

HARASSMENT PREVENTION POLICY

- 1. REASON FOR ISSUE:** This directive establishes the Department of Veterans Affairs (VA) harassment prevention policy. It outlines roles and responsibilities to help VA maintain a workplace free from harassment.
- 2. SUMMARY OF CONTENTS/MAJOR CHANGES:** “Enforcement Guidance: Vicarious Employer Liability for Unlawful Harassment by Supervisors,” June 18, 1999, Equal Employment Opportunity Commission (EEOC), requires Federal agencies to establish anti-harassment procedures that cover all protected bases of discrimination. This directive reflects longstanding policy at the Department of Veterans Affairs (VA) for maintaining a model workplace free from harassment and other forms of discrimination. The VA further prohibits employees from engaging in harassing conduct for *any* reason regardless of whether the conduct is related to one of the Federally protected bases. The electronic version of this directive is maintained on the [VA Publications website](#).
- 3. RESPONSIBLE OFFICE:** The Office of Resolution Management, Diversity and Inclusion (ORMDI).
- 4. RELATED HANDBOOK/DIRECTIVE:** VA Handbook 5979, Harassment Prevention Program Procedures (not yet published).
- 5. RESCISSION:** None.

CERTIFIED BY:

**BY DIRECTION OF THE SECRETARY OF
VETERANS AFFAIRS:**

/s/
Karen L. Brazell
Principal Executive Director, Office of
Acquisition, Logistics and Construction
and Chief Acquisition Officer, and
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/s/
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DISTRIBUTION: Electronic only

HARASSMENT PREVENTION POLICY

1. **PURPOSE.** This directive establishes the Department of Veterans Affairs (VA) harassment prevention policy.
2. **POLICY.** It is policy at VA to maintain a work environment free from harassment. Harassing conduct will not be tolerated. This policy requires immediate and appropriate action to be taken by management when notified of hostile conduct that is, or has the potential to become, severe or pervasive to the point that it constitutes a legal claim of sexual or non-sexual harassment.
 - a. EEOC defines harassment as any unwelcome verbal or physical conduct based upon race, color, religion, sex (including gender identity, transgender status, sexual orientation, and pregnancy), national origin, age, disability, genetic information, parental status or retaliation for opposing discriminatory practices or participating in the discrimination complaint process, when:
 - (1) The behavior can reasonably be considered to adversely affect the work environment, or,
 - (2) An employment decision affecting the employee is based upon the employee's acceptance or rejection of such conduct.
 - b. Sexual harassment involves 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 made explicitly or implicitly a term or condition of one's employment or is used as a basis for career or employment decisions affecting that person; or such conduct interferes with an individual's performance or creates an intimidating, hostile or offensive work environment.
 - c. VA further prohibits employees from engaging in harassing conduct for any reason regardless of whether the conduct was related to one of the legally protected bases identified above in paragraph 2.a.
 - d. Additionally, it is important to understand the distinction between harassment and legitimate management actions. For example, management is required to provide performance feedback to employees regarding time and attendance, conduct, and work performance. Negative feedback or action from management can be unpleasant for the employee, but negative feedback or delivery of same may not rise to the level of harassment. Harassment does not involve whistleblower retaliation. Examples of harassment include but not limited to offensive jokes, slurs, threats, offensive objects or pictures and intimidation.
 - e. Harassment allegations may be reported to the immediate supervisor; another management official if the alleged harasser is the immediate supervisor; the local Harassment Prevention Coordinator (HPC); or the VA Harassment Prevention Program (HPP) Office at 1-888-566-3982.

- f. VA will not tolerate retaliation against any individual for reporting harassing conduct under this or any other policy or procedure, or for assisting in any inquiry about such a report.

