


**DATE:** January 31, 2022

**TO:** All CMS Employees

**FROM:** Chiquita Brooks-LaSure   
Administrator

**SUBJECT:** Policy Statement on the Prevention of Harassing, Offensive and Inappropriate Conduct

The Centers for Medicare & Medicaid Services (CMS) is committed to maintaining a high standard of conduct in the workplace and providing a work environment free from harassing, offensive, or inappropriate conduct. Such conduct violates the fundamental dignity and mutual respect all people deserve, complicating the efficient operation of the Federal service and posing risk to successful mission accomplishment at CMS. This policy defines which conduct constitutes harassing, offensive, or inappropriate behavior in the workplace; informs all CMS employees of their roles and responsibilities in the proactive prevention of workplace harassment; and clarifies how to report instances of alleged harassment. Additionally, the policy serves to communicate the consequences of engaging in harassing, offensive, or inappropriate behavior, including discipline up to and including removal from Federal service.

## 1. AUTHORITY.

Title VII of the Civil Rights Act of 1964, as amended, Title 42 United States Code (U.S.C.) § 2000e-16; the Age Discrimination in Employment Act, 29 U.S.C. § 633a; the Rehabilitation Act, 29 U.S.C. § 791(g); the Civil Service Reform Act of 1978, 5 U.S.C. § 2302(b)(10); the Genetic Information Nondiscrimination Act of 2008; Title 29 Code of Federal Regulations (C.F.R) Parts 1604.11, 1605.2, 1606.8, and 1614; Executive Order 11478, as amended May 28, 1998; Enforcement Guidance: Vicarious Liability for Unlawful Harassment by Supervisors, Equal Employment Opportunity Commission (EEOC) 915.002, June 18, 1999; the Civil Service Reform Act of 1978, 5 U.S.C. § 1101 *et seq.*; the Civil Rights Act of 1871, 42 U.S.C. § 1983; Uniformed Services Employment and Reemployment Rights Act of 1994, 38 U.S.C. § 4301 *et seq.*; Executive Order 11478, as amended by Executive Orders 13087, 13152, and 13672; Executive Order 13988.

## 2. POLICY STATEMENT.

- (a) **No Tolerance for Harassment, Unlawful Discrimination, and Retaliation.** It is the policy of CMS to maintain a model workplace free from harassment and other forms of unlawful discrimination based on race, color, religion, national origin, sex (including pregnancy, sexual orientation, and gender identity), age (40 or older), disability, genetic information, and retaliation (for prior Equal Employment Opportunity (EEO) activity and/or opposition to discrimination). Moreover, consistent with Presidential Executive

Orders and other laws designed to protect Federal employees, we must vigilantly prevent discrimination based on parental status, marital status, political affiliation, military service, or any other factor not based on merit. These commitments must be exemplified in all of our management practices and decisions, including recruitment and hiring practices, appraisal systems, promotions, and training and career development programs. All CMS employees are responsible for maintaining a high standard of conduct in the workplace and must refrain from engaging in harassing, offensive, or inappropriate activities.

Accordingly, CMS has no tolerance for harassment or any other form of unlawful discrimination. In addition, CMS will not tolerate retaliation against any employee for reporting matters under this policy, or for assisting in any inquiry about such matters. Any employee, including a manager, who has been determined to have retaliated against an individual who reports or provides information regarding a matter being investigated will be appropriately disciplined.

