

**NATIONAL SUPPLEMENT 18
BETWEEN
U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
AND
AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES
NATIONAL COUNCIL OF HUD LOCALS 222**

SUBJECT: Implementation of Anti- Harassment Policy

SCOPE: The scope of this supplement encompasses the impact and implementation of the Anti- Harassment Policy. The purpose of this policy is to stop harassing behavior. Nothing in this supplement shall limit the employee from utilizing available protections, recourses, and remedies as provided in statute, policy, or this Agreement. This policy is not intended to provide for remedies that are covered by EEO or Grievance process. The parties understand the policy will apply to reports received after the effective date of the policy and this supplement. The parties agree that for the purposes of this supplement new complaints must be held on their own accord. Prior complaints or incidents that have occurred before implementation will be used if they have a direct correlation with the new complaint and is ongoing and continuous.

1. Implementation of the Department's procedures regarding Anti-Harassment shall not diminish or waive any rights that bargaining unit employees have under the AFGE Agreement, law, rule or regulation.
2. Harassment is unwelcomed or offensive treatment or conduct (verbal, physical, psychological, or visual) that a reasonable person would find intimidating, hostile or abusive and that unreasonably interferes with and is detrimental to an employee's work performance, professional advancement, mental or physical health, and or economics, creating an intimidating, hostile, or offensive environment. Harassing behavior and misconduct based on race, color, religion, sex (including, but not limited to sexual orientation, gender identity, or pregnancy), national origin, age, disability or genetic information, marital status, parental status, veteran status, political status, or reprisal is prohibited. This is consistent with the Secretary's Anti-Harassment Statement, dated July 26, 2017.
3. Offensive conduct may include, but is not limited to, offensive jokes, slurs, epithets or name- calling, false accusations, physical assaults or threats, intimidation, ridicule or mockery, insults or put-downs, offensive objects or pictures, and interference with work performance.

4. Within one year from the date of implementation of this supplement, management agrees to negotiate the procedures for bullying and hostile work environment and all other harassment whether or not it is based on protected classes, with the goal of including such procedures in this supplement.
5. When an employee files an allegation pursuant to the Anti-Harassment Policy, the employee will be informed that they have the right to file a EEO or Grievance at the same time. The employee shall be notified in writing that the timeframes and deadlines for filing a grievance or EEO run concurrently to the CRC process. The employee has the right to be represented by a representative of choice at any stage of the Anti-Harassment Policy procedures. The employee will designate his or her representative in writing. The CRC Advisory Form to be presented to the employee (containing the rights of the employee and the anti-harassment policy procedures, including points of contact and timeframes) will be reviewed and accepted by the Union prior to implementation of this policy. At all times under this procedure, the employee shall maintain their rights per Article 6, Section 6.08 of the agreement.
6. Retaliation, in any form against any person who reports harassment or participates in a fact-finding process, is strictly prohibited and may result in disciplinary action including but not limited to dismissal.
7. This supplement, the Policy and procedures regarding how investigations and fact-finding inquiries involving allegations of Harassment shall not supersede any article in the Agreement including but not limited to Article 6, Employees Rights/Standards of Conduct”, Article 9, “Equal Employment Opportunity and Discrimination Free Workplace”, Articles 51, “Grievance Procedures” and Article 52, “Arbitration”. If there is any conflict between this supplement/procedures and Articles 6, 9, 51 and 52, then Articles 6, 9, 51 and 52 will govern.
8. One of the most important priorities of any good employer is the safety of the workforce. The Department has zero tolerance for any acts of violence or acts which have the potential to result in a violent or volatile situation. Upon receiving an allegation of harassment, or witnessing what is believed to harassing conduct or behavior the appropriate management official will assess the situation to determine the severity of the alleged misconduct and provide any immediate corrective action required to protect the harassed party from further misconduct, imminent harm or threat in consultation of the CRC.
9. The CRC must be a neutral official. The Parties agree that the CRC will not have witnessed or been otherwise previously aware of the events, or alleged incidents. In the event of circumstances that may present a conflict of interest (e.g. when the accused and the CRC are within the same supervisory chain), management will

identify an alternate CRC. The parties recognize that the function of the CRC is ineligible for inclusion in the Bargaining Unit.

