



ADMINISTRATOR

DEPARTMENT OF THE TREASURY
ALCOHOL AND TOBACCO TAX AND TRADE BUREAU
WASHINGTON, D.C. 20005

October 29, 2019

MEMORANDUM FOR ALL ALCOHOL AND TOBACCO TAX AND TRADE BUREAU EMPLOYEES

FROM: Acting Administrator *[Signature]*

SUBJECT: Anti-Harassment Policy and Procedures

The Alcohol and Tobacco Tax and Trade Bureau (TTB) is committed to maintaining a workplace that fosters mutual trust and respect, and to promoting an environment free from unlawful discrimination, harassment or retaliation. This Policy is intended to ensure the Bureau is taking all necessary steps to prevent all forms of harassment, and to correct any harassing conduct that may occur.

In General

Harassment refers to a wide range of unwelcome, inappropriate, and offensive behavior. The conduct may or may not violate the law and can be a one-time incident or a repeated occurrence.

Equal Employment Opportunity Harassment

Equal Employment Opportunity (EEO) harassment is workplace behavior that violates one or more antidiscrimination laws. It is unwelcome conduct that is so pervasive or severe that it can reasonably be considered to adversely affect the work environment, unreasonably interferes with an individual's work performance, or creates an intimidating, offensive or hostile work environment. The conduct is related to one or more of the following EEO bases: race, age, color, religion, national origin, physical or mental disability, sex (including pregnancy, sexual orientation, and gender identity), parental status, marital or familial status, political beliefs, protected genetic information, prior participation in the equal employment opportunity process, or opposition to any practice made unlawful under any of the federal antidiscrimination laws.

Non-EEO Harassment

Non-EEO harassment is inappropriate behavior that does not rise to the level of harassment actionable under Title VII of the Civil Rights Act of 1964, as amended. The conduct, though offensive, can be isolated or infrequent, and may include, but is not limited to: occasional unwelcome compliments, questionable jokes, or nonviolent threats.

Examples of Harassment

Harassment can be written, verbal, electronic communications, physical gestures or contact, images or objects. Examples of potential harassment include, but are not limited to, the following:

- Making negative remarks about an individual's body, clothing, or physical appearance;
- Teasing, mimicking, or repeatedly commenting on an individual's disability or accent;
- Sharing inappropriate emails, notes, images or videos of an offensive nature;
- Making derogatory comments about a person's age, race, or personal religious beliefs;
- Using racist slang, phrases or nicknames;
- Telling offensive jokes or stories; making offensive gestures.

Other forms of misconduct can include insubordination, disruption in the work environment, workplace violence, or bullying. "Bullying" conduct includes, but is not limited to, threats, hate messages, and intent to inflict harm, or abusive, offensive, unprofessional, intimidating, derogatory, or otherwise inappropriate or unacceptable language intended to humiliate or demean a particular individual or group of individuals.

The harasser's conduct must be *unwelcome*. It is not how a person intended his or her actions to be taken, but rather how the actions are reasonably perceived. Therefore, the perspective of the individual subjected to the behavior or witness of the behavior – whether he or she views the act as offensive, demeaning, or hostile – is a primary consideration in determining whether the behavior constitutes harassing conduct.

The harasser can be the victim's supervisor, a supervisor in another area, a co-worker or subordinate. Harassment may be direct or indirect. Thus, the victim does not have to be the person harassed but could be an individual affected by the offensive conduct. For example, someone walking by a co-worker's office and overhearing an offensive joke being told could complain of harassment.

Statements or conduct may not meet the legal definition of harassment, but could have double meanings, carry offensive undertones, or indicate social awkwardness. The actions and communications of every TTB employee, supervisor, and manager should at all times be above reproach and avoid even the appearance of impropriety. You must not purposefully use language or conduct that has double meanings – one of which is offensive to the listener/observer. Even if the conduct or speech is fairly minor, such as an individual making a one-time statement instead of repeated comments, TTB will investigate the circumstances surrounding the event and may take corrective action to prevent it from happening again. Corrective action for minor statements or conduct may be as simple as educating the actor on the double meaning of a word, providing background on how the statement/action was viewed by others, giving the actor a warning, requiring the actor to take training, or all of the above. In instances where

there is a finding of harassment, the decision-maker must consult TTB Order 2752.1, and follow its guidance, specifically paragraphs 9 and 10.

