

PREVENTION OF SEXUAL HARASSMENT

Policy: It is the policy of VHA to maintain a work environment free from sexual harassment and intimidation. Sexual Harassment is unacceptable conduct in the workplace and **will not be tolerated.**

WHAT IS SEXUAL HARASSMENT ?



Though sexual harassment has long existed in the workforce, and has frequently gone un-addressed, employers and managers alike must now deal with this problem under law. It has been mandated, as part of **Title VII of the Civil Rights Act of 1964**, that each and every working person has the legal right to work in an environment free from harassment on the basis of sex.

Harassment on the basis of sex is a violation of section 703 of Title VII. **Unwelcomed sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when** (1) submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment, (2) submission to or rejection of such conduct by an individual is used as basis for employment decisions affecting such individual, or (3) such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating hostile, or offensive working environment.

In determining whether alleged conduct constitutes sexual harassment, the Equal Employment Opportunity Commission (EEOC) will look at the record as a whole and at totality of the circumstances, such as the

nature of the sexual advances and the context in which the alleged incidents occurred. The determination of the legality of a particular action will be made from the facts, on a case by case basis.

Applying general Title VII principles, an employer, employment agency, joint apprenticeship committee or labor organization (hereinafter collectively referred to as “employer”) **is responsible** for its acts and those of its agents and supervisory employees with respect to sexual harassment regardless of whether the specific acts complained of were authorized or even forbidden by the employer and regardless of whether the employer **knew** or should have **known** of their occurrence. The EEOC will examine the circumstances of the particular employment relationship and the job functions performed by the individual in determining whether an individual acts in either a supervisory or agency capacity.

With respect to conduct between fellow employees, an employer **is responsible** for acts of sexual harassment in the workplace whether the employer (or its agents or supervisory employees) **knows** or should have **known** of the conduct, unless it can show that it took immediate and appropriate corrective action.

An employer may also be **responsible** for the acts of **non-employees**, with respect to sexual harassment of employees in the workplace, where the employer (or its agents or supervisory employees) **knows** or should have **known** of the conduct and fails to take immediate and appropriate corrective action. In reviewing these cases the EEOC will consider the extent of the employer’s control and any other legal responsibility which the employer may have with respect to the conduct of such non-employees.

Prevention is the best tool for the elimination of sexual harassment. An employer should take all steps necessary to **prevent sexual harassment** from occurring, such as affirmatively raising the subject, expressing strong disapproval, developing appropriate sanctions, informing employees of their right to raise and how to raise the issue of harassment under Title VII, and developing methods to sensitize all concerned.

Other related practices: Where employment opportunities or benefits are granted because of an individual’s submission to the employer’s sexual advances or requests for sexual favors, the employer may be held **liable** for unlawful sex discrimination against other persons who were qualified for but denied that employment opportunity or benefit.

The most serious infringement is that of **Quid Pro Quo harassment**. That is, when a person in a position of power over another offers to trade an employment benefit for a sexual favor.

THE KEY WORD IS “UNWELCOMED”



The key word in defining sexual harassment is **“UNWELCOMED”**. When any unwanted, unwelcomed, or unsolicited sexual conduct imposed on a person who regards it as offensive or unwanted, it is sexual harassment. When a person communicates that the conduct is unwelcomed, it becomes illegal. Even if the conduct is implicit in nature—hidden in subtlety or innuendo—as long as it is unwelcomed, it is unlawful.

Sexual Harassment is not usually an expression of sexual desire or sexuality, but a problem of inappropriate use of power. The majority of complaints involve subtle forms of harassment, sexual remarks, and offhand comments disguised as social interactions. These subtle infringements are the hardest to detect and accept as sexual harassment, but can be just as damaging, and just as illegal.

The guidelines also cite hostile-environment harassment as illegal. Hostile-environment harassment is any lewd sexual conduct, pictures, words, and/or touching which interferes with a person’s job performance, or creates an intimidating, offensive working environment even if there is no occurrence of tangible or economic loss.

It is important to note that although the EEOC guidelines are meant to protect individuals from sexual harassment, they are not meant to be an option for solving minor problems. Unless the conduct is quite severe, a single incident or remark does not generally create a hostile environment. The conduct must substantially affect the work environment of a “reasonable” person to be considered harassment. The exception is that a single incident of touching a person in an unacceptable place is usually considered offensive enough to be labeled sexual harassment.

THE “WHAT-IF-THEY-WERE-HERE” PRINCIPLE



If you have any doubts that your own conduct may be considered offensive, ask yourself if you would act in this manner if a person with whom you have a personal relationship (for example, a spouse) were observing.

EFFECTS OF SEXUAL HARASSMENT ON OTHERS

Sexual harassment can have an effect on other people who are not directly involved. If an equally qualified individual is passed over for a promotion or raise because another person submits to requests for sexual favors, and thus receives the promotion or raise, then that individual has been illegally discriminated against and has a right to follow complaint procedures.

