THE SECRETARY OF VETERANS AFFAIRS

WASHINGTON

March 17, 2008

TO ALL EMPLOYEES

SUBJECT: Prevention of Sexual Harassment

Sexual harassment is an odious form of illegal discrimination, prohibited by Title VII, Section 703 of the Civil Rights Act of 1964, which generates a harmful and threatening atmosphere and undermines the integrity of the employment relationship. Sexual harassment also weakens morale and interferes with the productivity of its victims and their coworkers. All employees should refrain from such unacceptable conduct in the workplace.

Each employee has the responsibility for preventing or eliminating sexual harassment by (1) attending required training to become informed about the issue; (2) examining his or her behavior on the job; (3) identifying and taking individual action to stop inappropriate behavior by communicating directly and immediately with the person(s) whose behavior is offensive; and (4) if sexually harassed, bringing the matter to the attention of his or her supervisor, higher level manager, and/or the Office of Resolution Management (ORM). VA's policy on sexual harassment applies to all employees and covers harassment of a sexual nature between supervisors and subordinates, between employees, by employees outside the workplace while conducting Government business, and by non-VA employees while conducting business in VA's workplace. There are other incidents that would be considered sexual harassment. All allegations of sexual harassment should be reported within 45 calendar days of the alleged incident to ORM at toll free 1-888-737-3361, or by TTY/TDD at 1-888-626-9008.

I am holding all VA executives, managers, and supervisors accountable for taking the necessary steps to prevent and eliminate sexual harassment in the workplace. Allegations of sexual harassment will be dealt with swiftly and fairly. Substantiated complaints of sexual harassment will result in appropriate disciplinary or adverse action, up to an including removal. Also, appropriate disciplinary and/or adverse action will be taken against anyone who retaliates against an employee for reporting harassment or cooperating with the investigation of allegations of sexual harassment.

Supervisors should ensure that all employees receive training on the prevention of sexual harassment before December 31, 2008. New employees must receive face-to-face training. VA employees who have previously received this training may take their refresher course on-line. The Office of Diversity Management and Equal Employment Opportunity (DM&EEO) will provide guidance for reporting compliance by May 2008.

I expect your full support and cooperation in preventing and eliminating sexual harassment in VA. To assist you, guidelines prepared by DM&EEO are attached.

James B. Peake, M.D.

Attachment

GUIDELINES ON PREVENTION OF SEXUAL HARASSMENT

SEXUAL HARASSMENT DEFINED

- Sexual harassment is a form of sex discrimination prohibited under Title VII, Section 703, of the Civil Rights Act of 1964. Sexual harassment is deliberate or repeated unsolicited verbal comments, gestures, or physical contact of a sexual nature, or unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature 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 the 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.

- Sexual harassment is a prohibited form of illegal discrimination that generates a harmful and threatening atmosphere and undermines the integrity of the employment relationship. Sexual harassment also weakens morale and interferes in the work productivity of its victims and their coworkers. Sexual jokes and remarks with sexual innuendoes can also be a form of sexual harassment and are not acceptable in a professional work environment.

- There are three basic forms of sexual harassment:
  (1) **Verbal** - unwelcome suggestive remarks, sexual insults, innuendoes, jokes and humor about sex or gender-specific traits, sexual propositions and threats.
  (2) **Non-verbal** - unwelcome suggestive or insulting sounds, leering/ogling, whistling, obscene gestures and obscene graphic materials.
  (3) **Physical** - unwelcome touching, pinching, brushing the body, cornering, and actual or attempted rape or assault.

THE KEY WORD IS "UNWELCOME"

The key word in defining sexual harassment is "unwelcome." When any unwanted, unwelcome, or unsolicited sexual conduct is imposed on a person who regards it as offensive or undesirable, it is sexual harassment. When a person communicates that the conduct is unwelcome, it becomes illegal. Even if the conduct is implicit in nature (hidden in subtlety or innuendo) as long as it is unwelcome, it is unlawful.

SEXUAL HARASSMENT – AN INAPPROPRIATE USE OF POWER

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 off-hand 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.

HOSTILE WORKING ENVIRONMENT

Equal Employment Opportunity Commission (EEOC) guidelines 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 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. Another example of a sexual harassment is a quid pro quo ultimatum given by a supervisory to a subordinate that would negatively impact the subordinate would fall in that category.

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 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.

HANDLING A SEXUAL HARASSMENT COMPLAINT

In many situations, an appropriate supervisory response may resolve the situation and prevent an informal or formal Equal Employment Opportunity (EEO) complaint. When a supervisor is approached by an employee complaining of sexual harassment, the steps listed below should be followed:

Five steps in handling a sexual harassment complaint:

1. **Take the complaint.**
   Express no opinion and make no commitment, but encourage the person to speak candidly. Be an active listener, asking questions, acknowledging their statements and reflecting their feelings. Encourage facts. Advise the person of his or her right to contact an EEO Counselor in the Office of Resolution Management (ORM) within 45 calendar days of the alleged incident believed to be unlawful harassment.

2. **Interview the alleged offender.**
   Conduct the interview in the same straightforward, unbiased manner you used with the person who registered the complaint. If no resolution is achieved, proceed to step three.

3. **Consult the local EEO Program Manager.**
   The supervisor should discuss the matter with the local EEO Program Manager to determine an appropriate response. This may include reporting the matter to the applicable convening authority to begin an administrative investigation.

4. **Initiate an inquiry.**
   Be discreet, enlist organization sources, review appropriate records, and interview anyone who may have information or insights on what took place.

5. **Take appropriate action.**
   Explain the results of your inquiry to the alleged harasser and consult the local EEO Program Manager to determine the appropriate policy regarding disciplinary action.

PREVENTION OF SEXUAL HARASSMENT

Prevention is the key to elimination of sexual harassment in the work environment. Each employee should play a role in preventing or eliminating sexual harassment by: (1) attending required training to become informed about the issue; (2) examining his/her behavior on the job; (3) identifying and taking individual action to stop inappropriate behavior by communicating directly and immediately with the person(s) whose behavior is offensive; and (4) bringing the matter to the attention of his/her supervisor, higher level manager, local EEO Program Manager, EEO Counselor in ORM, a union representative if the employee is a member of a bargaining unit, or the Office of Inspector General.

ADDITIONAL RESOURCES

For additional information regarding prevention of sexual harassment, please visit the following Web sites:

- Office of Resolution Management
  http://vaww.va.gov/orm/

- Office of Diversity Management and Equal Employment Opportunity
  http://www.va.gov/dmeeo/

Department of Veterans Affairs
Office of Diversity Management and Equal Employment Opportunity
March 2008