

**United States Section
International Boundary and Water Commission**

Directive Management System

Volume I : Mission Support
Part 0700 : Executive Office of the Commissioner
Chapter 0702 : Equal Employment Opportunity
Directive 07024 : Anti-Harassment Policy and Procedures
Citation : SD.I.07024
Proponent : Equal Employment Opportunity
Effective Date : September 22, 2022

1. **Purpose:** This Directive prescribes policy, procedures, and responsibilities to assist the U.S. International Boundary and Water Commission (USIBWC) in achieving its goal to prevent harassing behavior before it becomes severe or pervasive.
2. **Requirement and Authority:**
 - A. *Burlington Industries v. Ellerth*, 524 U.S. 742 (1998)
 - B. *Faragher v. City of Boca Raton*, 524 U.S. 775 (1998)
 - C. Equal Employee Opportunity Commission (EEOC) Enforcement Guidance: Vicarious Employer Liability for Unlawful Harassment by Supervisors, Notice 915.002, June 18, 1999.
 - C. Agency Administrative Grievance Procedures, SD.I.08016
 - D. Notification and federal Employee Antidiscrimination and retaliation Act of 2001, as amended (PL. 107-174)
 - E. EEOC Directive: Prevention and Elimination of Harassing Conduct in the Workplace, Notice 560.005, August 9, 2006.
3. **Applicability.** This directive applies to all USIBWC employees.
4. **Definitions.**
 - A. Employment actions. Refers to decisions that significantly change an employee's employment status. Such actions include, but are not limited to, hiring, firing, promoting, demoting, and reassigning an employee.

- B. Reprisal or retaliation. Occurs when employees are treated differently because they are, or were, involved in a harassment complaint or a protected EEO activity. Examples include providing testimony in a harassment or EEO investigation, filing a complaint, or speaking out against activities that are discriminatory or involve harassment.

- C. Unlawful harassment. Includes, but is not limited to, unwelcome intimidation, ridicule, insults, comments, bullying, sabotage, or verbal or physical conduct that is based on race, color, religion, age (40 years or older), disability (physical or mental), national origin, reprisal, sex (to include pregnancy, gender identity, transgender status, and sexual orientation), disability, genetic information, personality differences, veterans status, marital status, parental status, or for no particular reason, when:
 - (1) Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment.
 - (2) A manager/supervisor makes an employee's submission to or rejection of such conduct the basis for employment decisions affecting the employee; or
 - (3) The conduct is intended to or has the effect of unreasonably interfering with an individual's work performance or creates an intimidating, hostile, or offensive work environment.

- D. Workplace harassment. Is any form of unwelcome, pervasive, persistent, and unsolicited verbal, non-verbal, written, or physical conduct that is so objectively offensive that it alters the victim's terms and conditions of employment. This happens by either culminating in a tangible employment action or by being sufficiently severe or pervasive as to unreasonably interfere with an employee's work performance by creating an intimidating, abusive, offensive, or hostile work environment.

- E. Non-EEO harassment. Refers to inappropriate behavior that is outside the scope of EEO program. The offensive conduct is unrelated to EEO bases of discrimination under Title VII, can be isolated (infrequent) and include, but is not limited to: unwelcome compliments, questionable jokes, workplace bullying, nonviolent threats, and insults.

5. Responsibility.

- A. The EEO Director. Is responsible for:
 - (1) Disseminating this directive and policy statement annually to all employees and posting it on USIBWC website.

- (2) Providing technical assistance and support, to ensure compliance with this directive. This means EEO Director answers only technical questions about the policy and procedures and refers questions about a particular situation to the HRO;
- (3) Training managers and supervisors on inquiring into allegations of harassment;
- (4) Ensuring that the identities of the Agency officials responsible for this Directive is promptly displayed in the Agency's internal drive and external website.
- (5) As needed, collect information on a quarterly basis on alleged harassment, findings, and actions taken in the HRO related to harassment.
- (6) Reporting on a quarterly basis on alleged harassment, findings, and actions taken at HQ to the Commissioner;
- (7) In collaboration with the HRO, establishing and updating policies, procedures, and guidelines to administer the agency's anti-harassment program and disseminating them annually;
- (8) Within 3 calendar days of receipt, referring reports alleging violations of the agency's policy to the HRO. The report must include the alleged victim's name and contact information; and
- (9) Collecting information on alleged harassment, findings, and actions taken and analyzing this information for compliance.

