

UNITED STATES OFFICE OF PERSONNEL MANAGEMENT



# **Guidance for Agency-Specific Domestic Violence, Sexual Assault, and Stalking Policies**

February 2013

*a New Day for Federal Service*

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## INTRODUCTION

Domestic violence, sexual assault, and stalking are serious problems that can affect individuals, families, and communities. According to the Centers for Disease Control and Prevention (CDC) 2010 National Intimate Partner and Sexual Violence Survey (NISVS), 1 in 4 women and 1 in 7 men in the United States have experienced severe physical violence by an intimate partner.<sup>1</sup> Stalkers victimize approximately 5.2 million women and 1.4 million men each year in the U.S., with domestic violence-related stalking the most common type of stalking and often the most dangerous.<sup>2</sup> One in 5 women and 1 in 71 men have been raped at some point in their lifetimes, and nearly 1.3 million women in the U.S. are raped every year.<sup>3</sup> The statistics are sobering – even more so with our understanding that these types of crimes are often the most underreported.<sup>4</sup> It is important to note that victims may experience one of these forms of violence or all three at the same time. Although women are the majority of victims, as the above statistics show, men can also become victims. In addition, these crimes affect people of all backgrounds, including race, income, religion, sexual orientation, gender identity, age, disability, etc.

These crimes often cause emotional trauma and physical injury.<sup>5</sup> In addition, because of the social stigma associated with the crimes and the fact that victims often have an on-going relationship with the offender, it may be more difficult for victims to report. Victims often continue to be in danger after reporting the crime, during the investigation process, and during prosecution of the cases. As a result, appropriate responses in these cases can save lives, prevent future violence, and promote victim recovery.

The effects of domestic violence, sexual assault, and stalking spill over to the workplace in numerous ways, introducing significant costs and safety concerns. The CDC has estimated that domestic violence, sexual assault, and stalking cost nearly \$8 billion a year in lost productivity, health care costs, and earnings.<sup>6</sup> In addition, domestic violence threatens the safety of both victims and their colleagues at work. Nearly a third of women killed in U.S. workplaces from 2003-2008 were killed by a current or former intimate partner.<sup>7</sup> While women are disproportionately affected by domestic violence, sexual assault, and stalking, men and people of all backgrounds can become victims.<sup>8</sup> A sub-population that is particularly vulnerable, for example, is individuals with disabilities, as 37.3 percent of women with

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<sup>1</sup> Black, M.C., Basile, K.C., Breiding, M.J., Smith, S.G., Walters, M.L., Merrick, M.T., Chen, J., & Stevens, M.R. 2011. *The National Intimate Partner and Sexual Violence Survey (NISVS): 2010 Summary Report*. Atlanta, GA: National Center for Injury Prevention and Control, Centers for Disease Control and Prevention.

[http://www.cdc.gov/ViolencePrevention/pdf/NISVS\\_Report2010-a.pdf](http://www.cdc.gov/ViolencePrevention/pdf/NISVS_Report2010-a.pdf)

<sup>2</sup> Black, Basile, Breiding, Smith, Walters, Merrick, Chen & Stevens, 2011.

<sup>3</sup> Black, Basile, Breiding, Smith, Walters, Merrick, Chen & Stevens, 2011.

<sup>4</sup> Black, Basile, Breiding, Smith, Walters, Merrick, Chen & Stevens, 2011.

<sup>5</sup> Adopted from U.S. Department of Justice, Attorney General Guidelines for Victim and Witness Assistance, 2011 edition, rev. May 2012. [http://www.justice.gov/olp/pdf/ag\\_guidelines2012.pdf](http://www.justice.gov/olp/pdf/ag_guidelines2012.pdf)

<sup>6</sup> Centers for Disease Control and Prevention. 2003. *Costs of Intimate Partner Violence Against Women in the United States*. [http://www.cdc.gov/ncipc/pub-res/ipv\\_cost/ipvbook-final-feb18.pdf](http://www.cdc.gov/ncipc/pub-res/ipv_cost/ipvbook-final-feb18.pdf)

<sup>7</sup> Tiesman, Hope M., Kelly K. Gurka, Srinivas Konda, Jeffrey H. Coben, and Harlan E. Amandus. 2012. "Workplace Homicides Among U.S. Women: The Role of Intimate Partner Violence." *Annals of Epidemiology* 22,4: 277-84.

<sup>8</sup> For the latest information and statistics, please see the Workplaces Respond to Domestic and Sexual Violence: A National Resource Center website at <http://www.workplacesrespond.org/>.

disabilities have experienced violent abuse in their lifetime, compared with 20.6 percent of women without disabilities.<sup>9</sup>

Domestic violence, sexual assault, and stalking have the potential to affect every Federal workplace across the United States. It is the policy of the Federal Government to promote the health and safety of its employees by acting to prevent domestic violence, sexual assault, and stalking within the workplace and by providing support and assistance to Federal employees whose working lives are affected by such violence.

This Guidance for Agency-Specific Domestic Violence, Sexual Assault, and Stalking Policies provides agencies with direction to enable them to fulfill the goals identified in the Presidential Memorandum on "[Establishing Policies for Addressing Domestic Violence in the Federal Workforce](#)," which was issued on April 18, 2012. As the nation's largest employer, the Federal Government should act as a model in responding to the effects of domestic violence, sexual assault, and stalking in the workplace. Some agencies have already taken steps to address these issues. By building on these efforts, the Federal Government can further address the effects of domestic violence, sexual assault, and stalking on its workforce, promoting the health and safety of its employees and improving the quality of its service to the public.

The Guidance is divided into the following three sections:

- Section 1.0 provides definitions of key terms.
- Section 2.0 provides an overview of critical considerations for policy development.
- Section 3.0 provides specific guidance on the main components of agency policies, including:
  - Workplace Flexibilities,
  - Disciplinary Actions and Legal Considerations,
  - Training, Awareness, and Employee Assistance Programs (EAP),
  - Building Safety and Security, and
  - Accountability

This Guidance is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

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<sup>9</sup> Centers for Disease Control and Prevention. 2012. Women with Disabilities page, Intimate Partner Violence. <http://www.cdc.gov/ncbddd/disabilityandhealth/women.html>

## 1.0 DEFINITIONS

### ***Cultural Competence***

Cultural competence is a set of congruent behaviors, attitudes, and policies that come together in a system, agency, or among professionals that enable effective work in cross-cultural situations. “Culture” refers to integrated patterns of human behavior that include the language, thoughts, communications, actions, customs, beliefs, values, and institutions of racial, ethnic, religious, or social groups. “Competence” implies having the capacity to function effectively as an individual or an organization within the context of the cultural beliefs, behaviors, and needs presented by consumers and their communities.<sup>10</sup>

### ***Domestic Violence***

Domestic violence is a pattern of coercive behavior, including acts or threatened acts, that are used by a perpetrator to gain power and control over a current or former spouse, family member, current or former intimate partner, current or former dating partner, or person with whom the perpetrator shares a child in common. This behavior includes, but is not limited to, physical or sexual violence, emotional and/or psychological intimidation, verbal abuse, stalking, economic control, harassment, threats, physical intimidation, or injury. Domestic violence can occur in any relationship, regardless of socio-economic status, education level, cultural background, age, gender, race, ethnicity, sexual orientation, gender identity, or religion. Domestic violence can occur in heterosexual and same-sex intimate relationships, including marital, cohabiting, or dating relationships that are not dependent on the existence of a sexual relationship.<sup>11</sup>

### ***Employee***

For the purposes of this Guidance, an employee is any person employed by a Federal Executive agency as defined in [5 U.S.C. § 105](#). This does not include employees of private contractors hired by the agencies.

### ***Employer***

For the purposes of this Guidance, an employer is any Federal Executive agency, as defined in [5 U.S.C. § 105](#).