10. The Conflict Resolution Coordinator (CRC) will act promptly to acknowledge receipt of the complaint within 5 business days and appoint a fact finder within ten (10) business days, of receipt of the complaint, unless unusual circumstances prevent acknowledge and appointment.
11. Generally, the fact-finder will complete the fact-finding and deliver a fact-finding report to the decision-maker, within 15 business days of his or her designation. The time for completing the fact-finding and report may be extended by the CRC under certain circumstances (e.g., unavailability of witnesses).
12. The time-period for completing the fact-finding and report may be extended by the decision-maker under certain circumstances (e.g., unavailability of witnesses). The following may be considered as guidance in conducting fact finding investigation:
 - 1) Fact-finding will usually include, at a minimum, interviews with:
 - i. The affected person(s);
 - ii. The alleged harasser(s);
 - iii. Any witnesses to the alleged harassment, and;
 - iv. Any other person who could reasonably be expected to have relevant information that could corroborate or refute allegations, (e.g., the person did not witness the harassment but spoke to the affected person immediately after the alleged event and could provide useful information).
 - 2) Fact-finding will include at a minimum, standardized questions for the parties:
 - i. Questions to Ask the Affected Person:
 1. Who committed the alleged harassment?
 2. What exactly occurred or was said?
 3. When did it occur and is it still ongoing?
 4. Where did it occur? How often did it occur?
 5. How did it affect you?
 6. How did you react?
 7. What response, if any, did you make when the incident(s) occurred or afterwards?
 8. Are there any other persons who have relevant information?
 9. Was anyone present (or heard) when the alleged harassment occurred?
 10. Did you tell anyone about it?
 11. Did anyone see you immediately after the alleged harassment?
 12. What is your relationship to alleged harasser?

13. Did the person who you believe harassed you harass anyone else at that time?
14. Do you know whether anyone else complained about harassment by that person?
15. Are there any notes, physical evidence, or other documentation regarding the incident(s)?
16. Do you fear retaliation or retribution for participating in this inquiry?
17. Do you know of any other relevant information?

ii. Questions to Ask the Alleged Harasser:

1. What is your relationship to the alleged affected person?
2. What is your response to the allegations?
3. If you disagree with the facts related, provide us your recollection of the “who, what, when, where, and how” for the alleged event(s).
4. Are there any persons who have relevant information?
5. Are there witnesses to the alleged incident?
6. Are there any notes, physical evidence, or other documentation regarding the incident(s)?
7. Do you know of any other relevant information?

iii. Questions to Ask Potential or Actual Witnesses to the Alleged Harassment:

1. What did you see or hear?
2. When did this occur?
3. Describe the alleged harasser's behavior toward the affected person and toward others in the workplace.
4. What did the affected person tell you?
5. When did she/he tell you this?
6. Do you know of any other relevant information?
7. Are there other persons that have relevant information?

- 3) The fact-finder must remind the affected person, alleged harasser, and any other persons interviewed about the agency's prohibition against retaliation. Additionally, the fact-finder must advise any interviewee, prior to the start of the interview, that he or she will be required to certify the accuracy of his/her written statement, or of the interview summary prepared by the fact-finder.
- 4) The fact-finder must complete summaries of any interviews conducted and obtain signatures from interviewed persons attesting to their accuracy, or obtain signed statements, affidavits, declarations, or transcribed interviews, under oath, as appropriate. If an interviewed person refuses to attest to the accuracy of the information he or she provides to the fact-finder that is reflected in an interview summary or other document prepared by the fact-finder, the fact-finder may still include such document in the fact-finding report for consideration by the decision-maker. In such situations, the fact-finder must ask the interviewed person

to explain his/her refusal for attesting to the accuracy of the document, and include such explanation in the fact-finding report.

