

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

I.

Purpose. It is the Federal Mine Safety and Health Review Commission's (FMSHRC) policy to ensure that every employee and applicant enjoy a non-hostile work environment free of discrimination or harassment of any kind. All employment decisions, such as hiring, promoting, training and rewarding, will be made exclusively on the basis of job-related criteria; e.g. employees' knowledge, skills, abilities and performance. Discrimination of any kind based on race, color, religion, sex (including pregnancy and gender identity), national origin, political affiliation, sexual orientation, marital status, disability, genetic information, age, membership in an employee organization, or other non-merit factor is forbidden and subject to appropriate disciplinary action. Reprisal against an employee for engaging in the complaint process described below or other protected activity is also prohibited. This policy is intended to assure that FMSHRC is taking all necessary steps to prevent sexual harassment and other forms of harassing conduct in the workplace, and to correct any harassing conduct that may occur before it becomes severe or pervasive.

II.

Definition of Harassing Conduct. For the purposes of this policy, harassing conduct is defined as any unwelcome verbal or physical conduct based on race, color, religion, sex (including pregnancy and gender identity), national origin, political affiliation, sexual orientation, marital status, disability, genetic information, age, membership in an employee organization, retaliation for protected EEO activity, or other non-merit factor when:

- A. The behavior can reasonably be considered to adversely affect the work environment; or
- B. An employment decision affecting the individual is based upon the individual's acceptance or rejection of such conduct.

Examples of conduct which could reasonably be considered to adversely affect the work environment include:

- A. Threats, intimidation, assault, or other forms of abuse;
- B. Offensive jokes, ridicule, insults, or other derogatory comments (such as the use of epithets);
- C. Suggestive pictures, cartoons, e-mails, or internet usage which may be seen by other employees as containing offensive material.

Whether the conduct is directed toward a specific individual who finds it unwelcome or is observed by another employee who finds it offensive, such conduct would constitute harassment if based (directly or indirectly) on the above-listed categories, and would be subject to the reporting and complaint procedures described below.

III.

Policy Against Harassing Conduct. FMSHRC does not tolerate harassing conduct by anyone in the workplace. It is the policy of FMSHRC to maintain a work environment free from harassing conduct described above.

FMSHRC 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 the demonstration of serious, or a pattern of, offensive conduct. FMSHRC will not wait for such a serious conduct or a pattern to emerge before taking remedial action. Rather, FMSHRC 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 FMSHRC's view that such conduct is inappropriate, must not be repeated, and will be treated as employee misconduct.

Similarly, FMSHRC is committed to maintaining a non-hostile workplace free of discriminatory harassment. As noted above, a hostile work environment can arise from threats or intimidation, abuse, ridicule, offensive jokes, insults, derogatory comments, or other forms of interference with work performance that are directly or indirectly based on race, color, national origin, sex, sexual orientation, religion, age, disability (including pregnancy and gender identity), genetic information, marital status, political affiliation, parental status, retaliation for protected EEO activity, or non-job related conduct. Personal conversations that can be overheard by another employee who would consider the conversation offensive can also create a hostile environment. Likewise, suggestive pictures, cartoons, emails, or internet usage in the work environment that may be seen by other employees as containing offensive material are examples of harassing behaviors which will be treated as misconduct. The prohibition against harassment covers the conduct of both employees and non-employees in FMSHRC workplaces.

FMSHRC will not tolerate retaliation against any employee for making a good-faith report of harassing conduct under this policy, or for assisting in any inquiry into such a report. Complaints of such retaliation shall be handled pursuant to the procedures in this directive.

This Policy is effective as of October 3, 2019, and supersedes any and all other previous policies on harassment at FMSHRC.

IV.

Responsibilities.

Each employee shall be responsible for:

1. Acting professionally and refraining from harassing conduct;
2. Becoming familiar with the provisions of this Policy, complying with all requirements of this Policy, and cooperating with any inquiry under this Policy; and
3. Promptly reporting any incident of harassing conduct that he or she experiences or witnesses before it becomes a pattern of misconduct so pervasive and offensive as to constitute a hostile work environment. FMSHRC 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, FMSHRC reserves the right to raise this failure to report as a defense against a suit for harassment.

All supervisors and managers shall be responsible for:

1. Acting promptly and appropriately to prevent harassing conduct in the workplace, and to prevent retaliation against those who complain of harassing conduct;
2. Reporting, pursuant to procedures set forth in this policy, any incident of harassing conduct that they witness or that is otherwise brought to their attention;
3. Receiving and handling an allegation of harassing conduct promptly and appropriately, utilizing the procedures set forth below; and
4. In consultation with the Anti-Harassment Program Manager and relevant investigator (see below), providing interim relief to alleged victims of harassment pending the outcome of the investigation to ensure that further misconduct does not occur.

