

**U. S. DEPARTMENT OF LABOR  
MANUAL SERIES**



**DLMS 4 – PERSONNEL MANAGEMENT**

**DEPARTMENTAL**

**OASAM X MANUAL TRANSMITTAL**

**DATE: October 27, 2003**

**Chapter Reference:** DLMS 4 – Chapter 700

"Policy and Procedures for Preventing and Eliminating Harassing Conduct in the Workplace"

**Nature of Revisions:** The directive is a new Departmental policy. It was previously approved and signed by the Secretary on April 10, 2003. This policy has been reformatted and renamed DLMS 4 – Chapter 700 to comply with all other Departmental Directives.

**Action Required:**

X Please post this new chapter on LaborNet in the appropriate sequence with all other Personnel Management chapters.

**Approval for Issuance and Distribution:**

PATRICK PIZZELLA  
Assistant Secretary for Administration and Management

## PERSONNEL MANAGEMENT

## Chapter 700 – HARASSING CONDUCT IN THE WORKPLACE

## POLICY AND PROCEDURES FOR PREVENTING AND ELIMINATING HARASSING CONDUCT IN THE WORKPLACE

- 701 Purpose.** This Policy is intended to assure that the Department of Labor is taking all necessary steps to prevent sexual harassment and other forms of harassing conduct in the workplace, and to correct harassing conduct that does occur before it becomes severe or pervasive. It updates the Department of Labor's long-standing policy on harassment in light of the Supreme Court's decisions in *Faragher v. Boca Raton*, 524 U.S. 775 (1998), and *Burlington Industries, Inc. v. Ellerth*, 524 U.S. 742 (1998).
- 702 The Definition of Harassing Conduct.** For the purposes of this Policy, harassing conduct is defined as any unwelcome verbal or physical conduct based on any characteristic protected by law when:
- A. The behavior can reasonably be considered to adversely affect the work environment; or
  - B. An employment decision affecting the employee is based upon the employee's acceptance or rejection of such conduct.
- 703 Policy Against Harassing Conduct.**

The Department of Labor does not permit harassing conduct by anyone in the workplace. It is the policy of the Department to maintain a work environment free from the harassing conduct described above.

The Department has determined that the most effective way to limit harassing conduct is to treat it as misconduct, even if it does not rise to the level of harassment actionable under Title VII of the Civil Rights Act of 1964, as amended. A hostile environment claim under Title VII usually requires showing a pattern of offensive conduct. The Department will not wait for such a pattern to emerge. Rather, the Department will act before the harassing conduct is so pervasive and offensive as to constitute a hostile environment. In the usual case, a single utterance of an ethnic, sexual, or racial epithet that offends an employee would not be severe enough to constitute unlawful harassment in violation of Title VII; however, it is the Department's view that such conduct is inappropriate and must be stopped. The Department will not tolerate retaliation against any employee for making a good-faith report of harassing conduct under this or any other policy or procedure, or for assisting in any inquiry about such a report. Complaints of such retaliation shall be handled pursuant to the procedures in this Policy.

This Policy supercedes any and all other previous policies on harassment at the Department of Labor. This Policy is separate and apart from any collective bargaining agreement or statutory complaint process covering harassment.

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## 704 Procedures and Responsibilities.

**A. Procedures Applicable to All Department of Labor Employees**

1. Each Department of Labor employee shall be responsible for:
  - a. Acting professionally and refraining from harassing conduct;
  - b. Becoming familiar with the provisions of this Policy, complying with all requirements of the Policy, and cooperating with any inquiry under this Policy; and
  - c. Promptly reporting, pursuant to procedures set forth in section 705, any incident of harassing conduct that he or she experiences before it becomes a pattern of misconduct so pervasive and offensive as to constitute a hostile environment. The Department cannot correct harassing conduct if the conduct is not known. When an employee unreasonably fails to take advantage of this procedure and does not promptly report an incident of harassing conduct as set forth herein, the Department reserves the right to raise this failure to report as a defense against a suit for harassment, in accordance with *Faragher* and *Ellerth*.