3. RESPONSIBILITIES.

- a. **Assistant Secretary for Human Resources and Administration/Office of Security and Preparedness (AS HRA/OSP)** shall provide oversight and support to the HPP, ensuring a harassment-free environment is established and maintained in the VA
- b. **Under Secretaries, Assistant Secretaries, and Other Key Officials** shall perform following functions as outlined in VA Handbook 5979: (not yet published)
 - (1) Ensure all employees are aware the policy is posted on the VA Publication Website and produce locally for employees who do not have access to email.
 - (2) Coordinate with the ORMDI HPP office to ensure that all employees receive harassment prevention training provided by the ORMDI HPP office.
 - (3) Appoint an HPC point of contact to coordinate with the ORMDI HPP office on all reports of harassment at the facility and staff office level.
 - (4) Coordinate with the ORMDI HPP office to ensure that the HPC receives all HPC training within 30 -45 days of appointment.
 - (5) Ensure that an investigation into harassment allegations is completed within 30 business days of receipt of the allegation.
 - (6) Appoint individual(s) as determined through coordination with the HPP Program Manager (PM), to serve on a pool of neutral factfinders. The factfinders will receive training and remain available to conduct factfindings to the extent necessary.
- c. **Deputy Assistant Secretary/Office of Resolution Management, Diversity and Inclusion (DAS ORMDI)** shall:
 - (1) Provide executive leadership, general oversight and support to the HPP and ensure that its functions remain separate and distinct from Equal Employment Opportunity (EEO) complaint processing functions.
 - (2) Designate an ORMDI HPP Program Manager.
 - (3) Develop and oversee VA-wide policy for processing harassment allegations.
 - (4) Provide an electronic case management system and a call center to receive harassment allegations from VA employees and managers.

(5) Serve as the advisor to the AS/HRA/OSP on harassment matters.

d. **The ORMDI HPP Program Manager** shall:

- (1) Develop and oversee VA-wide policy for processing allegations of harassment in the ORMDI HPP office.
- (2) Establish HPP assessment guidelines for reviewing and documenting compliance with applicable laws, regulations and directives regarding allegations of harassment for facility and staff offices. Conduct a minimum of 10 compliance reviews per fiscal year.
- (3) Ensure that policies and procedures for processing allegations of harassment are developed, distributed and maintained in accordance with applicable laws and regulations.
- (4) Advise and assist the DAS/ORMDI and other key officials on matters relating to the HPP processes.
- (5) Provide the DAS/ORMDI with Administration and Staff Office performance reports, evaluations and trend data regarding HPP compliance with applicable laws and regulations.
- (6) Track, monitor and report the quantity and quality of VA's harassment prevention activities uploaded into the Harassment Prevention Program Intake System (HPPIS).
- (7) Coordinate Department-wide training on how to prevent harassment in the workplace and procedures for reporting and addressing harassment in accordance with applicable EEOC regulations.
- (8) Ensure that all allegations of harassment are processed in accordance with applicable laws, regulations, directives and the HPP Handbook.
- (9) Work with VA management officials to raise awareness on their responsibilities in the Harassment Prevention arena.
- (10) Ensure that all employees receive the appropriate level of training required by EEOC directives and that sufficient resources are allocated to achieve organizational objectives.
- (11) Review and approve all existing VA and Administration policies and information documents to make sure they are current, complete, and aligned with VA's Sexual Harassment Policy.

e. **ORMDI HPP Program Specialist** shall:

- (1) Serve as HPP subject matter experts (SMEs) providing program guidance and education to customers and stakeholders.

- (2) Upload, review, and monitor reports of harassment in the HPPIS.
 - (3) Notify Administration, Staff Office and facility Directors upon receipt of reports of harassment and when offices fail to respond within 30 business days.
 - (4) Timely monitor and track case assignments to include following up with allegeders to ensure their allegations are handled in accordance with the HPP procedures.
 - (5) Coordinate with management and the HPCs to ensure that all allegations of harassment are addressed in accordance with EEOC regulations.
 - (6) Work closely with management to monitor compliance on corrective actions taken.
 - (7) Develop uniform training programs and collaborate with other VA organizations in the delivery of training for managers and employees in areas that often lead to HPP and EEO complaints.
 - (8) Identify internal and external training programs to address training needs.
 - (9) Conduct a compliance review at facilities and/or Staff Offices.
- f. **VA Harassment Prevention Coordinator** shall:
- (1) Serve in a collateral role as a coordinator for harassment allegations received in their respective Administrations and/or Staff Offices.
 - (2) Coordinate with the HPP Program Specialist to ensure management is aware and timely addresses all allegations assigned to them throughout the process.
 - (3) Review, update and input all required information and records in the HPPIS related to reports of harassment.
 - (4) Serve as a point of contact for staff to report allegations of harassment. Upon receipt of a report of harassment, HPC will notify management and educate the allegeder on the next steps in the process staff on the HPP process.
 - (5) Coordinate with the ORMDI HPP office on providing HPP awareness training to the workforce.
- g. **VA Administration and Staff Office Managers/Supervisors** shall perform following functions as outlined in VA Handbook 5979:(not yet published)
- (1) Work to prevent harassment in the workplace.