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<sup>10</sup> U.S. Department of Health and Human Services, Office of Minority Health (adapted from Cross et al. 1989). 2005. <http://minorityhealth.hhs.gov/templates/browse.aspx?lvl=2&lvlID=11>

<sup>11</sup> Adapted from Workplaces Respond to Domestic Violence and Sexual Assault. 2012. <http://www.workplacesrespond.org/>

## ***Perpetrator***

A perpetrator is an individual who commits or threatens to commit an act of domestic violence, sexual assault, and/or stalking.<sup>12</sup>

## ***Protection or Restraining Order***

Victims may obtain a protection order, sometimes called a restraining order, a stay-away order, or a peace order, from a court to protect them from a perpetrator. Such an order also may establish custody and visitation guidelines and provide for forms of economic security, like child support, rent or mortgage payments, which last for the duration of the order. Protection orders may also be issued in criminal cases as a condition of probation or condition of release, particularly in a domestic violence, sexual assault, or stalking related crime.<sup>13</sup>

## ***Sexual Assault***

Sexual assault refers to a range of behaviors, including but not limited to, a completed nonconsensual sex act (e.g., rape, sodomy, child molestation), an attempted nonconsensual sex act, and/or abusive sexual contact. Sexual assault includes any sexual act or behavior that is perpetrated when someone does not or cannot consent. A victim of sexual assault may know the perpetrator, such as a co-worker or a supervisor, and/or may be involved in a dating or marital relationship with the perpetrator, or the perpetrator may be unknown to the victim. Lack of consent should be inferred when a perpetrator uses force, harassment, threat of force, threat of adverse personnel or disciplinary action, or other coercion, or when the victim is asleep, incapacitated, unconscious, or physically or legally incapable of consent.<sup>14</sup>

## ***Sexual Harassment***

[Title VII of the Civil Rights Act of 1964](#) refers to unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when this conduct explicitly or implicitly affects an individual's employment, unreasonably interferes with an individual's work performance, or creates an intimidating, hostile, or offensive work environment. Sexual assault is a form of sexual harassment prohibited by Title VII, but most sexual harassment does not rise to the level of sexual assault. This Guidance only addresses sexual assault. For sexual harassment that does not rise to the level of sexual assault, agencies should follow their sexual harassment policies and guidance from the EEOC ([http://www.eeoc.gov/laws/types/sexual\\_harassment.cfm](http://www.eeoc.gov/laws/types/sexual_harassment.cfm)).

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<sup>12</sup> Adapted from Workplaces Respond to Domestic Violence and Sexual Assault. 2012. <http://www.workplacesrespond.org/>

<sup>13</sup> Adapted from Workplaces Respond to Domestic Violence and Sexual Assault. 2012. <http://www.workplacesrespond.org/>

<sup>14</sup> Adapted from Workplaces Respond to Domestic Violence and Sexual Assault. 2012. <http://www.workplacesrespond.org/>

## ***Stalking***

Stalking refers to harassing, unwanted, or threatening conduct that causes the victim to fear for his or her safety or the safety of a family member. Stalking conduct may include, but is not limited to, following, spying on, or waiting for the victim in places such as home, school, work, or recreation place; leaving unwanted items, presents, or flowers for the victim; making direct or indirect threats to harm the victim, the victim's children, relatives, friends, pets, or property; posting information or spreading rumors about the victim on the internet, in a public place, or by word of mouth; and obtaining personal information about the victim by accessing public records, using internet search services, hiring private investigators, going through the victim's garbage, following the victim, or contacting victim's friends, family, work, or neighbors. Stalking may occur through use of technology, including but not limited to, email, telephone, voicemail, text messaging, and use of GPS and social networking sites.<sup>15</sup>

## ***Victim***<sup>16</sup>

A victim is an individual who is currently subject to, or has in the past been subjected to, domestic violence, sexual assault, and/or stalking.<sup>17</sup>

## ***Trauma-informed Care***

Trauma-informed care is an approach to engaging people with histories of trauma that recognizes the presence of trauma symptoms and acknowledges the role that trauma has played in their lives.<sup>18</sup>

## ***Workplace***

A workplace is an employee's official duty station or alternative work location that is associated with the employee's established tour of duty (working hours). The employee is considered to be in the workplace while in or utilizing the resources of the employer. The availability and character of an agency response to a workplace-related incident may be dependent upon the location at issue.

## ***Workplace-related Incidents***

Workplace-related incidents of domestic violence, sexual assault, and stalking include acts, attempted acts, or threatened acts by or against employees, and/or against employees' families or property, that occur in the workplace or that occur outside the workplace but have an impact on the workplace.<sup>19</sup>

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<sup>15</sup> Adapted from Workplaces Respond to Domestic Violence and Sexual Assault. 2012.

<http://www.workplacesrespond.org/>

and U.S. Department of Justice, Office of Violence Against Women. 2012.

<http://www.ovw.usdoj.gov/aboutstalking.htm>

<sup>16</sup> Agencies may opt to use alternate terminology, such as "survivor" or "a person affected by domestic violence, sexual assault, or stalking."

<sup>17</sup> Adapted from Workplaces Respond to Domestic Violence and Sexual Assault. 2012.

<http://www.workplacesrespond.org/>

<sup>18</sup> Substance Abuse and Mental Health Services Administration. 2012. <http://www.samhsa.gov/nctic/>

### ***Workplace Safety Plan***

A workplace safety plan is a strategy developed in collaboration with a victim to implement workplace safety options, including but not limited to, handling of court protection orders, procedures for alerting security personnel, temporary or permanent adjustments to work schedules and locations, changes in parking spots, and requests for escorts to and from workplace facilities.<sup>20</sup>

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<sup>19</sup> Adapted from Workplaces Respond to Domestic Violence and Sexual Assault. 2012. <http://www.workplacesrespond.org/>

<sup>20</sup> Workplaces Respond to Domestic Violence and Sexual Assault. 2012. <http://www.workplacesrespond.org/>



## 2.0 OVERVIEW OF POLICY DEVELOPMENT

Agencies are responsible for developing their policies as described below.

### ***Roles and Responsibilities***

The Presidential Memorandum outlines agency roles and responsibilities for the development of agency-specific policies to address the effects of domestic violence, sexual assault, and stalking.

- 1) Pursuant to section 2(b), within 120 calendar days from the issuance of this Guidance, each agency shall develop or modify, as appropriate, agency-specific policies for addressing the effects of domestic violence, sexual assault, and stalking on its workforce, consistent with this Guidance. Each agency shall submit for review and comment to the Director of the Office of Personnel Management (OPM) a draft or modified agency-specific policy.

OPM recommends that:

- a. Agency-specific policies should address each of the main components outlined in section 3.0 of this Guidance and should be consistent with applicable law.
  - b. Agencies that already have policies should review those policies and make any necessary changes to ensure alignment with the principles and components described in this Guidance.
  - c. Agencies that do not have policies should develop policies that are in alignment with the principles and components described in this Guidance.
- 2) OPM will review agency-specific new or modified policies for addressing domestic violence, sexual assault, and stalking and provide recommended modifications for agency consideration. Pursuant to section 2(b) of the Presidential Memorandum, in reviewing the draft agency-specific policies, the Director of OPM shall consult with the Attorney General, the Secretary of Health and Human Services, the Secretary of Labor, the Secretary of Homeland Security, and other interested agency heads.
  - 3) Each agency shall issue a final agency-specific policy (whether new or modified) within 180 calendar days after submission of its draft policy to the Director of OPM.

### ***Basic Steps for Policy Development Addressing Domestic Violence, Sexual Assault, and Stalking***

Domestic violence, sexual assault, and stalking have the potential to affect every Federal workplace. There are many different approaches that agencies can take in developing agency-specific policies

consistent with this Guidance. This section provides some general steps that may be helpful for structuring this process.<sup>21</sup>

### 1) Form a Planning Group

A good first step in developing an agency policy is the formation of a planning group to evaluate the agency's current ability to respond to domestic violence, sexual assault, and stalking incidents and provide recommendations to strengthen this response capability. Members of the planning group may include, but need not be limited to, representatives from management, employee relations, human resources, unions, employee assistance programs, the occupational safety and health office, law enforcement, and security professionals.

Agencies that are too small to have a law enforcement/security component may have a representative of the Federal Protective Service (FPS) or local law enforcement in the planning group. Depending on the size, structure, and needs of the agency, membership may also include representatives from other appropriate offices.

The agency's Office of General Counsel and Office of the Inspector General should always be invited to participate. If these entities are not represented in the planning group, they should act as consultants to it.

### 2) Work with Your Union

An agency should involve its unions early in the process of policy development. It is good practice to involve unions before decisions are made so that they can express employees' concerns and offer their expertise. In some circumstances, unions may also be legally entitled to negotiate over some matters related to the development and implementation of agency-specific policies. Management should consult with labor relations specialists and counsel to ensure compliance with law and existing collective bargaining agreements. When implementing this Guidance, agency management should comply with applicable statutes, regulations, and collective bargaining agreements and inform the union of any proposed recommendations that may impact bargaining unit employees.