**B. Responsibilities of Supervisors and Managers**

1. All supervisors and managers shall be responsible for:
  - a. Acting promptly and appropriately to prevent harassment in the workplace, and retaliation against those who complain of harassment;
  - b. Reporting, pursuant to procedures set forth in section 705, any incident of harassing conduct that they witness or is otherwise brought to their attention;
  - c. Receiving and handling allegations of harassing conduct promptly and appropriately, utilizing the procedures set forth in section 706 below;
  - d. In consultation with the EEO Manager, providing interim relief to alleged victims of harassment pending the outcome of the investigation to ensure that further misconduct does not occur; and
  - e. Using the procedures set forth below, in consultation with the EEO Manager, taking prompt and appropriate corrective and disciplinary action, up to and including removal, against personnel who have engaged in harassing conduct or who have not carried out their responsibilities under this Policy.

**PERSONNEL MANAGEMENT****Chapter 700 – HARASSING CONDUCT IN THE WORKPLACE****C. Responsibilities of the Office of the Assistant Secretary for Administration and Management (OASAM)**

1. The Director, Civil Rights Center, shall be responsible for:
  - a. Disseminating the policy statement annually to all employees. Distributing this procedures document to all Departmental offices and posting it on the DOL website;
  - b. Ensuring that employees are informed of this Policy and the procedures to follow in connection with reporting harassing conduct;
  - c. Providing technical assistance and support, to assure compliance with this Policy and providing other assistance as requested by EEO Managers and Regional Administrators of the Office of the Assistant Secretary for Administration and Management (OASAM);
  - d. Training CRC investigators on inquiring into complex allegations of harassing conduct;
  - e. Ensuring that the identities of the agency EEO Managers and the OASAM Regional Administrators will be prominently displayed in the Department and listed on the LaborNet; and
  - f. Advising regional employees, by and through the Regional Civil Rights Officers, on this Policy.
2. The Regional Administrators shall be responsible for:
  - a. Receiving allegations of harassment under this Policy and promptly notifying the EEO Manager of the agency in which the alleged harasser is employed of the allegation; and
  - b. Providing further assistance as requested by an agency EEO Manager.
3. The Human Resources Center shall be responsible for:
  - a. Providing advice to managers and supervisors on taking disciplinary actions for conduct that violates this Policy, as consulted.

**D. Responsibilities of Agency EEO Managers**

1. The EEO Manager in each Department of Labor agency shall be responsible for:

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- a. Advising national office employees in his or her agency on this Policy;
- b. Receiving allegations of harassing conduct;
- c. Conducting or overseeing fair and impartial inquiries into allegations of harassing conduct. The EEO Manager will have the authority to decide who will conduct an inquiry into an allegation of harassment, provided that the person conducting the inquiry has had appropriate training in investigating allegations of workplace misconduct. In complex or difficult cases, the EEO Manager will draw upon the expertise of the Civil Rights Center as he or she deems appropriate;
- d. Advising supervisors and managers on the provision of interim relief to the alleged victims of harassing conduct pending the outcome of the investigation to ensure further misconduct does not occur; and
- e. Advising the Agency Head or other persons who need to know of allegations of harassment and the resolution of those allegations under this Policy.

**E. Responsibilities of the Office of the Solicitor and Counsel to the Inspector General**

The Office of the Solicitor shall be responsible for providing legal advice to management concerning the implementation and interpretation of this Policy. If an Office of the Inspector General (OIG) employee is involved in the allegation, legal counsel to the OIG will, after consultation with SOL, provide legal advice to OIG management.

**F. Responsibilities of Agency Heads**

1. Each Department of Labor Agency Head shall be responsible for:
  - a. Taking appropriate action to enforce this Policy; and
  - b. Working closely with the EEO Manager to ensure that this Policy is properly implemented.