B. Executives. Are responsible for:

- (1) Ensuring employees are informed of the agency's anti-harassment policy and procedures;
- (2) Promoting management and employee efforts to eliminate harassment;
- (3) Ensuring appropriate actions are taken to enforce the anti-harassment policy and procedures;
- (4) Appropriately evaluating subordinate supervisors and managers on their performance under this policy; and
- (5) Displaying or making readily available copies of relevant policies and procedures.

C. Supervisors and Managers. Are responsible for:

- (1) Ensuring employees are informed of the agency's anti-harassment policy and procedures
- (2) Receiving allegations of harassment;
- (3) Ensuring that employees know the specific procedures for dealing with harassment and providing training on these procedures;
- (4) Acting promptly and appropriately to prevent harassment in the workplace and preventing retaliation against those who report it;
- (5) Handling allegations of harassment promptly, thoroughly, and appropriately, in accordance with the procedures in this chapter; and
- (6) Consulting with the Human Resources Office and taking prompt and appropriate corrective and disciplinary action, as necessary.

D. Human Resources Officer (HRO). Is responsible for:

- (1) In collaboration with the EEO Director, establishing and updating policies, procedures, and guidelines to administer the agency's anti-harassment program;
- (2) Providing oversight, technical assistance, and support to managers, supervisors, and employees to ensure compliance with this policy;
- (3) Receiving reports alleging violations of the agency's policy and taking appropriate action as we describe in this chapter;
- (4) When there is a conflict of interest, referring allegations to the EEO Director to assign the complaint inquiry to another program or Division;
- (5) Maintaining a written record of harassment reports and actions taken;
- (6) Providing technical assistance and support as requested to ensure compliance with this directive. This means EEO Director answers only technical questions about the policy and procedures and refers questions pertaining to a particular situation to the HRO;
- (7) As appropriate, developing, conducting, and coordinating training with the EEO Director on prevention of harassment in the workplace;
- (8) Collecting information on alleged harassment, findings, and actions taken and analyzing this information for compliance.

(9) Maintaining a written record of harassment reports and actions taken at the agency;

E. Employees and other people who are performing work on behalf of the agency are responsible for:

(1) Acting professionally and refraining from engaging in harassment;

(2) Understanding the provisions of these procedures, complying with all procedural requirements, and cooperating with any inquiry;

(3) Participating in periodic training; and

(4) Promptly taking actions regarding incidents of harassment that are experienced or witnessed as this directive requires.

6. **Procedures for Addressing Harassment Claims.** The agency has organized the procedures into four basic steps shown in sections A through D below – reporting harassment, responding to the allegations, conducting an inquiry, and taking action(s) after the inquiry is complete.

A. Reporting harassment. Individuals must take the following actions to avoid harm from unlawful harassment:

(1) When appropriate, promptly and professionally inform the offender that his or her behavior is unwelcome and must stop;

(2) Individuals, who believe they have been harassed, or have witnessed conduct that is in violation of our directive should immediately report the behavior either verbally or in writing to either:

(a) A supervisor or management official, or

(b) An employee in the HRO or EEO offices.

A delay of more than 43-4 workdays between the alleged harassment and an allegation of harassment may not be considered 'immediate,' although every case will be reviewed on its own facts and merits.

(3) Non-employees, such as vendors, volunteers and visitors, should immediately notify an agency supervisor.

(4) Contractors should contact their employer immediately. They should also inform an agency supervisor or an employee in the HRO or EEO offices.

- (5) To the greatest extent possible, we will protect the confidentiality of the individual who reports harassment, except as necessary to conduct an appropriate inquiry of the alleged violation(s). We are committed to ensuring that allegations of harassment are shared only with those who need to know.