- (b) **Extension of Coverage to U.S. Public Health Service Commissioned Corps and Private Contractors.** This policy also applies to incidents of harassment, offensive, or inappropriate activities as described herein committed at any CMS facility by Commissioned Corps Officers assigned to CMS. The policy also applies to relevant instances by employees of private contractors against CMS employees, and anywhere by CMS employees against Commissioned Corps Officers and employees of private contractors. Any reference to “employees” or “staff” within this policy includes “Commissioned Corps Officers” and “private contractors” within the meaning and scope of those terms.
- (c) **Definition of Harassment.** Harassment includes unwelcome intimidation, ridicule, insult, comments, bullying, or physical conduct based on race, color, religion, national origin, sex (including pregnancy, sexual orientation, and gender identity), age (40 or older), disability, genetic information, including family medical history, or retaliation (for prior EEO activity and/or opposition to discrimination) where:
- (1) An employee’s acceptance or rejection of such conduct explicitly or implicitly forms the basis for an employment decision affecting the employee; or
  - (2) The conduct is sufficiently severe or pervasive as to alter the terms, conditions, or privileges of the employee’s employment, or otherwise create a hostile work environment. This type of harassment typically does not involve discrete personnel actions such as denial of promotion.
- (d) **Conduct Covered by this Policy.** The conduct covered by this policy is broader than the legal definition of harassment listed above. It includes sexual harassment, unwanted and unwelcomed sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature and any comment or conduct that disparages, denigrates, or demonstrates hostility or aversion towards any person (including applicants for employment) that could reasonably be interpreted as harassing, offensive, or inappropriate in the workplace. Comments, jokes, gestures, written documents, photocopies, e-mails, pictures, images, or other items or behavior in a work or work-related environment are covered by this policy. Examples of prohibited conduct include, but are not limited to, the use of epithets, slurs, negative stereotypes, threats, intimidation,

hostile acts, and the use, display, or dissemination of offensive written or pictorial material (such as posters, calendars, flyers, memoranda, messages, etc.). The goal of this policy is to avoid, or at least limit, harm to any employee subjected to unwelcome hostile or abusive conduct by ensuring that appropriate officials are notified of - and have the opportunity to promptly correct - such conduct before it becomes so severe or pervasive as to violate the law, or as soon as possible thereafter.

### 3. **RESPONSIBILITIES.**

- (a) **Agency.** The responsibility of CMS to its employees is to create an environment that is free of harassment, and to take immediate corrective or disciplinary action if violations of this policy occur. To accomplish this, everyone must share the responsibility of maintaining a harassment-free workplace.

The extent of an individual's specific responsibility depends on their level of authority within the agency.

- (1) **Managers/Supervisors.** The responsibility of managers/supervisors is to proactively foster work environments that are free from acts of harassment and to educate individuals under their supervision or control. Additionally, managers and supervisors are responsible for:

- Providing their employees with a copy of this policy and explaining its content. The policy includes who to contact if an employee feels that they have been the victim of, or affected by, harassment. At a minimum, managers will inform their employees to contact any of the following to report harassment: first-line manager, a manager in the employees' chain of command, and/or the Harassment Prevention Coordinator (HPC). Contact information for the HPC is found at the end of this policy.
- Advising their employees that they are encouraged to make their immediate supervisor, or higher-level management aware of any conduct on the part of another employee (including a supervisor) or a non-employee (e.g., contractor, visitor, representative of a non-CMS organization) that they believe constitutes harassment;
- Informing their employees that harassment is prohibited conduct that will not be tolerated and that appropriate corrective or disciplinary action, up to and including removal, will be taken against any person found to be engaged in harassment;
- Immediately contacting the HPC, see Section 3(b) below, upon becoming aware of conduct that is, or appears to constitute harassment;
- Where appropriate, informing the alleged harasser (or manager of the alleged harasser) that an allegation of workplace harassment has been made by another employee regarding their conduct; and
- Assisting the HPC and/or CMS officials, as may be required, in obtaining information, making necessary inquiries, and resolving allegations of conduct that are, or appear to constitute, workplace

harassment.

- Participating in and fully cooperating with, including providing testimony and evidence, and making employees available to provide testimony and evidence, any HPC investigation raised pursuant to this policy.

(2) **Employees.** Each CMS employee is personally responsible for:

- Ensuring that their conduct is not inappropriate or offensive to other employees, job applicants, visitors or any other person directly associated with the performance of their official duties;
- Assisting CMS in its efforts to prevent and eliminate a hostile and offensive work environment; and,
- Cooperating in the investigation and fact-finding of allegations of workplace harassment by providing any information in their possession concerning the allegation.