- (2) Ensure that their subordinates are aware of this directive and associated handbook VA Handbook 5979 (not yet published) and its requirements.
 - (3) Ensure that all employees receive harassment prevention training.
 - (4) Immediately begin to address (within five business days) any incident of inappropriate and harassing behavior (e.g., separate the alleged perpetrator of sexual harassment from the employee alleging harassment; begin an inquiry, factfinding, mediation, administrative investigation, to the extent possible). Allegations involving senior leaders, as defined in VA Directive 0500, must be reported to OAWP. OAWP may investigate these allegations. Notify the ORMDI HPP office that the case was reported to OAWP. For more information about OAWP, visit www.va.gov/accountability.
 - (5) Ensure allegations of inappropriate and harassing behavior are kept confidential, to the extent permitted by law.
 - (6) Submit a copy of the completed factfinding, inquiry, administrative investigation and/or outcome to the HPP and/or HPC within 30 business days of the receipt of the report of harassment. A template will be provided in Handbook 5979, not yet published.
 - (7) Within three (3) business days of the outcome, follow up with the employee who reported the harassing behavior.
 - (8) Take prompt and appropriate corrective and disciplinary action against personnel who have engaged in harassing conduct or who have not carried out their responsibilities under this policy.
 - (9) Within three (3) business days, notify the ORMDI HPP office of the corrective action or any other measures taken to address the substantiated allegations.
 - (10) Notify the ORMDI HPP office, within two (2) business days, of all reports of harassment (one (1) business day for sexual harassment), reported directly to the facility or staff office and not to the HPP Agency Office. Submit documentation outlining efforts to address issues and the outcome.
 - (11) Participate and support the HPP Compliance Review Program, conducted at facilities or staff offices. Provide a corrective action plan within thirty (30) business days of receipt of the HPP Compliance Review Program Final Report.
- h. **General Counsel** In addition to the responsibilities in Para 3 b above, shall provide expert legal advice and guidance relevant to harassment prevention responsibilities and assist in legal issues that arise during HPP inquiries.
- i. **Assistant Secretary for Accountability and Whistleblower Protection** In addition to the responsibilities in Para 3 b above, shall:

- (1) Receive allegations of harassment against senior leaders as defined in VA Directive 0500.
- j. **Administration and Staff Office Human Resource Offices (HR)** shall:
- (1) Receive biannual HPP training specific to their roles in TMS, as provided by ORMDI.
 - (2) Provide guidance and advice to employees and management to address harassment allegations.
- k. **Employee Relations/Labor Relations (ER/LR) Supervisor** shall:
- (1) Provide guidance and advice to management to address harassment allegations when a complaint of harassment has been received from the ORMDI HPP office.
 - (2) Provide guidance and advice to management when corrective action is required in response to harassment allegations.
 - (3) Provide confirmation to the ORMDI HPP office within three business days that corrective action has been taken when it has been determined that inappropriate behavior has occurred.
- l. **It is VA policy that all VA Employees** shall:
- (1) Act professionally and refrain from inappropriate and harassing conduct.
 - (2) Immediately report inappropriate and harassing behavior to a management official, HPC and/or the ORMDI HPP office, if subjected to unwelcome hostile or abusive conduct.
 - (3) Immediately report inappropriate and harassing behavior to a management official, HPC and/or the ORMDI HPP office, if as a bystander, harassing behavior is witnessed.
 - (4) Fully cooperate in an inquiry or fact-finding of a harassment allegation.

4. REFERENCES.

- a. Title VII of The Civil Rights Act of 1964, as amended, 42 United States Code (U.S.C.) §2000e-16.
- b. Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. §633a.
- c. Americans with Disabilities Act Amendments Act of 2008, 42 U.S.C. §12101 et seq.
- d. Rehabilitation Act of 1973, as amended, 29 U.S.C. §791(g).

- e. Civil Service Reform Act of 1978, 5 U.S.C. §2302(b) (10).
- f. Genetic Information Nondiscrimination Act of 2008, (GINA), 42 U.S.C. §2000ff-1(b).
- g. The Pregnancy Discrimination Act of 1978, P.L. Number 95-955.
- h. Executive Order 11478, as amended, prohibiting discrimination based on sexual orientation, May 28, 1998.
- i. Executive Order 13152 prohibiting discrimination based on parental status, May 2000.
- j. EEOC Management Directive 715, December 3, 2019.
- k. EEOC Enforcement Guidance: Vicarious Employer Liability for Unlawful Harassment by Supervisors, June 18, 1999.
- l. EEOC Management Directive 110, as revised, August 5, 2015.
- m. VA Secretary Equal Employment Opportunity, Diversity and Inclusion, No FEAR and Whistleblower Rights and Protection Policy Statement, December 19, 2019.
- n. VA Secretary Memo regarding the establishment of the Anti-Harassment Office/HPP, February 12, 2015.
- o. VA Handbook 0500, Investigation of Whistleblower Disclosures and Allegations Involving Senior Leaders or Whistleblower Retaliation
- p. Equal Employment Opportunity Commission (EEOC)