### 3) Steps in the Planning Process

The following steps can help structure the planning process for developing agency-specific policies to address domestic violence, sexual assault, and stalking.

#### a. Assess Current Capacity

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<sup>21</sup> The content for this section is adapted from: U.S. Office of Personnel Management. 1998. *Dealing with Work Place Violence: A Guide for Agency Planners*. [http://www.opm.gov/employment\\_and\\_benefits/worklife/officialdocuments/handbooksguides/workplaceviolence/index.asp](http://www.opm.gov/employment_and_benefits/worklife/officialdocuments/handbooksguides/workplaceviolence/index.asp)

It is necessary to conduct an analysis of the agency's current ability to handle incidents related to domestic violence, sexual assault, and stalking in its workforce. An effective way to begin is by assessing previous incidents that occurred and evaluating the responses to them. In assessing current capacity, agencies should pay particular attention to available staff expertise, existing level of security, and jurisdictional issues. It may be necessary to engage experts on domestic violence, sexual assault, and stalking to assess agency capacity.

b. Fill Skills Gaps

Even large agencies with numerous resources experience skills deficiencies. In some cases, training may be appropriate to address any skills gaps as described in greater detail in other sections of this Guidance. When it is impractical to maintain in-house expertise for all aspects of agency policies, agencies may solicit outside assistance from entities such as other government agencies, local police, community resources, or reimbursable consultants.

c. Develop a Reporting Procedure

Agencies should develop reporting procedures that provide an effective, confidential, and accessible way for employees to report incidents and concerns. Because the credibility of any reporting procedure will depend on the extent to which reports are handled quickly and efficiently, agency staff responsible for responding to reported incidents should be trained and prepared to handle any such reports. Additional guidance for developing reporting procedures is found in section 3.0 of this Guidance.

d. Develop Incident Response Plans

Agencies should develop plans that specify which offices will generally respond to different types of incidents and who will be responsible for different aspects of incident responses. Additional guidance for developing incident response plans is found in section 3.0 of this Guidance.

4) Consider Needs of Employees with Disabilities

Each agency should ensure effective communication with persons with disabilities (e.g., hearing or speech impairments) by providing appropriate auxiliary aids during training, outreach, and awareness activities, reporting procedures, administration of safety precautions, and an employee's usage of assistance services. In addition, reasonable accommodations must be provided to persons with disabilities where such accommodations are necessary to ensure that they receive the same benefits and flexibilities under agency policies as persons without disabilities.

## 3.0 COMPONENTS OF AGENCY POLICIES

### *Workplace Flexibilities*

Various types of workplace flexibilities are available to an employee when the employee and/or the employee's family member(s) are victims of domestic violence, sexual assault, or stalking. To the greatest extent possible, agencies should work in collaboration with the employee to provide leave and/or other workplace flexibilities to help the employee remain safe and maintain his or her work performance. All possible leave options should be considered for an employee in this situation. When the need for time off is foreseeable, an employee must provide reasonable advance notice to the agency.

An agency may choose to develop a policy that would allow an employee who is a victim and/or the employee's family member(s), as discussed in this section, the opportunity to request leave or other paid time off through a third party, such as an Employee Assistance Program (EAP) Coordinator, if the employee does not feel comfortable speaking with a supervisor. Although the supervisor is the only person who can approve the leave, the leave request may be made through the third party. Employees are not required to provide personal details in their requests for leave. However, employees are required to provide enough information in their leave requests so their supervisors know which type of leave is appropriate (e.g., sick leave, annual leave, Family and Medical Leave Act (FMLA), etc.). Supervisors should consider whether an employee is entitled to a certain type of leave (e.g., FMLA or sick leave) or whether an employee's request for leave other than under the FMLA should be granted. Details on the administration of leave will be provided by the agency.

An agency is not required to ask for verification or proof of domestic violence, sexual assault, or stalking, but it may accept the employee's credible statement as verification. If necessary, verification or proof may also include, but need not be limited to, a service provider's statement, a protection order, medical records or doctor's statement, or police or court reports. **Under no circumstances should the agency require the employee to contact law enforcement or otherwise report the violence as a condition for accessing leave. To do so could place victims in greater danger.**

Below is a list of available workplace flexibilities that should be incorporated into agency-specific policies for addressing domestic violence, sexual assault, and stalking. It is important to note that these options can be applied to situations in which the domestic violence, sexual assault, or stalking is currently taking place or to situations in which the trauma related to a *past* situation involving violence is causing a negative impact in the workplace. Note that the intent of this Guidance is not to expand or restrict how these flexibilities are used generally, but simply to explain how they can be applied in the domestic violence, sexual assault, and stalking context.

*Annual Leave.* This type of leave may be used for, but is not limited to, time off for court proceedings and to meet with lawyers, victims' advocates, law enforcement officers, or to attend support group meetings. Annual leave can also be used in lieu of sick leave for illnesses or injuries as a result of domestic violence, sexual assault, or stalking for the employee to go to a safe place. An employee has a right to take annual leave, the timing of which would be subject to agency approval.

*Advanced Annual Leave.* At its discretion, an agency may advance annual leave to an employee in an amount not to exceed the amount the employee would accrue in the remainder of the leave year. Upon request of the employee, agencies are encouraged to approve advanced annual leave for this purpose if the employee has exhausted his or her accrued annual leave.

*Sick Leave.* An employee may use sick leave, consistent with current law and regulations for granting and using sick leave. Sick leave may be used for injuries resulting from domestic violence, sexual assault, or stalking, to meet with medical providers, for counseling by a health care provider,<sup>22</sup> to care for a family member<sup>23</sup> with injuries or a “serious health condition”<sup>24</sup> resulting from domestic violence, sexual assault, or stalking, or to accompany a family member when he or she meets with medical providers for injuries or illnesses resulting from domestic violence, sexual assault, or stalking.

*Advanced Sick Leave.* Upon request of the employee, agencies are encouraged to approve advanced sick leave for any of the purposes referenced above if the employee has exhausted his or her available sick leave. An agency may advance up to 13 days of sick leave for the employee’s own – or a family member’s – medical, dental, or optical examinations or treatment, or to care for a family member who is incapacitated by a medical or mental condition. If the employee is incapacitated for the performance of his or her duties or if the family member’s injury rises to the level of a “serious health condition,”<sup>25</sup> an agency may advance up to 30 days of sick leave to the employee.

*Leave Without Pay (LWOP).* An employee may be granted LWOP if other forms of paid leave are unavailable. As with annual leave and advanced leave, agencies are encouraged, whenever possible, to approve requests by employees for LWOP for reasons related to domestic violence, sexual assault, or stalking. Employees are entitled to up to 12 weeks of leave without pay under the Family and Medical Leave Act (FMLA) described below.

*Excused Absence (Administrative Leave).* Each agency has discretion to excuse employees from their duties without loss of pay or charge to leave. Excused absence may be granted for brief periods when it is determined to be in the interest of the agency and should be limited to those situations in which the excused absence, in the agency’s determination, is not prohibited by law. OPM advises that the granting of excused absence for purposes related to domestic violence, sexual assault, or stalking issues be limited to those situations in which the employee’s perpetrator poses a threat to the employee and/or his or her co-workers in the workplace. It is essential for the agency to consider the safety of the employee and his or her co-workers in addition to avoiding disruption to the workplace.

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<sup>22</sup> For the definition of “health care provider” for sick leave and FMLA purposes, please see [5 CFR 630.201](#) and [5 CFR 630.1202](#)

<sup>23</sup> For the definition of “family member” for sick leave purposes, please see [5 CFR 630.201](#)(b) and our fact sheet [Definitions Related to Family Member and Immediate Relative](#)

<sup>24</sup> For the definition of “serious health condition” for sick leave and FMLA purposes, please see [5 CFR 630.201](#) and [5 CFR 630.1202](#)

<sup>25</sup> For the definition of “serious health condition” for sick leave and FMLA purposes, please see [5 CFR 630.201](#) and [5 CFR 630.1202](#)

Excused absence should be used in very limited circumstances. Typically, annual and/or sick leave or leave without pay will be the most appropriate tools.

*Family and Medical Leave Act (FMLA).* An employee is entitled to up to 12 weeks of unpaid leave under FMLA if domestic violence, sexual assault, or stalking results in a serious health condition<sup>26</sup> for the employee that makes the employee unable to perform the essential functions of his or her position. FMLA leave can also be used to care for a spouse, son or daughter (under 18 or over 18 but incapable of self-care because of a mental or physical disability), or parent of the employee with a serious health condition as a result of domestic violence, sexual assault, or stalking. Annual leave, sick leave, and annual leave donated under the Voluntary Leave Transfer or Voluntary Leave Bank Programs may be substituted for unpaid leave under FMLA.