V.

Complaint Procedure. FMSHRC's harassment reporting and complaint process is overseen by Program Manager Michael Chirico (mchirico@fmshrc.gov, 202-434-9909). As detailed below, inquiries into reports of harassment shall be conducted by the agency's General Counsel, or in the event of a conflict of interest, the Executive Director, who shall issue recommended findings and actions subject to final approval by the Chair.

1. Reporting Harassment. Any person who believes that he or she has been the subject of an incident of harassing conduct, or has witnessed such conduct, should report this matter to at least one of the following contacts: any FMSHRC supervisor or manager; the FMSHRC EEO Director; or the independent human

resource specialist provided by the Bureau of Fiscal Services, Heather Helmick (heather.helmick@fiscal.treasure.gov, 304-480-8334).

The supervisor, manager, EEO Director, or BFS Specialist who receives a report of alleged harassment shall immediately: document the details of the reported harassment; inform the Program Manager of the allegation; and, in consultation with the Program Manager, take action to stop any ongoing harassment.

2. Inquiry and Interim Action. Upon receipt of an allegation of harassing conduct, the Program Manager shall promptly provide the relevant details to the General Counsel, or in the event of a conflict of interest, the Executive Director, for investigation.

Within 10 calendar days of receipt of the harassment allegation, the investigator shall initiate an inquiry into the alleged harassing conduct, in conjunction with the BFS Human Resource Specialist.

While the investigation is ongoing, the investigator shall take action to stop any harassing conduct and to prevent further harassment, including granting interim relief to the alleged victim of harassment if appropriate.

3. Findings and Subsequent Action. Upon completing the inquiry, the investigator shall evaluate the evidence, prepare a written summary, and make recommended findings as to: whether harassment occurred; and the appropriate action(s) to be taken (if any). This recommendation shall be submitted to the Chair for final approval and enactment.
 - i. Where the inquiry establishes that an employee did engage in harassing conduct, he or she shall be subject to appropriate corrective action, up to and including removal.
 - ii. 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 up to and including removal.

This final determination shall be reached and corrective action (if any) shall be taken within 60 calendar days of the Program Manager's receipt of the harassment allegation.

The summary, recommendation, and other documentation gathered under this procedure shall be kept confidential to the extent possible. Information may only be disclosed to those officials and employees with a need to know in order to carry out the purpose and intent of this policy or in litigation in which the information may be relevant.

For a reasonable period following a finding of harassment, the Program Manager should coordinate with the relevant management officials to ensure that the situation is monitored to prevent further incidents of harassment or retaliation against individuals who have reported harassment or participated in the inquiry.

VI.

Federal Remedy Equal Employment Opportunity (EEO) Complaint Process. The procedures contained in this policy are separate from the EEO complaint process. An employee or applicant who chooses to pursue a Federal remedy alleging harassment or other discrimination based on race, color, religion, sex (including pregnancy, gender identity and sexual orientation based on sex-stereotyping), national origin, disability, genetic information, age or retaliation, and who wishes to file a complaint must contact FMSHRC's EEO Director within 45 days of the discriminatory action or incident. The only circumstances where complaint allegations may be raised beyond the 45-day time frame are continuing violations, situations where the employee was unaware an action might have been taken based on discrimination until a later action occurs; or extreme extenuating circumstances. In order to pursue a Federal remedy, refer to the procedures set forth in FMSHRC's EEO Discrimination Complaint Process, posted on the employee bulletin board and on FMSHRC's website at www.fmsshr.gov/eoo-policies.

VII.

Remedy for Discrimination based on Sexual Orientation, Political Affiliation, Marital Status, Membership in an Employee Organization, or Other Non-Merit Factor. Any employee who believes that they have experienced harassing conduct or discrimination based on sexual orientation, political affiliation, marital status, membership in an employee organization, or other non-merit factor is encouraged to report such concerns according to the procedures set forth in this policy so that the matter may be addressed. An employee who chooses to pursue a Federal remedy based on these bases must contact:

U. S. Office of Special Counsel
1730 M Street, NW, suite 218
Washington, DC 20036
Telephone (800) 872-9855 or (202) 804-7000
(TTY) 1-800-877-8339
info@osc.gov
<https://osc.gov>

VIII.

For Additional Information.

Relating to the Federal complaint processing procedures, contact Kimberly Burch, EEO Director, at 202-434-9913, kburch@fmshrc.gov.

Relating to laws enforced by the Equal Employment Opportunity Commission, refer to www.eeoc.gov or call 1-800-669-4000; (TTY) 1-800-669-6820.

Relating to laws enforced by the Office of Special Counsel, refer to <https://osc.gov> or call 1-800-872-9855; (TTY) 1-800-877-8339.