All CMS employees are strongly encouraged to notify their immediate supervisor, higher level management, the Office of Equal Opportunity and Civil Rights (OEOCR), and/or the HPC of any actions or conduct on the part of another employee (including a supervisor) that is, or appears to constitute, workplace harassment.

(3) **OEOCR.** OEOCR is responsible for:

- Disseminating this policy to all employees on an annual basis and periodically reminding employees of their responsibilities under this policy;
- Developing and providing periodic mandatory training for all employees on this policy and its requirements; and
- Providing oversight, technical assistance, and support to CMS staff to ensure compliance with this policy.

(b) **Harassment Prevention Coordinator (HPC).** The CMS HPC contractor is responsible for:

- (1) Receiving reports alleging violations of this policy and, as described in Section 4 of this policy, making or directing further inquiries into such reports, as appropriate and necessary;
- (2) Maintaining a written record of reports made. These records will be maintained in a secure location;
- (3) Maintaining an email address in order to receive and respond to inquiries from CMS employees. The current email address for CMS matters is: [Complaint@CMSHarassmentPrevention.com](mailto:Complaint@CMSHarassmentPrevention.com);
- (4) Staffing a telephone line to respond to inquiries from CMS staff or their representatives about workplace harassment. Callers shall be provided with information about the requirements of this policy; and
- (5) Providing a Report of Findings to the Director of OEOCR, or their designee, that

contains a narrative and the evidence gathered during the investigation.

#### **4. PROCEDURES.**

##### **(a) Reporting Hostile or Abusive Conduct.**

- (1) Any employee who feels they have been subjected to unwelcome hostile or abusive conduct is strongly encouraged to report the matter to the HPC, OEOCR, and/or their manager.
- (2) Any employee who feels they have been subjected to unwelcome hostile or abusive conduct is encouraged, if comfortable doing so, to inform the person(s) responsible for the conduct which it is unwelcome and offensive, and request that it cease. If the employee is uncomfortable raising the concerns with the responsible person(s), they are strongly encouraged to report the matter to the HPC and/or a member of management, or OEOCR.
- (3) Any employee who feels they have been subjected to unwelcome hostile or abusive conduct by their manager is strongly encouraged to report the matter to the HPC, or OEOCR, and/or to the next highest level of management.
- (4) Employees who know of or suspects hostile or abusive conduct directed at others are strongly encouraged to report the matter to their supervisor, who will subsequently report the matter to the HPC. Employees may also report the matter directly to the HPC or OEOCR.
- (5) Initial contacts to the HPC will be confidential, except as necessary to conduct an appropriate investigation into the alleged violations or when otherwise required by law.
- (6) Employees may obtain information about this policy, or report hostile or abusive conduct to the HPC by telephone, email, or fax. Contact information for the HPC is provided on the last page of this policy.

NOTE: Reports and actions pursuant to this policy do not replace, substitute, include, or otherwise satisfy the different forums that an employee may use, including but not limited to the following processes: EEO, the negotiated grievance procedure, Merit Systems Protection Board (MSPB), or other statutory process.

For further information concerning how an employee may pursue rights under one of these separate processes, see Section 5 of this policy.

##### **(b) Management Response to Harassment Reports.**

###### **(1) Notifying Appropriate Officials of Report of Harassment.**

- (a) A supervisor or manager who becomes aware of allegedly hostile or abusive conduct involving employees outside of their chain of command must immediately notify the HPC or OEOCR. Failure to do so may result in disciplinary action.
- (b) Supervisors and managers who become aware of hostile or abusive conduct within their chain-of-command must immediately notify the HPC or OEOCR. Failure to do so may result in disciplinary action.