- 5) The fact-finding shall be confined solely to the reported allegation(s) of harassment. If additional unrelated allegations of harassment are made, or evidence of additional harassment comes to light during the fact-finding, the fact-finder shall immediately consult with the decision-maker to determine whether the scope of the fact-finding should be expanded, or a new and separate fact-finding should occur.
 - 6) Unless required by applicable laws and regulations, an employee's cooperation in fact-findings regarding allegations of harassment shall be voluntary. Employees participating in this process are entitled will be afforded any applicable rights and procedures in accordance with the Agreement.
13. The fact-finder must be a person who is not named in the allegation(s) of harassment and who has not witnessed the alleged incident(s) of harassment. The fact-finder must also not act as an advocate on behalf of either party. The fact-finder may not be a supervisor or manager in the alleged harasser's chain of supervision. The fact-finder may be a supervisor or manager outside the alleged harasser's organization, an agency HR official, a contractor, or another uninvolved individual. The fact-finder, however, shall not be a subordinate employee to the alleged harasser.
14. The Unless exigency circumstances are warranted for immediate fact-finding interviews, the Department will ensure that potential witnesses will be given a minimum of two (2) business days' notice of a fact-finding interview. Potential witnesses will be advised that their participation is required.
15. The parties agree that for the Anti-Harassment Policy (AHP) to be effective, managers and supervisors will be trained on their responsibilities under this policy. Employees will be notified annually of the AHP policy and procedure, and the contact information to utilize the AHP will be available on HUD@work (or successor entity). The Department will conduct training to assist employees to address situations that will lead to workplace harassment; training in conflict resolution, and effective communications. The training will include but not be limited to the Department's policy on acts of workplace harassment and the provisions of this supplement. The training will also include steps employees need to take with incidents involving coworkers and incidents from individuals from outside the agency perpetrating harassment. During the training the Department will reiterate employees' rights to be represented by the local union while participating in workplace harassment fact-finding. The Department will require

that supervisors and managers receive training to understand their responsibilities under the agencies' anti-harassment policy and complaint procedure. Such training may explain at a minimum: the types of conduct that violate the agency's anti-harassment policy; the seriousness of the policy; the responsibilities of supervisors and managers when they learn of alleged harassment; and the prohibition against retaliation.

16. Whenever the Department conducts a fact-finding inquiry/investigation into allegations of Workplace Harassment, the Union will be notified in accordance with Article 4.04 of the HUD AFGE Agreement. The notice will include 1) who will conduct the investigation and 2) summary of the allegations raised.
17. To the extent possible management shall ensure that the person conducting the fact-finding inquiry investigation will have the necessary experience in fact finding/investigations. This could include fact finders from other agencies who have implemented anti-harassment programs (shared services).
18. If the Union objects to either the fact-finding inquirer/investigator's qualifications or the ability to be impartial, the Department shall address the objections prior to the commencement of the investigation. The Union's objections and the Department's response shall be in writing. {5 USC 7106 (B)(1)}. Such objection will not impede the commencement of the investigation of the alleged harassment.
19. At the beginning of a Workplace Harassment fact finding inquiry/investigation, employees who participate in the investigation will be advised of their rights and obligations and include but not limited to the following:
 - a. The employee's right to representation by the local union;
 - b. The right of an employee to a copy of his/her personal statement or testimony; and,
 - c. The right of an employee not to incriminate him/herself in a criminal matter.

The inquiry/investigation will be in compliance with Article 6 of the Agreement.

20. Any meeting or interview held during an inquiry/investigation or fact-finding process is a formal meeting and the Union has the right to represent per Article 4 and Article 6 of the Agreement.
21. The Parties shall ensure that the affected employees' identities involved in fact finding investigation and/or the substance of the allegation(s) will be kept confidential, to the extent possible. Managers and supervisors, however, should only discuss the matter with those who have a need to know, as a part of the assigned duties.