APPENDIX A

GUIDELINES TO REPORT HARASSING CONDUCT

1. REPORTING HARASSMENT

Harassment by or against VA employees, applicants, contract employees, clients/patients, customers or anyone doing business with VA is strictly prohibited. Any individual who has been subjected to and/or witnessed unwelcome conduct is encouraged to inform the person(s) responsible for the conduct that it is unwelcome and offensive. If the conduct continues or the individual is uncomfortable confronting the responsible person(s) about the conduct, he or she must immediately report the matter to the following:

- a. Their immediate supervisor.
- b. Another supervisor or other management official, if the supervisor is the alleged harasser.
- c. The HPC. For a list of HPCs, visit www.va.gov/ORM/HPP.asp.
- d. The ORMDI HPP office at 1-888-566-3982.

In addition to understanding what harassment is, it is also important to understand what it is not. Harassment should be distinguished from management's legitimate efforts to supervise employee. For example, management is required to provide feedback to employees regarding time and attendance, conduct, and work performance. Negative feedback or action from management on these topics could be unpleasant for the employee but may not rise to the level of harassment. Harassment does not involve whistleblower retaliation.

All information pertaining to a harassment claim must be maintained on a confidential basis. The maintenance of records and any disclosure of information from these records must be in complete compliance with the Privacy Act, Title 5 U.S.C. 552a. Such information can be disclosed on a "need to know" basis.

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2. INQUIRY INTO ALLEGATIONS OF HARASSING CONDUCT

A supervisor or manager who receives an allegation or witnesses harassing conduct must:

- a. Immediately assess the situation and consult with the HPC and/or Human Resources Management ER/LR staff to determine what type of inquiry will occur.

Note: Harassment allegations involving senior leaders, as defined in VA Directive 0500, must be reported to OAWP. OAWP may investigate these allegations. For more information about OAWP, visit www.va.gov/accountability.

- b. Notify the alleged that his/her report of harassment has been received and an inquiry into the allegations will be conducted.
- c. Designate a factfinder immediately when it is determined that an informal fact-finding is necessary. See the above note about harassment allegations involving senior leaders. Managers and supervisors dealing with allegations of inappropriate and harassing conduct should avail themselves of the expertise of the HPP Specialist, HPC and/or HR Specialists throughout this process. This expertise is critical when selecting the person who will serve as the factfinder.

NOTE: REPORTS OF SEXUAL HARASSMENT:

When sexual harassment reports are received directly by the HPC or the supervisor, the HPC and supervisors are required to report the matter to the ORMDI HPP office within one (1) business day for monitoring and tracking. The report must be in writing and must include a brief description of the alleged harassing conduct, name of the alleged and accused, and preliminary steps taken, in response to the allegation. For a sample harassment complaint form to be used by the supervisor and the HPC visit www.va.gov/ORM/HPP.asp.

- d. In consultation with subject-matter experts, make the ultimate determination as to whether the conduct violated the policy and, if so, what type of corrective action is warranted. Any employee, supervisor or manager who is found to have violated the harassment prevention policy or procedures may be subjected to disciplinary action.
- e. The supervisor and/or designee will notify the employee who reported the harassment of the completion and outcome of the process.

The ORMDI HPP office will:

- a. Monitor and track reports of harassment to ensure allegations were addressed by management.
- b. Follows up with employees to ensure that management notified them:
 - of the outcome
 - that the situation was resolved
 - that any concerns about the process are addressed
- c. Review all outcomes for appropriateness and timeliness.
- d. Follow up with the appropriate management official to ensure that action is taken in accordance with the VA Handbook 5979 (not yet published).

Note: Reporting allegations of harassment in the Harassment Prevention arena does not preclude an individual from filing an EEO complaint. The EEO and HPP are separate programs. To file an allege harassment complaint in the EEO arena, the individual must contact an ORMDI EEO Counselor within 45 calendar days of the date of the alleged discrimination. For additional information, visit the ORMDI website at <http://www.va.gov/ORM/HPP.asp>.