*Voluntary Leave Transfer and Bank Programs.* An employee is eligible to apply for donated annual leave if the domestic violence, sexual assault, or stalking results in a medical emergency for either the employee or the employee's family member<sup>27</sup> that is likely to require the employee to be absent from duty for a prolonged period and to result in a substantial loss of income because of the employee's lack of available paid leave.

*Telework.* Agencies are encouraged to permit a telework-ready<sup>28</sup> employee to work from an alternative site if the employee (or a family member for whom the employee is caring) is experiencing problems associated with domestic violence, sexual assault, or stalking. Telework promotes continuity of operations without risking the safety of the employee or the employee's co-workers. An employee must follow his or her agency's telework policy for requesting leave and work scheduling changes when teleworking.

*Flexible Work Schedules.* An employee on an approved flexible work schedule may adjust his or her work schedule, such as reporting times and work hours, to accommodate events driven by domestic violence, sexual assault, or stalking in accordance with agency internal policies and/or collective bargaining agreements. Employees represented by an exclusively-recognized union may participate in a flexible work schedule only to the extent expressly provided under a collective bargaining agreement between the agency and the exclusive representative (see [5 U.S.C. § 6130\(a\)\(2\)](#)). Agencies should review their internal flexible work schedule policies and practices and collective bargaining agreements and adjust accordingly to permit an employee to adjust his or her schedule for this purpose.

*Credit Hours (Flexible Work Schedules).* Credit hours can be earned and used only by employees who are governed by a flexible work schedule that provides for credit hours. An employee who works

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<sup>26</sup> For the definition of "serious health condition" for sick leave and FMLA purposes, please see [5 CFR 630.201](#) and [5 CFR 630.1202](#)

<sup>27</sup> For the definition of "family member" for VLTP and VLBP purposes, please see [5 CFR 630.902](#) and [5 CFR 630.1002](#) and our fact sheet [Definitions Related to Family Member and Immediate Relative](#)

<sup>28</sup> A telework-ready employee is someone who has been deemed eligible to telework by the agency and who has entered into an official telework agreement. (Guide to Telework in the Federal Government, [http://www.telework.gov/guidance\\_and\\_legislation/telework\\_guide/telework\\_guide.pdf](http://www.telework.gov/guidance_and_legislation/telework_guide/telework_guide.pdf), 7)

under a flexible work schedule that permits credit hours may elect to work in excess of his or her basic work requirement (e.g., 80 hours in a pay period for a full-time employee) so as to vary the length of a workweek or workday. Agency policies or union agreements may place restrictions on earning or using credit hours. Employees may use credit hours to fulfill their basic work requirement, thereby gaining time off from work to deal with issues related to domestic violence, sexual assault, or stalking. If an agency authorizes credit hours under its flexible work schedule program, employees may carry over a maximum of 24 credit hours from one pay period to another.

*Compensatory Time Off.* Employees may earn compensatory time off in lieu of overtime pay in exchange for performing an equal amount of time in irregular or occasional overtime work or, when permitted under agency flexible work schedule programs, for regularly scheduled or irregular or occasional overtime work. An employee may use earned compensatory time off for issues related to domestic violence, sexual assault, or stalking.

*Compensatory Time Off for Travel.* Employees earn this type of compensatory time off for time spent in a travel status away from the employee's official duty station when such time is not otherwise compensated. Compensatory time off for travel that an employee has accrued may be used upon an employee's request to deal with issues related to domestic violence, sexual assault, or stalking.

*Absence Without Leave (AWOL).* An employee is charged AWOL when the employee is absent without permission. Employees who are missing as a result of domestic violence, sexual assault, or stalking may substitute a form of approved paid or unpaid leave upon return to work and with supervisor approval.

## ***Disciplinary Actions and Legal Implications***

In developing policies and procedures related to domestic violence, sexual assault, and stalking, agencies should take into account disciplinary and legal considerations related to both employees who are perpetrators and employees who are victims. These considerations include, but may not be limited to, responses to perpetrators and victims, situations involving employees in the same workplace, handling of contractors, and confidentiality concerns.

### **Employees as Perpetrators**

If agency officials determine that an employee has engaged in acts of domestic violence, sexual assault, or stalking, the agency may take disciplinary action proportionate to the offense, to the extent that there is a nexus between the conduct and the “efficiency of the service.” Removal from Federal service under certain circumstances has been supported by current Federal case law.<sup>29</sup> Managers are strongly encouraged to contact their servicing employee and labor relations specialist in the human resources office or agency counsel for advice and guidance on this issue.

#### *Disciplinary Actions for Misconduct Committed Outside of Work*

To take adverse action against employees who commit off-duty misconduct, there must be a proven “nexus” between the specific misconduct of the employee and the employee’s ability to perform his or her duties. That is, when taking adverse action against an employee, an agency must be able to show that there is a clear and direct relationship between the grounds for the adverse action and the employee’s ability to perform his or her duties or some other legitimate governmental interest promoting the “efficiency of the service” ([5 U.S.C. §7513\(a\)](#)).

[5 U.S.C. Chapter 75](#) and [5 U.S.C. Chapter 23](#) require a nexus when taking any disciplinary action for Federal employees (who have completed their probationary period) hired under Title 5 of the United States Code.<sup>30</sup> Agencies have to establish a nexus by a preponderance of the evidence. When misconduct happens in the workplace or during duty hours, a nexus may be presumed.

For adverse actions to be sustained by third party adjudicators such as the [Merit Systems Protection Board](#), the facts that are relied upon to establish a connection between the misconduct and the efficiency of the service must be proven by a preponderance of the evidence,<sup>31</sup> which includes proper penalty determinations. Penalty determinations are made in accordance with the [Douglas Factors](#),

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<sup>29</sup> See: *Carlton v. Department of Justice*, 104 LRP 14987, 95 MSPR 633 (2004); *Banks, Jr. v. Department of Veterans Affairs*, 102 LRP 30985 (2001).

<sup>30</sup> Nexus may apply to employees hired under other appointment authorities outside of Title 5, beyond the provisions of this chapter, and as determined by the guidance provided by the servicing employee and labor relations specialist and human resources.

<sup>31</sup> Preponderance of the evidence as defined by [5 CFR 1201.56\(c\)\(2\)](#): The degree of relevant evidence that a reasonable person, considering the record as a whole, would accept as sufficient to find that a contested fact is more likely to be true than untrue.



which is a list of aggravating and mitigating factors to consider in establishing the proper disciplinary action, if relevant.

It is well established that an agency can show a nexus linking an employee's off-duty misconduct with the efficiency of the service, among other things, through: (1) a rebuttable presumption of nexus that arises in certain egregious circumstances based on the nature and gravity of the misconduct; (2) a showing that the misconduct affects the employee's or his or her co-workers' job performance, or that the nature and seriousness of the offense impacts management's trust and confidence in the employee's future job performance; or (3) a showing that the misconduct interfered with or adversely affected the agency's mission.

#### *Disciplinary Actions for Misconduct Committed at Work*

As mentioned above, agencies have the authority to impose discipline or take other appropriate action for conduct that involves the threat or commission of domestic violence, sexual assault, or stalking by an agency employee during off-duty hours in certain circumstances. Of course, agencies should also consider the threat of or commission of domestic violence, sexual assault, or stalking by an agency employee on agency premises or during working hours or at an agency-sponsored event (see nexus requirement above).

Agencies that have an existing suggested discipline guide (e.g., table of penalties) should expand it to include such circumstances. It should explicitly state that penalties up to and including removal from the Federal service should be considered. All penalty determinations should be made in accordance with the requirements outlined above.

#### *Disciplinary Actions Pertaining to an Alleged Misconduct*

The civil service laws permit an agency to place an employee on indefinite suspension when the agency has reasonable cause to believe the employee has committed a crime for which the employee could be imprisoned. The law (at [5 U.S.C. § 7513\(b\)\(1\)](#)) permits agencies to dispense with usual notice periods where the "reasonable cause" standard, as interpreted by the Merit Systems Protection Board and courts, has been met. An agency must terminate the suspension promptly upon completion of the event it identified when imposing the suspension. A sample of an indefinite suspension proposal notice can be found in *Appendix A*.