Sexual Harassment

Sexual harassment includes uninvited comments or conduct based on an individual's gender that is characterized by unwelcome sexual advances, requests for sexual favors, or other conduct of a sexual nature when:

1. this conduct explicitly or implicitly affects an individual's employment;
2. unreasonably interferes with an individual's work performance; and/or
3. creates an intimidating, hostile, or offensive work environment.

Examples include, but are not limited to, the following:

- A supervisor requesting employee's submission to sexual requests in exchange for promotion, work assignment or other tangible job benefits, or penalizing employee for refusing to participate in such conduct;
- Deliberately touching, patting, or giving inappropriate looks to another person;
- Pressuring someone for dates or sexual activity, or inquiring about their sexual experience;
- Making unwelcome telephone calls, sending email messages, or writing letters of a sexual nature;
- Posting sexually graphic pictures in the workplace.

The harasser's conduct must be *unwelcome*. The harasser may be a woman or a man, and the victim may be of the opposite sex or the same sex as the harasser. A consensual relationship between the harasser and the victim may still be construed as harassment. For example, if the victim agrees to sexual behavior out of fear of retaliation, the conduct of the harasser may still constitute sexual harassment despite the victim's consent. The focus is on whether the conduct was unwelcome, not consensual.

Filing an EEO Complaint or Grievance

If you believe the harassment is based on a protected class, you have the right to file an EEO complaint or grievance on the alleged harassment. However, reporting an allegation of harassment under this policy **does not** satisfy the requirements for filing an EEO complaint or grievance, and **does not** delay the time limits for initiating those procedures. If you choose to pursue these remedies, you must make an election as follows:

1. To file an EEO complaint, contact the Office Equality, Diversity and Inclusion within forty-five (45) calendar days of the most recent incident of the alleged harassment, in accordance with 29 CFR § 1614.105(a)(1).

2. For employees in the bargaining unit, file a written grievance within thirty (30) calendar days after the incident of the alleged harassment or within thirty (30) calendar days after the employee became aware of the incident of the alleged harassment, in accordance with Article 34 of the 2014 Agreement between the Bureau and the National Treasury Employees Union.
3. For non-bargaining unit employees, file a written grievance within twenty-one (21) calendar days after the incident of the alleged harassment or within twenty-one (21) calendar days after the employee became aware of the incident of the alleged harassment, in accordance with Section 12 of TTB Order 2770.1: Administrative Grievance System.

An employee may file an EEO complaint or a grievance, but not both.

TTB's Anti-Harassment Program

TTB's Anti-Harassment Program, *separate* and *apart* from the EEO complaint procedures, establishes an independent investigatory process to proactively respond to allegations of harassment, whether or not accompanied by an EEO basis. It is intended to take prompt and appropriate corrective action, including the use of disciplinary actions, to eliminate harassing conduct regardless of whether the conduct violated the law. Ultimately, the goal of the Anti-Harassment Program is to promptly bring the harassment to an end or to prevent it from occurring.

TTB's Anti-Harassment Coordinator

The Human Resources Division (HRD) oversees the Anti-Harassment Program at TTB. The Director of HRD will serve as the Anti-Harassment Coordinator and is responsible for receiving claims of harassment and overseeing the investigative function of the program, ensuring that a prompt and thorough investigation is conducted into allegations of harassment.

Reports of harassment may be made to the Anti-Harassment Coordinator in person, in writing (via email or otherwise), or over the phone. Reports can also be made anonymously, but this may limit the extent to which the harassment can be investigated.