**705 Reporting Harassment.** The procedures for reporting incidents of harassing conduct are as follows:

- A. Any person who believes that he or she has been the subject of an incident of harassing conduct in violation of this Policy should report this matter: to anyone in the complainant's supervisory chain; or to his or her Agency EEO Manager in

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the National Office; or for regional employees, to the Regional Administrator, OASAM.

- B. All information will be maintained on a confidential basis to the greatest extent possible. The maintenance of records and any disclosures of information from these records shall be in complete compliance with the Privacy Act, 5 U.S.C. 552a. Such information, however, may have to be disclosed to defend the Department in any litigation to which the information may be relevant and necessary. Further, information may need to be disclosed to those officials and employees within the Department with a need to know in order to carry out the purpose and intent of this Policy.

**706 Inquiries into Allegations of Harassing Conduct.**

- A. A supervisor or manager who receives an allegation or witnesses harassing conduct shall immediately:
1. Inform the EEO Manager and seek guidance as to further actions;
  2. In consultation with the EEO Manager, take action to stop any harassing conduct and prevent further harassment while the allegations are being investigated, including granting of appropriate interim relief to the alleged victim of harassing conduct; and
  3. In consultation with the EEO Manager, document the allegation received and his or her efforts to address it.
- B. If the OASAM Regional Administrator receives an allegation of harassing conduct, he or she shall promptly notify the EEO Manager of the agency of the person accused of misconduct and provide further assistance as requested by the EEO Manager.
- C. When the EEO Manager receives an allegation of harassing conduct, either directly by the complainant or through a supervisor, manager or other sources, he or she shall: Ensure that a prompt, thorough, impartial and appropriate inquiry is conducted; and
1. Recommend appropriate action to stop any harassing conduct and prevent further harassment, including granting appropriate interim relief to the alleged victim of harassing conduct while the allegations are being investigated.
- D. Where an investigation is necessary, a written summary of the investigation shall be prepared by the individual conducting the inquiry, in consultation with the EEO Manager for the agency of the person accused of misconduct. (The summary may

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be brief, depending on the complexity and seriousness of the case.) The summary shall be prepared promptly after completion of the inquiry and shall be submitted to the EEO Manager (if the EEO Manager did not conduct the inquiry) and the supervisor who would be responsible for taking disciplinary action against the alleged harasser, if the allegations are true.

- E. The summary of the investigation or other documentation prepared under this procedure shall be kept confidential, to the extent possible. The maintenance of records and any disclosures of information from these records shall be in complete compliance with the Privacy Act, 5 U.S.C. 552a. Such information, however, may have to be disclosed to defend the Department in any litigation to which the information may be relevant and necessary. Further, information may need to be disclosed to those officials and employees within the Department with a need to know in order to carry out the purpose and intent of this Policy.

**707 Action To Be Taken upon Completion of the Inquiry.**

- A. Upon completion of the inquiry, and in consultation with the EEO Manager, agency management shall promptly evaluate the evidence and determine the appropriate action to take. This responsibility normally shall rest with the first line supervisor of the employee alleged to have engaged in the harassing conduct unless such supervisor is involved in the allegation. The EEO Manager shall be informed of this decision, including a decision not to act. In cases of complex or egregious alleged harassing conduct, the supervisor and EEO Manager should seek the counsel of the Office of the Solicitor. If an Office of the Inspector General (OIG) employee is involved in the allegation, legal counsel to the OIG will, after consultation with SOL, provide legal advice to OIG management.
- B. Where the inquiry establishes that an employee did engage in harassing conduct under this Policy, he or she shall be subject to appropriate corrective action, disciplinary or otherwise, in accordance with Chapter 75 of the Civil Service Reform Act, up to and including removal.
- C. Where the inquiry establishes that a manager or supervisor did not properly carry out the responsibilities provided for under this Policy, he or she shall be subject to appropriate corrective action, disciplinary or otherwise, in accordance with Chapter 75 of the Civil Service Reform Act, up to and including removal.