### **Employees as Victims**

#### *Disciplinary Actions against Victims*

Employees who are victims of domestic violence, sexual assault, or stalking may inadvertently react in a manner that results in disciplinary action. For example, an employee may be charged with AWOL for absences arising from domestic violence, sexual assault, or stalking. In such cases, once the supervisor becomes aware of the domestic violence, sexual assault, or stalking issues, the victimized employee should be referred to the resources within the agency for support and assistance. In addition, the impact of domestic violence, sexual assault, and stalking should be taken into consideration as a

mitigating factor in determining the appropriate discipline in cases involving the victim. **Agencies should work to make sure that workplace policies do not re-victimize victims to the extent possible, while maintaining appropriate workplace standards.**

### *Non-discrimination*

Agencies should not discriminate against victims of domestic violence, sexual assault, or stalking in hiring, staffing, discipline, or other terms and conditions of employment. Such treatment re-victimizes victims. For information about how the equal employment opportunity laws may apply to such situations, see the Equal Employment Opportunity Commission's publication "[Questions and Answers: The Application of Title VII and the ADA to Applicants or Employees who Experience Domestic or Dating Violence, Sexual Assault, or Stalking.](#)"

### **Situations Involving Employees in the Same Workplace**

In some situations, both the victim and the perpetrator are Federal employees working in the same building, campus, or work unit and may need to be separated while at work. For example, two employees working in the same building are divorcing and one of them takes out a protective order against the other. The order allows the respondent (the alleged perpetrator) to come to work. The agency should look at options to maintain safety in terms of switching tours of duty, changing work locations, granting telework, and/or issuing a cease and desist order.

A directive to avoid contact in the form of a Memorandum of Instruction may be given to both the victim and the alleged perpetrator by their respective supervisors. This document will outline the agency and employee's obligations to avoid contact while still performing the functions of their position. The agency's employee relations team and the response team should be consulted for advice and guidance for the creation of this document. Privacy, confidentiality, and impartiality must be maintained. Both employees should be reminded of their opportunity to use the services of the agency's EAP.

### **Situations Involving Contractors**

The Federal workplace also includes contractor employees of vendors. Such personnel are not Federal employees. Concerns regarding the conduct of contractors promptly should be brought to the attention of the relevant contracting officer or contracting officer's technical representative and/or agency security personnel or law enforcement. If a contractor is a victim of domestic violence, sexual assault, or stalking, agencies should make security personnel available as necessary to consult on enhancing the safety of the workplace for the contractor and Federal employees.

[Executive Order 11246](#), as amended, sets requirements for Federal contractors on non-discriminatory practices and prohibits contractors from discriminating against their employees on the basis of sex, including by engaging or allowing their employees to engage in sexual harassment. Contractors are also required to comply with [Title VII of the Civil Rights Act of 1964](#), including its prohibition on sex discrimination. Prohibited behavior could occur in conjunction with domestic violence, sexual assault, or

stalking. While federal contractors are not legally required to attend training that would otherwise be mandated for Federal employees, agency contractor representatives are strongly encouraged to partner with their contracting officer to provide training related to domestic violence, sexual assault, and stalking. In addition, an agency may choose to require a contractor to adopt a workplace policy responding to domestic violence, sexual assault, and stalking as a condition of contract.

## **Confidentiality**

In developing their policies, agencies should address what steps managers are expected to take if and when an employee discloses that he or she has committed a workplace-related incident of domestic violence, sexual assault, or stalking, or if he or she is a victim of such violence. In addition, it is important to consider the protocol a supervisor should follow if he or she suspects that an employee may have committed such an incident.

Agencies should recognize and respect a victim's right to privacy and the need for confidentiality and autonomy. To the extent permitted by law, except when maintaining confidentiality could compromise the security of the workplace or compromise an ongoing criminal investigation, it is important to maintain the confidentiality of an employee who discloses information regarding an experience of domestic violence, sexual assault, or stalking.

When information provided by a victim must be disclosed within and/or external to an agency (such as due to security reasons), an agency should limit the breadth and content of such disclosure to information reasonably necessary to protect the safety of the disclosing employee and others and to comply with the law. The agency should make every effort to provide advance notice to the employee who disclosed information about the fact that the information will be disclosed, with whom it will be disclosed, and why. The agency should also provide the employee with the names and titles of the people with whom the agency intends to share the employee's statements and should explain the necessity and purpose of that disclosure.

Managers should be aware that the confidentiality of employee information and records related to domestic violence, sexual assault, and stalking is critical. A manager must determine if there is a need to retain written information. If so, this information should be protected and kept separate from other records maintained on the employee. Violations of confidentiality could jeopardize the victim's safety.

## ***Training, Awareness, and Employee Assistance Programs (EAPs)***

It is critical that agency-specific policies highlight training, awareness, and EAP support. Both managers and employees should be aware of the sources of support that exist in their agencies that can positively impact an incident involving domestic violence, sexual assault, and stalking. Agencies are urged to provide an appropriate and timely response to all reported or suspected workplace-related incidents involving these issues.

All agency components may consider implementing programs to educate and train supervisors, human resources personnel, internal or external EAP personnel, and employees about the effects of domestic violence, sexual assault, and stalking on the workplace, including provisions for confidentiality and privacy requirements and employer and employee obligations under this policy. This training should include contractor, intern, and volunteer staff as appropriate.

### **Support and Assistance**

Workplace support, including access to supportive services (such as an EAP), appropriate responses from supervisors, and referrals to culturally competent victim service providers for immediate and on-going trauma-informed care and support, should be offered to employees who are victims of domestic violence, sexual violence, or stalking to minimize the impact of the violence on the victim and others in the workplace and to protect victim and workplace safety.

Any worker who has a concern about the workplace impact of domestic violence, sexual violence, or stalking should be encouraged to contact appropriate personnel.

### **Employee Assistance Programs (EAPs)**

EAPs can be a strategic partner and valuable resource in addressing domestic violence, sexual assault, and stalking as a workplace issue. The EAP should have the ability and intimate partner violence expertise to provide a variety of services to employees affected by these issues. The EAP should also be able to support agencies in their response to the needs of employees affected by domestic violence, sexual assault, and stalking. To the extent possible, the EAP should work in conjunction with agency and/or building security, with the employee's permission, to plan for the safety of the workgroup when incidents of domestic violence, sexual assault, or stalking affect the workplace.

### **Referrals of Victims and Resources List**

#### *EAP Referral*

An EAP referral can be a simple tool to encourage victims of domestic violence, sexual assault, or stalking to seek out help from agency professionals at the EAP. The referral does not need to be written.

## Resources

Agencies are encouraged to maintain a list of resources for victims of domestic violence, sexual assault, and stalking and should provide employees with information regarding crisis hotlines and local and national service providers, including EAPs when available, that can assist victims. The agency EAP may already have such resources available. In this case, the agency should make that information available to managers as well so that employees who are in immediate need can access this information easily.

Employees and supervisors are encouraged to visit the Governmentwide [Guidance on Workplace Violence](#). In addition, the Merit Systems Protection Board published a study in September 2012 on [Employee Perceptions of Federal Workplace Violence](#).

## Workplace Awareness and Outreach

Agency-specific policies should address increasing awareness of issues related to domestic violence, sexual assault, and stalking among both employees and managers. Below is a list of possible methods to increase awareness:

- Agency-wide emails
- Website or newsletter alerts and articles
- Posters, brochures, or safety cards:
  - Distributed to all employees
  - Distributed in lunchrooms, meeting areas, and restrooms
  - Available through human resources, employee services, and/or managers
  - Distributed at agency employee events

Agencies should consider what methods of awareness and outreach are appropriate for them.

## Training

It is also critical that agency-specific policies address education and training options for supervisors, human resources professionals, EAP providers, and employees. At a minimum, agencies should provide regular training opportunities.