Anti-Harassment Procedures Differ from the EEO Complaint Process

TTB's Anti-Harassment Program differs significantly from the Federal EEO discrimination complaint process, which exists to provide a remedy for employees who believe they have been subjected to discrimination. Alternatively, the Anti-Harassment procedures are intended to address employee allegations of harassment and take immediate and appropriate corrective action, including the use of disciplinary actions, to eliminate harassing conduct regardless of whether the conduct violates the law. For example, an EEO complaint alleging hostile work environment usually requires showing a pattern of offensive conduct. Thus, an isolated incident of an ethnic, sexual or racial statement that offends an individual generally would not be considered severe enough

to rise to the level of unlawful harassment in violation of Title VII. However, under the Anti-Harassment Program, the Bureau will take action before the harassing conduct is so pervasive and offensive as to constitute a hostile work environment.

The EEO complaint procedures also differ from those of the Anti-Harassment Program in that the EEO Director remains neutral throughout the EEO complaint process and cannot advise management on whether disciplinary action should be taken. In contrast, the Anti-Harassment Coordinator makes a determination whether the Bureau's Anti-Harassment Policy has been violated and provides guidance to management on whether to take corrective action. In addition, an EEO complaint can result in a finding of "no discrimination" while a harassment inquiry may determine harassment occurred.

When an EEO complaint includes a claim(s) of harassment, both the EEO complaint and harassment inquiry processes will be conducted *separately* and *simultaneously*. If an individual chooses to withdraw his or her EEO complaint, the employee can still continue with the harassment allegation. A reported harassment allegation cannot be withdrawn. **TTB will promptly investigate all allegations of harassment/hostile work environment pursuant to the Anti-Harassment Program regardless of whether the individual has initiated the EEO complaint process.**

How to Report Allegations of Harassment

Victim of Harassment. If you believe you have been or are being harassed:

- Clearly communicate to the offending person, if possible, that his or her conduct is unwelcome and must stop immediately. Such informal action may be enough to stop the behavior.
- Keep a record of the incident, date and place of the occurrence, names of parties involved, and all other pertinent facts.
- Report the conduct promptly to one of the following if direct communication is not possible or fails to stop the behavior:
 - your first-line supervisor (or second-line supervisor in the event the first-line supervisor is the alleged harasser)
 - another management official
 - Anti-Harassment Coordinator

Witness of Harassment. If you witness harassment and/or become aware that another employee has been subjected to harassment, report the incident as soon as possible to your first or second-line supervisor, another management official, or the Anti-Harassment Coordinator.

Supervisors and Managers. It is a supervisor's and manager's duty to protect employees from unlawful harassment, if there is a nexus with the workplace. This duty is unaffected by the location where harassment occurs, on or off the worksite, including the internet. The duty remains the same – supervisors and managers must intervene and take prompt and effective corrective action to end the harassment.

If a manager or supervisor observes or is made aware of allegations of harassing conduct, they are *required* to act promptly, effectively, and in accordance with this Policy. They should contact the Anti-Harassment Coordinator for assistance or guidance when handling a harassment situation. Supervisors and managers will be held accountable for harassing conduct that occurs in their divisions if no action is taken. Ignoring such conduct is not acceptable and may result in disciplinary action, up to and including removal.

Internal Investigation of Allegations of Harassment

- The Anti-Harassment Coordinator launches an internal, independent investigation of allegations of harassment (also referred to as an administrative inquiry for possible misconduct), consisting of interviews with all individuals with relevant information, including the individual accused of the harassing conduct, and a review of any written or electronic information about the alleged harassment.
- Disclosures about allegations of harassment will be made only on a “need to know” basis, in order to determine the facts surrounding the allegation and to take appropriate action.
- **Supervisors and managers *must* take appropriate action once they have been apprised of allegations of harassment, even if the employee requests that no action be taken.**
- Supervisors and managers must ensure all individuals who report alleged harassment or who cooperate during an inquiry are protected from retaliation.
- Depending on the nature of the allegation, supervisors and managers may take appropriate steps during an inquiry to ensure that further harassment does not occur. Such steps may include changing the work location of the victim or alleged harasser.
- If improper conduct is found, supervisors and managers must act promptly to stop the harassing conduct and ensure it does not reoccur. Appropriate disciplinary action, properly documented, is taken in all cases where improper conduct is found to have occurred.
- If it is determined that discipline is warranted, the information from the inquiry that is the basis for the disciplinary action can be shared with those for whom disciplinary or adverse action has been proposed. If an EEO complaint is filed on the same or related matter, information from the inquiry will be provided to an EEO Investigator.
- At the completion of the investigation, the Anti-Harassment Coordinator provides the report of investigation (ROI) to the respective decision-maker (generally the employee’s immediate supervisor) to determine if improper conduct occurred and whether or not to propose corrective action.
- The decision-maker reviews the ROI and takes into consideration the circumstances, such as the nature of the behavior, and the context in which the alleged harassment occurred. The decision-maker makes a finding from the facts on a case-by-case basis.