22. The maintenance of records and any disclosure of information from these records will comply with the Privacy Act, 5 U.S.C. § 552a, as amended, and records management requirements contained in the Federal Records Act, 44 U.S.C. § 3101, et seq., as amended.
23. Upon conclusion of the fact-finding investigation, the complaint and their representative shall receive a written summary of findings for the compliant. If additional information is warranted, the Union may request a complete copy of the final report through FOIA or Request for Information under 7114 of the Labor Statute, in accordance with applicable privacy laws.
24. If a final report of a fact- finding investigation is used in a grievance, disciplinary or other personnel action, an employee's representative will receive a complete copy of all evidence used to support the Department's action, in accordance with Article 12 and Article 51. This includes, but is not limited to, copies of all testimony/transcripts, recommendation and/or findings, and photographs. In accordance with the law and the Agreement, the Department will provide additional information requested by the employee's representative. The Department will provide a written explanation of any denial of information requested in a timely manner no later than 10 calendar days.
25. For the Anti-Harassment Policy, the use of the EAP shall be pursuant to Article 11, Section 11.05. If the employee's supervisor is involved in the complaint, an alternative designee shall be provided for the purposes of approving leave.
26. Management will consider the employee's participation in the Employee Assistance Program (EAP) when considering discipline or adverse action, in accordance with Article 11.02 of the HUD AFGE agreement.
27. If the fact-finding inquiry/investigation final report establishes that any HUD employee engaged in harassing conduct under this Policy and the Deciding Official decides to use discipline to correct the accused employee's behavior, any disciplinary action shall be administered in accordance with the provisions of Article 12 of the Agreement. Disciplined employees' contractual rights shall be maintained in accordance with HUD AFGE Agreement.
28. Performance elements and standards shall be administered in accordance with Article 30, Section 30.07(5), factors beyond an employee's control, to include but not limited to the employee's participation in the Anti-Harassment Policy process.
29. If an employee is reassigned to another position as a settlement for a workplace harassment complaint, the affected bargaining unit employees must be qualified for such

position or comparable position. A reasonable amount of time for training will be provided, if necessary. Training for newly assigned duties will be in accordance with the terms of the Agreement.

30. The implementation of the Policy will be in compliance with the Departmental Reasonable Accommodation Policy and Article 45 of the Agreement. The fact-finding process, inquiry/investigation and any finding or settlement of a complaint will not alter any reasonable accommodations currently in effect.
31. Mediation services or alternative dispute resolution methods may be utilized to assist in the resolution of harassment complaints. If both parties agree to this, the CRC cannot deny it.
32. The CRC will advise appropriate management officials on any non-disciplinary corrective measures. ELR is responsible for recommending disciplinary actions. The Anti-Harassment Policy will be amended to be in compliance with the intent of this supplement, see AHP Draft Sections 2.3(d) and 3.5(b).
33. Management will discuss with the aggrieved person and the Union Representative actions and or solutions that may be taken to ensure the wellbeing of the aggrieved person based on his or her request. Such actions or solutions shall not adversely affect the complainant.
34. Upon request, the Union shall be notified of any contracting for the services of necessary independent fact-finders and mediators. If the Union objects to a contracted mediator or fact-finding inquirer/investigator's qualifications the Department shall address the objections prior to the commencement of the investigation. The Union's objections and the Department's response shall be in writing. Such objection will not impede the commencement of the investigation of the alleged harassment.
35. OCHCO will provide to the union copies of quarterly aggregate statistical reporting.
36. Bargaining unit employees shall not be expected to reimburse OCHCO for the cost of any required independent third-party fact-finding or mediation.
37. This supplement will be used in addition to the policy, in cases where conflict arise, the supplement shall supersede.

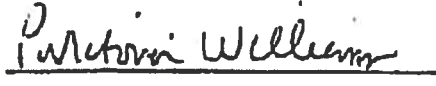
For Management:


For AFGE Council 222:

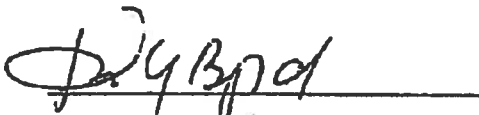
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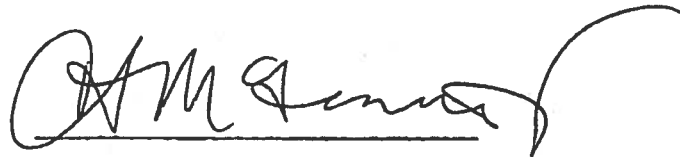

Jette White, Chief Negotiator

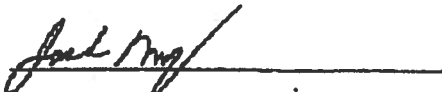

Salvatore Viola, Chief Negotiator

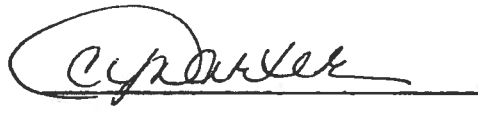

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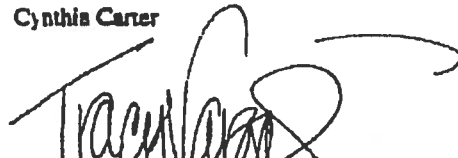

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