B. Responding to allegations of harassment.

- (1) When a manager or supervisor receives an allegation of harassment directly from an individual, is a witness to harassment, or is informed about an allegation of harassment, he/she must:
 - (a) Within 3 calendar days, report the allegation to the HRO or EEO. Failure to report the allegation could result in disciplinary or adverse action against the manager or supervisor for not adhering to policy.
 - (b) Assure the employee who reports alleged harassment that the agency will:
 - (i) Conduct a prompt, thorough, and impartial inquiry;
 - (ii) Protect his/her confidentiality to the extent possible; and
 - (iii) Take immediate and appropriate corrective action if we determine there has been harassment.
 - (c) When an allegation of harassment occurs in a manager's or supervisor's area of responsibility, **he/she should take measures to stop any inappropriate conduct and prevent further harassment or retaliation while an inquiry is being conducted.** An example of such a measure would be to change work schedules to avoid contact between the parties or temporarily transfer the alleged harasser. The alleged victim should not be involuntarily transferred or otherwise burdened, since such measures could be considered unlawful retaliation.
 - (d) In all instances, the manager or supervisor to whom the incident is reported must inform the individual of his/her right to:
 - (i) Seek counseling from an EEO Counselor or EEO Director within 45 days from the date of the alleged harassment if the bases for the harassment is covered under EEO laws or statutes;
 - (ii) File a grievance in accordance with the terms of his/her formal bargaining contract, if applicable, and
 - (iii) Pursue an administrative grievance under SD.I.08016 or seek relief through any other statutory process.

(e) Take appropriate corrective action in consultation with the HRO.

(2) When the HRO receives a complaint:

(a) The office must, within 3 calendar days, refer the complaint to the appropriate Executive or AOM, who will oversee an inquiry into the complaint. The HRO also serves as an advisor for the inquiry process and oversees processing of the complaint to ensure that those responsible are meeting the required timeframes.

(b) When there is a conflict of interest at the Executive level, the HRO will refer it within 3 calendar days to the Commissioner. When there's a conflict at HRO, the HRO will refer it to the Commissioner within 3 calendar days.

(c) The Executive, Department Manager or AOM member to whom the complaint is sent must ensure that a prompt, thorough, and impartial inquiry of the allegation begins within 10 calendar days from the date in which the allegations were brought to his/her attention.

(3) When EEO Officials, to include collateral duty EEO counselors and mediators, receives an allegation of harassment, the staff in that office must, within 3 calendar days, report the allegation to the HRO, as appropriate, and provide them with the alleged victim's name and contact information.

The EEO Director will provide technical assistance and support as requested to ensure compliance with this directive—they do not answer questions specific to a particular situation.

C. Conducting the inquiry.

(1) An inquiry is an examination that usually involves collecting testimony and, if relevant, supporting documents.

(2) The inquiry must result in a record sufficient enough to support any corrective or disciplinary action taken, or that indicates that there is not sufficient evidence to support corrective or disciplinary action.

(3) The alleged harasser's program must pay for the cost of the inquiry, if there are any costs.

(4) Management officials may use one of the following resources to conduct the inquiry:

(a) A supervisor or manager from within the Division, Department or Field Office,

- (b) A supervisor or manager from outside of the Division, Department or Field Office; or
 - (c) A contractor from an investigative firm.
- (5) The management official must ensure that the individual conducting the inquiry:
- (a) Does not have a conflict of interest with either the alleged victim or the alleged harasser;
 - (b) Is well-trained in the skills that are required for interviewing witnesses, evaluating credibility, and gathering facts; and
 - (c) Provides the decision maker/Executive, within 21 calendar days, a written summary of the findings. The summary may be brief, depending on the complexity and seriousness of the case.
- (6) The person conducting the inquiry should, at a minimum, adhere to the following process:
- (a) Coordinate with the manager or supervisor responsible for the inquiry and with the HRO to ensure that all obligations are met for the inquiry.
 - (b) Confirm the name, position, and supervisory chain of the alleged victim and the alleged harasser and identify any potential witnesses.
 - (b) Ask questions of the alleged victim, alleged harasser, and witnesses, and obtain signed statements from each of them.

Identify the alleged misconduct to include:

- (i) A detailed account of the specific actions/comments;
 - (ii) The dates, the times, and the locations of the alleged actions/comments; and
 - (iii) The names of any witnesses or others with knowledge of the alleged misconduct.
- (d) Obtain a detailed response to each allegation from the alleged harasser as well as the names of witnesses who can corroborate the alleged harasser's account of events.
- (f) Refrain from offering his or her opinion.