All reports of harassment will be promptly, thoroughly, and fairly investigated. The Anti-Harassment Coordinator will present the outcome of the inquiry to the decision-maker. If an investigation confirms that harassment has occurred, the supervisor will promptly take corrective action. Harassment is misconduct and if the decision-maker finds that a claim is substantiated, the decision-maker follows TTB Order 2752.1 in addressing the misconduct. Any employee found to have engaged in harassment may be subject to disciplinary action, up to and including removal.

Retaliation is Not Tolerated

TTB strictly prohibits retaliation against any individual for:

- making a good-faith report of harassing conduct;
- assisting another individual with reporting harassment;
- providing information related to any harassment inquiry; or
- participating in the investigation of a harassment claim.

Anonymity and Confidentiality

“Anonymity” means that the identity of the individual reporting harassment is not disclosed. An employee may choose to remain anonymous when reporting an incident of harassment. However, this may limit the ability of the Bureau to conduct an effective inquiry.

“Confidentiality” means that the details of an allegation of harassment are disclosed to specific persons on a need-to-know basis. When an employee alleges harassment to a supervisor or manager, an inquiry must be conducted. Therefore, individuals with a need to know will be notified of the allegations. In this regard, allegations of harassment cannot remain confidential information between an employee and a supervisor or manager, although the employee may remain anonymous (i.e., his or her identity will not be disclosed) under the conditions described in the preceding paragraph.

Responsibilities

Employees must:

- Act professionally, refrain from conduct considered harassment, and monitor their personal behavior regarding their words and actions.
- If harassed, clearly communicate to the offending person, if possible, that his or her conduct is unwelcome and must stop immediately, before the conduct becomes severe or pervasive.
- Report the conduct (as experienced or witnessed) promptly to your first or second-line supervisor, another management official, or the Anti-Harassment Coordinator.
- Complete all mandated anti-harassment training.

Supervisors and managers must:

- Display appropriate behavior and cultivate and maintain a work environment that is free of harassment.
- Set the tone for a positive and professional work climate.
- Act promptly to prevent or cease reported or observed incidents of harassment.
- Be alert to signs of retaliation and, if any such sign exists, take prompt and effective corrective action.
- Document allegations of harassment and promptly report any incident of harassing conduct you have witnessed, or are made aware of, to the Anti-Harassment Coordinator.
- Take prompt, appropriate, and corrective action, possibly including disciplinary action – up to and including removal – against employees who have engaged in harassment, or have knowingly made a false statement relating to harassment, or who have not carried out their responsibilities as established in this Policy.
- Complete all mandated anti-harassment training.

It is essential that all employees understand and comply with the Bureau's Policy prohibiting harassment. All TTB employees, supervisors, and managers will be held accountable for their conduct in the workplace. No employee, regardless of title or position, is exempt from the requirements of this Policy. TTB has zero tolerance for harassment and will take corrective action when it occurs.

For additional information on EEO harassment, contact the Director, Office of Equality, Diversity and Inclusion, Tiara Ngo at (202) 453-2063 or Tram-Tiara.Ngo@ttb.gov.

For additional information on non-EEO harassment, contact the Director, Human Resources Division, Harinder Jaiswal at (202) 453-2023 or Harinder.Jaiswal@ttb.gov.