Unchecked sexual harassment can also have less identifiable consequences on others in the workplace. Persons witnessing the harassment may feel the same loss or damage as the person toward whom the conduct is directed. Harassment problems which are either ignored or denied by supervisors or management can erode overall morale and productivity, not to mention exposing the organization to possible litigation and embarrassing press.

SEXUAL HARASSMENT, THE EMPLOYER, AND THE NON-EMPLOYEE

Sexual harassment can also come from outside the organization. EEOC guidelines establish the right of employees to be protected from harassment by non-employees. It states that employers are responsible

for any acts of sexual harassment perpetrated by non-employees while conducting business in the employer's work environment if the employer is aware of the harassment and takes no action to correct the conduct.

WHAT TO DO IF YOU ARE THE VICTIM OF SEXUAL HARASSMENT

- Tell the harasser that the behavior is unwanted, unwelcomed and unsolicited.
- Keep a record of any instances of harassment such as dates, places, times, comments, your responses, and witnesses. Also keep a record of follow-up actions.
- Ask coworkers if they observed the behavior or are aware of similar behavior.
- Tell your manager, supervisor or someone else about the incident. If the harasser is your supervisor, inform a higher level supervisor.
- Contact an EEO Counselor, the Federal Women's Program Manager, the EEO Manager, Union representative or the Human Resources Management Office within 45 days of the incident.



THINGS YOU SHOULD KNOW



1. Individuals of any sex, age, race, and marital status on any job can be a victim of unwanted sexual advances or attention.
2. VA may be held responsible, depending on the degree of control it has over a non-employee, for harassment by a non-employee temporarily at your place of work, or for harassment by co-workers if you have informed a supervisor of the incident and the VA facility has failed to take immediate and appropriate action. Employers are responsible for acts of harassment in the workplace where the employer, or its agents or supervisory employees, knows or should have known of the illegal conduct.
3. VA is liable for harassment by a supervisor or manager if the employee has suffered a tangible employment loss or harm. For hostile environment created by a supervisor or manager, the agency may limit its liability by showing a) it took preventive measures and promptly corrected any harassing behavior and b) the victim of the harassment failed to take advantage of preventive or corrective opportunities, such as informing the appropriate agency official or following any of the agency avenues available to address such matters (see above), to report the behavior.

4. Appropriate corrective action will be taken against any employee who engages in such conduct. The effect on the victim will be minimized to the extent possible.

5. Federal law prohibits retaliation (reprisal) against any employee who reports unlawful misconduct. VA officials will take appropriate disciplinary action, up to and including removal, against those who retaliate against any VA employee who cooperates, participates, or testifies in cases involving alleged harassment or discrimination.

If you believe you have been discriminated against in any employment matter or action, you **MUST** first contact an EEO Counselor **within 45 calendar days of the date of the matter or action you believe to be discriminatory**. Failure to contact an EEO Counselor within the 45 calendar day time limit may result in your complaint being rejected. Current EEO laws provide protection against discrimination due to race (any race), color (any color), sex (male or female), sexual orientation, national origin, religion, age (40 and over), disability/handicap (any handicap physical or mental) or reprisal for participation in past EEO complaint activity.

OFFICE OF RESOLUTION MANAGEMENT Telephone Directory

OFFICE OF THE DEPUTY ASSISTANT SECRETARY
FOR RESOLUTION MANAGEMENT (08)..... (202) 501-2800

ALTERNATIVE DISPUTE RESOLUTION..... (202) 501-2925
OFFICE OF THE CHIEF OPERATING OFFICER (202) 501-2900
OFFICE OF POLICY AND COMPLIANCE (08B)..... (202) 501-2680

FIELD OFFICES:

SOUTHEASTERN OPERATION

BAY PINES FIELD OFFICE (08J)..... (727) 319-1193

GREAT LAKES OPERATION

CLEVELAND FIELD OFFICE (08I)..... (440) 717-2852

CENTRAL PLAINS OPERATION

HOUSTON FIELD OFFICE (08N)..... (713) 794-7756

MID-SOUTH OPERATION

LITTLE ROCK FIELD OFFICE (08F)..... (501) 257-1581

NORTHEASTERN OPERATION

LYONS FIELD OFFICE (08E).....(908) 604-5349

WESTERN OPERATION

VANCOUVER FIELD OFFICE (08L).....(360) 759-1610

MID-ATLANTIC OPERATION

WASHINGTON, DC FIELD OFFICE (08D)..... (202) 501-2760

COMPLAINT PROCEDURES



A. Authority for the complaint process:

The administrative complaint process is authorized by the Civil Rights Act of 1964, as amended; the Age Discrimination in Employment Act of 1967, as amended; and the Rehabilitation Act of 1973, as amended. All Acts delegate responsibility to the EEOC to promulgate regulations which set forth the particulars of the complaint process. The EEOC regulations are published in Title 29, Code of Federal Regulations, Part 1614.