- (g) Inform all interviewees that the individual who reported the harassment, the alleged victim, and all witnesses are protected against retaliation.
- (7) If the alleged harasser does not deny the accusation, there is no need to interview witnesses. Management officials will contact HRO and can immediately determine appropriate corrective action.

D. Taking action(s) after an inquiry is complete:

- (1) Once the inquiry is complete, the person conducting the inquiry and the management official who is reviewing the report of inquiry, must collaborate with the HRO to determine, if possible, whether the alleged actions occurred and if sufficient evidence exists to justify taking disciplinary action.
- (2) The HRO will share the findings with the appropriate management officials to whom the alleged harasser and the alleged victim are assigned.
- (3) The responsible management officials must promptly evaluate the evidence and determine the appropriate action to take, in accordance with the agency's Employee Conduct, Discipline and Adverse Action Directive. This responsibility normally rests with the first line supervisor of the employee alleged to have engaged in the harassing conduct.
- (4) When an inquiry establishes that an employee engaged in misconduct under this directive, he or she is subject to appropriate corrective action, disciplinary or otherwise, up to and including removal. The appropriate management official (usually the employee's supervisor) makes this decision in consultation with the HRO.
- (5) The management official can immediately determine the appropriate corrective action in consultation with the HRO when the alleged harasser does not deny the accusation.
- (6) In cases of complex or egregious alleged misconduct involving harassment, the supervisor must consult with the HRO. HRO may also decide to consult the Legal Office.
- (7) If the inquiry establishes that a manager or supervisor did not properly carry out his/her responsibilities under this policy, he or she is subject to appropriate corrective action, disciplinary or otherwise, up to and including removal. The first line supervisor of the manager/supervisor found culpable must make this decision in consultation with the HRO and the Legal Office.
- (8) All efforts taken to address the allegations must be documented.

- (9) Managers/supervisors involved in the process must continually assess the need for training. In most situations, we recommend conducting training within 30 calendar days of the outcome of the management inquiry, regardless of the outcome of the inquiry.
 - (10) The manager of the employee who was allegedly harassed must provide him/her a summary of the findings within 15 calendar days of the closure of the inquiry. Managers should consult with the HRO to determine the best way to do this.
 - (11) If the inquiry establishes that immediate and appropriate corrective action is warranted, anyone who will receive a disciplinary or adverse action must also get a copy of the documentation used to determine culpability. Managers should only take corrective action in consultation with the HRO and the Legal Office.
 - (12) Within 60 calendar days from the day the agency received notice of a harassment complaint, the Agency must reach a decision and, if necessary, take corrective action. Extensions to this timeframe are approved on a case-by case basis.
 - (13) If the evidence is inconclusive, managers should consider taking preventive measures, such as training and monitoring.
 - (14) The HRO must maintain a record of all inquiries related to allegations of harassment.
- E. Reporting requirements. The EEO Director will request quarterly reports from the HRO. The reports will include name(s), claim(s), date(s) of alleged harassing conduct, name of management official conducting the inquiry, and outcome of the inquiry.
- F. Does compliance with this directive satisfy the agency's obligation under the grievance policy, EEO complaint process, collective bargaining agreements, or other processes?
- (1) No. Compliance with the directive and procedures does not replace, substitute, or otherwise satisfy the separate obligation under an EEO complaint process, formal bargaining contract, administrative grievance, or any other statutory process.
 - (2) Employees who want to pursue an EEO complaint alleging harassment must contact an EEO Counselor no later than 45 calendar days after the date of the alleged harassment. For more information about filing a complaint based on a protected class, visit our Intranet site (VIBE) or contact the EEO Director, at 915.832.4112.

(3) Employees covered under a collective bargaining contract should refer to their agreement for instructions on filing a grievance using the negotiated grievance procedures.

G. To get more information about the agency's directive and procedures on harassment, you can contact the EEO Office at HQ or the HRO.

7. **Supersession:** This directive supersedes United States Section Directive, SD.I.07024, dated 18 February 2016, subject: Anti-Harassment Policy and Procedures.

Approved:



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Dr. Maria-Elena Giner, P.E.
Commissioner

Date