Training elements for employees may include but are not limited to:

- Explanation of why domestic violence, sexual assault, and stalking are workplace issues
- Acknowledgement of the potential difficulty in discussing domestic violence, sexual assault, and stalking
- Dynamics of domestic violence, sexual assault, and stalking
- Workplace responses, including education, referral services, support (such as EAP and through the human resources office), and safety and security
- Workplace flexibilities available to employees
- How to talk to a co-worker about domestic violence, sexual assault, and stalking
- How to exercise cultural competence when addressing domestic violence, sexual assault, and stalking within a diverse Federal workforce

In addition to the above, training elements for managers may include but are not limited to:

- Worksite-specific actions that managers are required to implement when responding to threats of violence at work
- Policy-based responses to workplace needs of victims, including requests for time off, workplace flexibilities, and performance concerns
- Knowledge of internal resources (such as EAP and the human resources office) and external victim service organizations
- Ways to educate employees about the policy, including distributing information and resources at worksites
- Dynamics of the mental health aspects (e.g., depression and post-traumatic stress disorder)
- Risk factors in vulnerable populations (e.g., older persons and persons with disabilities)
- Common behavior, reactions, and emotions of victims
- Understanding the unique domestic violence and sexual assault issues and higher statistics for individuals with disabilities, especially those with intellectual and developmental disabilities
- How to exercise cultural competence when discussing domestic violence, sexual assault, and stalking with an employee or co-worker

Agencies may use one or several of the following ways to provide training regarding domestic violence, sexual assault, and stalking in the workplace:

- New employee orientation or new manager training
- In-person training or workshops
- Web-based training
- Video-conferencing
- Supplementing training with policy and resource content in employee handbooks, management guidebooks, or other written policy and procedural materials

Training may involve partnering with national and/or local domestic violence, sexual assault, and stalking experts to offer immediate access to people with the knowledge to assist employees in need of support. Also, domestic violence, sexual assault, and stalking content may be incorporated into other training and training agendas, such as workplace violence prevention training, work/family seminars, health and safety trainings, basic manager training, and EAP orientations.

**Training should include resources for employees who may disclose domestic violence, sexual assault, or stalking incidents during the training (such as on-site counselors with expertise in domestic violence, sexual assault, and stalking).**

## ***Building Safety and Security***

It is imperative that agencies engage security personnel, leadership, and appropriate staff in the development of a policy. Although not mandatory, the following suggestions may assist with policy development. In order to ensure victim and workforce safety, agency policies should address multiple aspects of building and employee security.

The most effective response in dealing with the workplace threat of a perpetrator's criminal behavior is to treat that threat like any external threat to the workplace. Do not expect that the victim has the ability to control or limit the risk.

### **Strategic Solutions**

Effective strategic solutions are available to address the physical safety of victims in the workplace. Proactive solutions require planning and the creation of coordinated responses that are automatically triggered when a workplace threat presents itself. The backbone of such actions is a workplace policy that ties domestic violence, sexual assault, and stalking to agencies' current policies and procedures on workplace violence prevention and sexual harassment.

### **Domestic Violence, Sexual Assault, and Stalking Response Team(s)**

Each agency should create one or more multi-disciplinary Domestic Violence, Sexual Assault, and Stalking Response Teams to assess incidents of domestic violence, sexual assault, and stalking impacting the workplace. These teams should be trained on addressing the needs of victims of domestic violence, sexual assault, and stalking. They should include representatives from the agency's security, human resources, employee assistance, and other appropriate offices. Taking into consideration this Guidance's confidentiality section, agency personnel, including human resources or security staff, who identify a situation may consider contacting the members of the team so that a plan can be developed and implemented in collaboration with the victim employee. Domestic violence, sexual assault, and stalking situations do not always need to be escalated to the response team level. In many instances, a victim can effectively handle the situation with his or her supervisor.

The team should be tasked with developing recommendations for the specific threat reported to the team and work with the victim and management to implement the safety plan. The victim's own assessment of the level of threat must always be respected and factored into this process.<sup>32</sup> Subject to any applicable legal restrictions (including but not limited to the Privacy Act), the victim should have access to the records of any response team discussions regarding him or her.

In developing policies, agencies should consider whether they will want to create new sets of records relevant to domestic violence, sexual assault, and stalking response, or whether each responder will keep records within the existing scope of their responsibilities. For example, will multi-disciplinary response teams create their own records, or will each member keep his or her own records within the

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<sup>32</sup> Adapted from: Defense Personnel Security Research Center, *Combating Internal Workplace Violence: Guidelines for Employers and Law Enforcement*, Washington, D.C.: Bureau of Justice Assistance, n.d., p. 12.

scope of his or her role on the team? Agencies should consider the confidentiality and Privacy Act implications of their record-keeping decisions.

## **Safety Planning**

Developing a workplace safety plan that includes and respects the views and preferences of the affected employee is an essential element of threat management. When a violent incident affects the workplace, it is important that employees and managers know what to do. In consultation with the victim and his or her supervisor, or other support personnel as appropriate, agency management officials should develop the workplace and telework components of their safety plans to assist victims. This planning may involve temporary changes, such as moving the employee to a more secure location or instituting an adjustment to the employee's work schedule to make the employee less vulnerable to attack. Agency security offices should also keep copies of restraining orders and photos of the perpetrator at all appropriate guard stations when made available and deemed appropriate. The agency Domestic Violence, Sexual Assault, and Stalking Response Team should also be involved in safety planning.

To the greatest extent possible, agency security office personnel should refer victims to appropriate agency EAPs, as well as the FPS, state and local law enforcement, and community resources. These resources can assist victims with navigating the criminal justice system, obtaining a temporary restraining order and legal representation, and other victim concerns. Together with qualified agency management, these resources can also advise victims on the following:

- Dealing with telephone, internet, or mail harassment
- Addressing safety when entering or leaving a worksite, including walking between parking lots and worksite buildings
- Using technology to enhance safety (e.g., cellular phones)
- What to do if confronted in the workplace by the perpetrator
- What to do if the victim sees the perpetrator trying to enter the workplace

In addition, qualified agency security office personnel can provide a valuable first line of defense for employees who are pursued or stalked by a perpetrator. It is critical to involve the security office when the victim and perpetrator work in the same physical location. Perpetrators and stalkers are known to be extremely resourceful in gaining access to buildings and sites with even the best of security systems, often by simply talking their way in or getting someone on the inside to help. In reviewing site access and entry control systems and procedures, consider the following issues:

- How well trained are officers, including contract security officers, with respect to domestic violence, sexual assault, and stalking as it impacts the workplace?
- Are agency policies and procedures easily accessible and distributed as appropriate?
- Could a perpetrator or stalker talk his or her way past a security officer by claiming, for example, that he was there to have lunch with his wife or that he was authorized to make a package delivery?
- Do employees inside the building open the door to strangers who have "forgotten their IDs"?



- Do employees receive annual security training that incorporates discussion of workplace violence concerns?
- Do employees have round-the-clock security, or could someone gain access to the building after hours?

Agencies should be prepared to take timely action every time they become aware of a problem or potential problem. These recommendations can be used as part of an overall workplace safety plan if there is an immediate threat to the employee:

- Distribute the perpetrator's photo to security guards
- Change the employee's work schedule when possible. This may be necessary to ensure that there is no disruption in the workplace. The employee must be able to perform his or her duties without fear of answering the phone. Additionally, reassigning a new schedule will go a long way towards showing that the agency is responsive to the employee
- Change the employee's phone extension
- Have calls screened, transferring harassing calls to security if applicable
- With the victim's consent, inform the victim's co-workers and others about limiting information about the victim (e.g., victim's whereabouts or time of return) that the perpetrator might attempt to obtain by telephone and internet communication
- To the greatest extent possible, ensure that hallways, elevators, parking lots, and offices are well-lit
- Install security mirrors or emergency contact alarms at the employee's work station (i.e., panic alarm)
- Offer the victim a parking space close to the building, if available
- Develop procedures so that security personnel can accompany employees to their cars or to public transportation, particularly after dark if legally viable. Most security officers are restricted by law to stay on the premises. This practice may cause legal issues

Agency response teams should remain available to the employees to address workforce safety needs until relevant situations are resolved. This contact will increase the likelihood that the agency will receive critical updates on the perpetrator's whereabouts and the status of legal proceedings.

### **Addressing Physical Layout of Worksite**

Security personnel, supervisors, and other appropriate agency staff should work with victims to assess the physical layout of the worksite and identify possible threats to victim safety as well as changes that can be made to enhance safety. For example, victims who work in venues that are accessible to the general public, or where their view of people coming and going is obstructed, may have an increased sense of safety with a change in the physical placement or layout of their offices. Public service environments may present challenges that require an agency's Domestic Violence, Sexual Assault, and Stalking Response Team to come up with alternative plans with the assistance of law enforcement, if necessary, and in consultation with victims.