- (2) **Conducting Investigations.** Upon notification of a report of harassment the HPC will collect information to determine:
- (a) What conduct is at issue and whether it could be considered hostile or abusive; and,
  - (b) Who may be involved.
- (c) **HPC Response to Harassment Reports.** When the allegation is transmitted to the HPC, the HPC shall immediately:
- (1) Acknowledge receipt of the report;
  - (2) Notify OEOCR; and
  - (3) If tasked by OEOCR, conduct an investigation,
    - (a) Decide how investigations will be carried out, and
    - (b) Contact the reporter within two (2) business days to schedule an interview to obtain information concerning the complaint to ensure the investigation is conducted swiftly, impartially, and in a manner appropriate to the allegation.
- (d) **Resolving Conflicts of Interest in Inquiries or Investigations.**
- (1) If an Office Director, Center Director, or similar high-ranking official is implicated in potentially harassing conduct, the HPC shall inform OEOCR, and an alternate method of investigation may be employed, including, but not limited to, transferring the investigation to the U.S. Department of Health and Human Services (HHS) for disposition.
  - (2) Any dispute between the affected Office and the HPC regarding further investigation will be resolved by the Chief Operating Officer or designee.
- (e) **Taking Corrective Action.**
- (1) If any employee, including a manager, has engaged in unwelcome hostile or abusive conduct in violation of this policy, disciplinary or other timely and appropriate corrective action will be taken in accordance with Article 23 of the Master Labor Agreement (MLA) and with other established Agency protocol and applicable law, rule, or regulation, up to and including removal from Federal service.
  - (2) Any supervisor or other management official who fails to perform their obligations as set forth in this policy, including any unreasonable failure to report known violations of this policy, will be subject to disciplinary or other timely and appropriate corrective action in accordance with applicable law, rule, or regulation, up to and including removal from Federal service.
  - (3) If the reviewing official determines that an employee has violated this policy or has engaged in misconduct, the appropriate management official will as timely as possible, following established Agency protocols, determine the type and severity of the discipline, and the discipline will be imposed in accordance with the MLA and relevant appeal rights.

(f) **Maintaining Confidentiality, Maintaining Records under the Privacy Act, and Monitoring Compliance.**

- (1) **Maintaining Confidentiality.** All reports of hostile or abusive conduct and related information will be maintained on a confidential basis to the greatest extent possible. The identity of the reporter(s), subject(s) of harassment, witness(es), and alleged harasser(s) will be kept confidential, except as necessary to conduct an appropriate investigation into the alleged violations or when otherwise required by law.
- (2) **Privacy Act.** Information generated through the CMS Prevention of Workplace Harassment (PWH) process is protected by the Privacy Act of 1974. The Privacy Act prohibits the disclosure of information obtained, documents included, and reports generated through this process, except as otherwise provided by law. The PWH process is administered by CMS in anticipation of litigation.
- (3) **Monitoring the Procedures.** OEOCR must ensure that these procedures are properly executed by:
  - (a) Monitoring investigations under this policy of reported or otherwise discovered hostile or abusive conduct;
  - (b) Providing guidance concerning the information to be gathered and methods to be used during investigations; and
  - (c) Monitoring the HPC activities to ensure reporters are contacted within two (2) business days, after receiving authorization from CMS or OEOCR, to schedule an interview to obtain information concerning the complaint to ensure investigations are swift, thorough, impartial, and appropriate.
- (4) **Monitoring the Work Environment.** Managers will be responsible for ensuring that their offices are in full compliance with requirements of this policy. In addition, these officials are responsible for monitoring the work environment following a report alleging a violation of this policy to ensure that there are no further violations or incidents of retaliation against any individual who has reported harassment or participated in the inquiry or investigation.

**5. PROCEDURES UNDER THIS POLICY ARE SEPARATE FROM STATUTORY AND COLLECTIVE BARGAINING CLAIMS.**

- (a) **Filing Statutory or Administrative Complaints or Negotiated Grievances.** Filing an allegation under this policy is separate and apart from the requirements for filing an EEO complaint, negotiated grievance under Article 24 of the MLA or its successor, administrative grievance, MSPB appeal, or other procedure available to employees. An employee who reports an allegation of harassment under this policy may also avail themselves of the aforementioned forums if they choose. Reporting alleged harassment under this policy will not delay or toll the time limit requirements for filing through other avenues available to the employee. Any employee who chooses to file under another avenue should be aware of the time limits governing each process. An employee who chooses to pursue statutory, administrative, or collective bargaining remedies for unlawful harassment must select one of the available forums:

- (1) For an EEO complaint pursuant to 29 C.F.R. § 1614, contact an EEO counselor in OEOCR within 45 calendar days from the effective date of the personnel action or most recent incident of alleged harassment, as required in 29 C.F.R. § 1614.105(a)(1).
- (2) For a bargaining unit employee's grievance, file a written grievance within 20 calendar days of the incident in accordance with the provisions of Article 24 of the MLA or its successor article.
- (3) For a non-bargaining unit employee's administrative grievance, file a written grievance within 30 calendar days of the incident in accordance with HHS Instruction 771-1.
- (4) For an appeal to the MSPB pursuant to 5 C.F.R. § 1201.22, file a written appeal with the Board within 30 calendar days of the effective date of an appealable adverse action as defined in 5 C.F.R. § 1201.3, or within 30 calendar days of the date of receipt of the Agency's decision, whichever is later.

(b) **Reporting Hostile or Abusive Conduct Raised in the Statutory, Administrative, or Collective Bargaining Process.** This policy is designed to address hostile or abusive conduct before it rises to the level of illegal discrimination for which an employee can exercise the statutory right to file an EEO complaint, grievance, or MSPB appeal. Its purpose is to ensure that management is notified of and has the opportunity to correct any hostile or abusive conduct, and applies whether or not the employee has filed an EEO complaint, union grievance, administrative grievance, or MSPB appeal. CMS's liability for an EEO complaint, grievance, or other action may depend upon whether it was aware of and promptly corrected the hostile or abusive conduct.

- (1) If an employee pursues a claim of harassment through the EEO process, an MSPB appeal, or by filing a Union grievance, the CMS official who receives notice of such claim shall promptly notify OEOCR. The management official must treat the notice as a report under Section 4 of these procedures, unless such treatment would be inconsistent with applicable regulatory or statutory requirements.
- (2) OEOCR shall provide any records of action taken under this policy to the Office handling a parallel statutory or other administrative process, where applicable and supported by law.

(c) **Commissioned Corps Instruction CCI 211.04, "Complaints and Redress."** – (For **Commissioned Corps Officers Only**): In addition to the CMS Prevention of Workplace Harassment Process, Commissioned Corps Instruction CCI 211.04 is available to Commissioned Corps Officers who believe they have been wronged by an official action that directly affects the officer and is in violation of a law, executive order, regulation, or policy; beyond the legitimate authority of the official taking the action; an arbitrary or capricious act; an abuse of the official's discretion; or materially unfair. This may include a deprivation, restriction, or limitation of any right, privilege, benefit, or entitlement. For information on engaging the instruction, contact the CMS Commissioned Corps Liaison Office. U.S. Public Health Service Officers may choose between filing a harassment complaint pursuant to the PWH policy or Commissioned Corps instruction 211.04.



## 6. DISTRIBUTION.

This policy shall be distributed to all employees upon issuance, and annually thereafter. It shall also be distributed to all new employees as part of the CMS New Employee Orientation during their first week of work. This policy will also be made available to employees on-site or as part of the CMS intranet. If there are any changes in this policy, the Union will be notified prior to any distribution to CMS bargaining unit employees.

### **HPC Contact Information**

Harassment Prevention Coordinator

Bashen Corporation

**Phone:** (800) 994-1553

**Fax:** (800) 994-1552

**TTY:** (800) 994-1556

**Email:** [Complaint@CMSHarassmentPrevention.com](mailto:Complaint@CMSHarassmentPrevention.com)

### **OEOCR Contact Information**

For questions regarding this policy, please contact:

Centers for Medicare & Medicaid Services

Office of Equal Opportunity and Civil Rights

7500 Security Boulevard, Room N3-22-16

Baltimore, Maryland 21244-1850

**Phone:** (410) 786-5110

**Fax:** (443) 380-8875

**Email:**

[PreventionofWorkplaceHarassmentProgram@cms.hhs.gov](mailto:PreventionofWorkplaceHarassmentProgram@cms.hhs.gov)