The bases for filing complaints are outlined in those regulations. They provide for the acceptance of complaints from any employee, or applicant for employment who believes that he or she has been discriminated against on the basis of **race (any race), color (any color), religion (any religion), sex (any sex, including sexual harassment), national origin (any national origin), age (40 years and above), disability (any disability), or in reprisal for having opposed such discrimination (as an EEO complainant or witness to an EEO complaint).**



B. Processing Stages:

1. **Informal Stage.** The aggrieved person must first seek counseling from an EEO Counselor about the event causing him or her to believe that he or she has been discriminated against, within **45 calendar days** of the date of occurrence. At the initial counseling session, counselors must inform individuals in writing of their rights and responsibilities. . When the aggrieved person has named or otherwise identified a responsible management official (RMO), the EEO Counselor must solicit the views of that RMO prior to the counselor's interview, the RMO must be advised that they have been named or identified by a complainant, must be informed of the nature of any accusations made, and must be advised of the right to have representative present during the interview to provide advice on how to respond to any questions the counselor may ask. The EEO Counselor will then make whatever inquiry is necessary and will attempt to seek a solution to the matter on an informal basis. The EEO Counselor will conduct the final interview and issue written notification of the complainant's right to file a formal complaint of discrimination on the 30th day after the initial contact by the complainant. An exception is where the agency offers alternate dispute resolution (ADR) and complainant wants to participate; the final interview then should take place within 90 days.
2. **Formal Complaint Stage.** The complaint must be reduced to writing, signed by the complainant and submitted to either the Regional EEO Officer, the Deputy Assistant Secretary for Resolution Management, or the Secretary of Veterans Affairs, within **15 calendar days** of receipt of the written Notice of Final interview. Complaints are usually submitted on VA Form 4939, but any written document containing the same information is acceptable. A complainant may amend a complaint at anytime before the investigation is finished to include

issues or claims that are like or related to the complaint. Authority to accept or dismiss a complaint is delegated to the Regional EEO Officer.



3. **Investigative Stage.** If a complaint is accepted, an investigator will be assigned to the case. The person assigned may not be an employee of the installation where the complaint arose. The investigator is authorized to take statements from witnesses, under oath and without a pledge of confidence, gather pertinent documents and records and conduct whatever other inquiry may be necessary. If a complaint has not been investigated and transmitted to the complainant and their representative within **180 calendar days** of its filing or the last amendment was filed, or within 360 days of the date the original complaint was filed, whichever is earlier. The complainant may request a hearing by an Administrative Judge appointed by the EEOC immediately.

4. **Advisement of Rights.** The Regional EEO Officer will give a complete copy of the report of investigation, along with an advisement of rights letter, to the complainant and to the complainant's representative (if any). **Pursuant to 29 CFR 1614.108 (f)**, the advisement of rights letter which is presented to the complainant and his or her representative upon completion of the investigation shall notify the complainant that, within **30 calendar days** of receipt of the investigative file, the complainant has the right to request either a hearing before an EEOC Administrative Judge or an Final Agency

Decision from Office of Employment Discrimination Complaint Adjudication (OEDCA), without a hearing.

5. **Hearing Stage.** If the complainant elects a hearing, either after completion of the investigation or after expiration of the 180 calendar days of the date the complaint or the last amendment was filed, or within 360 days of the date the original complaint was filed, which is earlier. The complainant must send a written request for a hearing directly to the EEOC office identified in the acknowledgment letter from the Regional EEO Officer. Also, the complainant may ask the administrative judge to amend the complaint, which, may include issues or claims that are like or related to the complaint. EEOC administrative judge is fully responsible for adjudicating complaint, including development of the record. The Administrative judge may dismiss a complaint, and may issue a decision without a hearing. The administrative judge will issue a decision within 180 days after receiving the complaint file from Office of Resolution Management. If the OEDCA does not issue a final order within 40 days after receiving the administrative judge's decision and hearing file, the decision becomes the final action of the agency.



6. **Final Agency Decision Stage.** The OEDCA must issue a final order within 40 days after receiving the administrative judge's decision and hearing file. The order must state whether or not the agency will fully implement the decision. If the order states that the agency will not, the OEDCA must file an appeal with EEOC at the same time it issues its final order. Where there is no decision by an administrative judge – dismissals or where a complainant did not request a hearing.

OEDCA is to take final action on a complaint by issuing a final decision. The decision must address all claims in the complaint, including the rationale for any dismissal, and /or findings on the merits. OEDCA must issue a final decision within 60 days of complainant' request for an immediate decision from the agency.

7. **Appeal Stage.** The decision letter from the OEDCA shall inform the complainant of the right to appeal the decision of the agency (including the decision to reject or cancel) to the EEOC and to the Federal District Court (Civil Action) and of the time limits within which the appeal must be filed. However, if the complaint involves a mixed case, where the agency should provide notice of right to appeal to the Merit System Protection Broad (not the EEOC) within thirty (30) days of receipt of the agency final decision.