The following guidelines should be considered for each case of possible on-site intrusion:

- Ensure that the layout does not allow someone to sneak up on the victim (e.g., victim has back to the door, lobby, or street-level window)
- Consider the use of barriers (desks, dividers, walls, furniture) between the victim and entrances that a perpetrator might use to enter the workplace
- If the agency's components have workplaces in multiple locations, it is helpful, and potentially lifesaving, to offer to relocate a threatened employee to alternate worksites unknown to the perpetrator. This relocation should be handled with the strictest confidentiality and respect for victim autonomy related to worksite relocation

For employees who work in non-office settings, agencies are urged to implement appropriate safety precautions.

### **Addressing Computer Technology Concerns**

In consultation with the victim, the agency's security personnel should coordinate with the agency's computer technology personnel to address victim safety concerns. These concerns include the employee/perpetrator use of computer technology to harass or stalk a victim. As appropriate, the above-described safety plan should address these concerns, including removing identifying information, such as the victim's telephone number and office location, from the agency's and its component's public websites. An employee who uses the agency equipment to engage in harassing or stalking behavior may be subject to disciplinary action up to and including removal from Federal service.

### **Firearms and Workplace Safety**

Relevant to domestic violence, employees are reminded of Federal law prohibiting possession of firearms. Specifically, under certain provisions of the Federal Gun Control Act, persons subject to a qualifying protection order ([18 U.S.C. § 922 \(g\)\(8\)](#)) or convicted of a qualifying misdemeanor crime of domestic violence ([18 U.S.C. § 922\(g\)\(9\)](#)) are prohibited from possessing firearms or ammunition. For more information about these provisions, see <http://www.atf.gov/publications/download/i/atf-i-3310-3.pdf> and <http://www.atf.gov/publications/download/i/atf-i-3310-2.pdf>.

The provision relating to misdemeanor crimes of domestic violence, also known as the "Lautenberg Amendment," does not have an official use exemption. This means that if a person is convicted of a qualifying misdemeanor crime of domestic violence, he or she may not possess firearms even for official use, such as during duty as a law enforcement officer.

In addition, Federal law prohibits the knowing possession of, or the causing to be present of, firearms or other dangerous weapons in Federal facilities and Federal court facilities by all persons not specifically authorized by [18 U.S.C. § 930\(d\)](#). (See [41 C.F.R. § 102-74.440](#).)

## **Working with Local Law Enforcement**

Appropriate agency security personnel may determine that local law enforcement agencies should be contacted when there is a risk of violence that could affect one or more employees. Local police may have information that could be helpful in assessing the level of threat against an employee while he or she is at work. For example, they may have dealt with the perpetrator in the past and are familiar with his or her patterns of violence. Taking into consideration confidentiality concerns, it is critical that victims be informed that the police will be notified.

The agency response team should identify which Federal or local law enforcement agency or agencies have responsibility for its worksite. For example, the FPS is the primary law enforcement service for responding to incidents in Federal facilities under the charge and control of the General Services Administration (GSA) as an owned or leased facility. FPS typically locates its offices in areas where there is a high concentration of Federal employees and is capable of providing timely responses to GSA-owned or leased facilities in these areas. For immediate responses to GSA-owned or leased facilities in rural areas and/or areas with a small Federal presence, law enforcement officials from local jurisdictions should be contacted. Agencies should refer to the following link to locate the FPS regional office for their jurisdictions: <http://www.dhs.gov/report-suspicious-activity-federal-protective-service>.

Depending on the agency, location of the office, and the type of incident or situation, jurisdiction may vary. The agency's own law enforcement organization, the FPS, or Federal, state, or local law enforcement, or a combination of these, may have jurisdiction. Gaps may exist in law enforcement coverage when issues of workplace violence arise. These gaps should be addressed in the agency's emergency response and safety plan.

Some agencies have in-house security and/or law enforcement organizations. Others have contracts with private security firms. It is not always clear who has jurisdiction and who should be contacted, so agencies need to be ready with the information when the need arises. Each agency will need to address its jurisdiction issues.

## **Protection and Restraining Orders**

Agencies should recognize that a victim may seek an order of protection or may receive a restraining order as part of his or her efforts to become safe and as part of his or her workplace safety plan. It is important to recognize that the workplace may or may not be included in an order as a location from which a perpetrator must remain away. If an employee chooses to disclose the existence of a protection or restraining order, an agency, wherever possible (as determined in consultation with legal counsel), should assist the employee to enforce his or her order. Agencies should maintain such orders in a confidential and separate file from employee's personnel file, and, if applicable, should assist the employee in gathering documentation from the workplace, such as email or voicemail messages, that could assist the employee's efforts to obtain or maintain safety from a perpetrator. Agencies should consider the confidentiality and Privacy Act implications of their record-keeping decisions.

## **Suggested Safety Steps for Victims**

Agencies should consider the following safety steps in their guidance:

- Encourage the employee to save any threatening email or voicemail messages. These messages may be used for future legal action or can serve as evidence that an existing restraining order was violated.
- If the employee obtains a protection or restraining order, it should encompass the employee's workplace or alternative worksites. The employee should keep a copy of this order with him or her at all times. The employee should be encouraged to provide a copy to the agency's security office, local law enforcement, his or her supervisor, human resources staff, and other appropriate offices. The employee should also provide a picture of the perpetrator to his or her agency's security offices and those staffing reception areas.
- The employee should identify at least two emergency contact persons in case the employer is unable to contact the employee. It must be clearly understood by the employee that these persons will be contacted when an unexplained absence occurs. If an absence is deemed appropriate, the employee should be clear about the plan to return to work. While absent, the employee should maintain contact with his or her manager or the designated agency contact.

## ***Accountability***

Ensuring accountability is a necessary component of any successful agency-specific policy. This includes assigning responsibility within an agency for monitoring, evaluating, and reporting on progress.

### **Appointing a Point of Contact**

Essential to ensuring accountability is having one central contact (individual or an office) and a regular report back to the agency stakeholders on progress. To that end, agencies should identify a single point of primary contact (POC) for this issue. The POC should be responsible for monitoring and evaluation efforts.

### **Monitoring and Evaluating Agency Responses and Results**

Monitoring is an important management function, and simple checks on whether new procedures are being consistently implemented are needed. It is important to review incident reports for both the quality of security responses and the number of actions taken.

Any type of monitoring or evaluation depends in part on written or electronic records. It is crucial that detailed records relevant to domestic violence, sexual assault, and stalking incidents be kept in a properly secured, confidential file and only shared, as necessary, with appropriate personnel, such as those in security and management roles. In developing policies, agencies should consider whether they will want to create new sets of records relevant to domestic violence, sexual assault, and stalking response or whether each responder will keep records within the existing scope of their responsibilities. For example, will multi-disciplinary response teams create their own records, or will each member keep his or her own records within the scope of his or her role on the team? Agencies should consider the confidentiality and Privacy Act implications of their record-keeping decisions.

In order to ensure transparency and identification of areas of progress and needed improvement, agencies should prepare an annual summary report (based on fiscal year) on related activities to be shared with agency stakeholders.

The report for a given agency should be an agency-wide review and should contain at least the following components:

- Goals for specified period of time (short- and long-term goals)
- Progress toward meeting specified goals
- Identification of measures for evaluating program effectiveness

Agencies should take special care to ensure that identifying information is not exposed in annual reports.

## Evaluation Considerations

Agencies should consider a number of outcomes in monitoring programs related to domestic violence, sexual assault, and stalking, such as those described in the [Annual Review Checklist](#) in *Appendix B*. To monitor responses on an ongoing basis, it is recommended that agencies review their current employee surveys for the possibility of adding survey items related to this Guidance's topics. Some issues that agencies might want to address in an employee survey are: (1) awareness of resources to address domestic violence, sexual assault, and stalking; (2) satisfaction with such resources; and (3) frequency of the use of support services.

Additionally, it is important to monitor the usage rate of employees accessing services for victims of domestic violence, sexual assault, and stalking over time. Higher usage would tend to indicate that the services provided are meeting employee needs. To begin a process for regular monitoring of workplace responses to domestic violence, sexual assault, and stalking, agencies should consider the use of a questionnaire, such as the sample in *Appendix C*.

## ***Summary***

Domestic violence, sexual assault, and stalking are serious forms of violence with multiple layers of consideration. Each of these has a direct impact on policy development. OPM strongly recommends that agencies consider the following areas when developing their policies: (1) workplace flexibilities, (2) disciplinary actions and legal considerations, (3) training, awareness, and employee assistance programs (EAP), (4) building safety and security, and (5) accountability.

OPM Contact:

Questions should be addressed to [worklife@opm.gov](mailto:worklife@opm.gov).

# Appendices



**APPENDIX A**  
**Indefinite Suspension Proposal Notice**

DATE:

TO:

FROM:

SUBJECT:       **Proposal of Indefinite Suspension**

This is notice that I propose that you be suspended without pay for an indefinite period of time from your position as \_\_\_\_\_. The information in the record indicates that there is reasonable cause to believe you may have committed a crime for which a sentence of imprisonment may be imposed. Accordingly, as provided by 5 U.S.C. § 7513(b)(1), you are being provided seven days' advance notice of this proposed action. The proposed suspension, if instituted, will be effective no earlier than seven (7) calendar days following the date of your receipt of this notice. Should this proposal result in an indefinite suspension, it will remain in effect until the conclusion of your criminal proceedings, or until there is sufficient evidence to either return you to duty or to support an administrative action against you. The basis for this proposed indefinite suspension is Criminal Docket Case#: [cite if available]

The alleged criminal conduct of \_\_\_\_\_ is serious in nature, has a direct relationship to your Federal employment and the duties you perform, and calls into question your trustworthiness. Your position as \_\_\_\_\_ requires you to [state specific purpose]. The offenses described in the charge above are antithetical to the duties required of you in your [Agency] employment in that [explain how the public trust reposed in the employee has been breached by such conduct, how such conduct relates to the employee's duties, and/or how such conduct impacts the Agency's ability to trust the employee to carry out his or her duties in the future.]

I have considered the fact that [Agency] has a formal table of penalties, which provides for an indefinite suspension where an employee has engaged in "conduct which causes the employee to be indicted or charged with a criminal offense which is related directly to the duties of the employee's position or the mission of the Agency and for which a sentence of imprisonment may be imposed." Based upon the foregoing, I have considered that your retention in an active duty status or any pay status is not in the best interest of the [Agency]. This action is being taken to promote the efficiency of the Federal Service.

You will receive a final written decision on this proposal. If you are indefinitely suspended, the decision notice will inform you of the date on which your suspension without pay (non-pay, non-duty status) will begin.

You have the following rights in connection with this proposed action:

**To Reply:** You may answer this notice orally, in writing, or both. You should send any written reply to: [Deciding Official, Mailing Address].

You will be allowed seven (7) calendar days from the date you receive this notice to submit your written response. If you need an extension of the time limit for a reply, you may submit a written request to \_\_\_\_\_. Should you wish to make an oral reply, please telephone [ER Specialist, Phone] within seven (7) calendar days upon receipt of this notice to schedule a time to present your oral reply. You may also submit affidavits and other documentary evidence in support of your answer.

**To Be Represented:** You are entitled to be represented by an attorney or other representative in this matter. Both you and your representative must complete and sign the enclosed “Memorandum for Designation of Representative” form and fax it to: [ER Specialist, Fax].

Should you choose to seek representation, we have enclosed an additional copy of this proposal letter.

**To Review Materials:** You and/or your representative may review all of the materials relied upon to support the reasons contained in this notice. You may arrange to do so by telephoning [ER Specialist, Phone].

**Status During Notice Period:** You will continue to be carried in non-duty, pay status (administrative leave) during the notice period, and until further notice. Therefore I am instructing you that during this period you are not to return to the [Agency] grounds for any purpose.

[The deciding official] will issue a decision as soon as possible after [he/she] receives your reply to this notice, or after the expiration of the 7 calendar day period should you not respond.

Any change in your address or telephone number needs to be reported to me so that the Agency may continue communicating with you about the status of your employment. Should you have any questions about the contents of this notice or your rights in connection with it, please contact [ER Specialist, Phone].

Sincerely,

[Proposing Manager]

## APPENDIX B

### Annual Review Checklist

The following checklist outlines information to consider in monitoring the effectiveness of strategic responses to domestic violence, sexual assault, and stalking. It is important to keep in mind that documenting such events may come across as a rise in incidence of violence. In actuality, any evidence of higher incidence may be a reflection of insufficient reporting in the past.

Set up a system for reporting the following and review these reports at least annually:

- 1) Number of employees and managers receiving training or educational information on domestic violence, sexual assault, and stalking (including sexual harassment, see [Fact Sheet: What is Workplace Violence?](#))
- 2) Number of employees requesting information, referrals, or time off for needs relating to domestic, sexual assault, and stalking
- 3) Number of orders of protection or restraining orders (in aggregate form) given to management by employees or taken out by the employer in consultation with employee (see [Protection Order Guide](#))
- 4) Number and/or percentage of employees requesting help for domestic violence, sexual assault, and stalking through employee assistance services
- 5) Records of threat assessment and violence prevention actions related to domestic violence, sexual assault, and stalking, specifically plans made to respond to domestic violence, sexual assault, and stalking threats and/or prevent incidents of sexual harassment and violence (see [Safety and Security Concerns](#))
- 6) Incident reports of any violent events that involved employees or others at work
- 7) Changes to policies or procedures that were implemented during the last year

A review of the above information should provide a snapshot of activities over the year and a comparison for any prior year's activities. Use the information to plan necessary changes to increase awareness of helpful responses to domestic violence, sexual assault, and stalking.

Source: Adapted from *Workplaces Respond to Domestic Violence and Sexual Assault*. 2012.

<http://www.workplacesrespond.org/>

## **APPENDIX C**

### **Sample Domestic Violence, Sexual Assault, and Stalking Checklist: Threat Assessment**

**All reports of threatening or violent conduct should be taken seriously and evaluated.** While the method of evaluation, screening, and assessment will vary depending upon the size of the agency and security operation, as well as the nature and severity of the threat, the list below is a good guideline. If an employee self-discloses domestic violence, and it appears that they may be in immediate danger, call 911. A threat assessment should take place if the danger is present, but not urgent. An agency must decide who should conduct the assessment, whether it should be security, a human resources representative, or a manager. Be sure to let the employee know that only certain information will be shared with human resources, security and other key people within the organization to ensure his or her safety.

#### **Call 911 if you are ever in immediate danger.**

- 1) What is the situation? Please explain the details.
- 2) Has your significant other made any threats?
- 3) What type of abuse have you been exposed to?
- 4) Have there been any harassing phone calls?
- 5) Have there been any harassing phone mail messages?
  - a) If so, have they been deleted? (Explain how the organization can help screen and/or record them).
- 6) Are your co-workers aware of the situation?
  - a) If so, who are they and what information has been given to them?
- 7) Does your significant other know where you work? Has he/she visited the facility in the past?
- 8) Does your significant other have a history of violence?
  - a) If so, please explain each situation.
- 9) Do you think you or others are in danger here? (The victim knows best what the abuser is capable of.)
- 10) Does your significant other possess any type of firearms or weapons?
  - a) If so, are they registered?
  - b) Please describe the type (handgun, shotgun, assault rifle, etc.)
- 11) What is the status of your relationship?
- 12) Have you contacted the EAP or a domestic violence program in the community?

- 13) Can I help you gather or provide you with the numbers of local domestic violence resources?
- 14) Has a report been filed with the police?
  - a) If so, please provide a copy of the report
- 15) Has an order of protection been issued?
  - a) If so, please provide us with a copy.
  - b) If not, will one be filed?
- 16) Can you provide us with a description and current picture of the abuser?
- 17) What is your need for safety NOW?
- 18) Do you need time off to attend court?
- 19) Do you need more extended leave to find safe housing or address other safety concerns?
- 20) Do you need time off or flexible hours to arrange for childcare?
- 21) Do you need to be escorted to and from your car/public transportation?
- 22) Do you need to change your hours or location?
- 23) Do you have the confidential security hotline handy?
- 24) Do you have a safety plan?
  - a) If not, it would be a good idea to work with a domestic violence counselor to create one.
- 25) Do you feel safe at work?
  - a) Has your significant other/spouse/partner (use the term the victim uses) made any threats, specifically to try to hurt you at work?
- 26) Do you need any further assistance?

At this point, if there is no threat to the safety of the victim at work, offer referrals to local domestic violence counselors and/or the EAP. Each case is different and responses must be tailored to the circumstances. When the threat assessment process determines that a high level of planning or response is needed, the more intensive step of gathering the Domestic Violence, Sexual Assault, and Stalking Response Team should be taken. Always consult your security department, the police or other experts to help you make an accurate threat assessment.

Source: Safe@Work Coalition. 2012. <http://www.incasa.org/PDF/2012/safeatworkcoalition.pdf>



UNITED STATES  
OFFICE OF PERSONNEL MANAGEMENT  
Employee Services  
Strategic Workforce Planning  
Work Life and Performance Culture  
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