



United States Department of the Interior

BUREAU OF RECLAMATION
Great Plains Regional Office
P.O. Box 36900
Billings, MT 59107-6900

IN REPLY REFER TO:

GP-1280
ADM-14.00

APR 29 2011

VIA ELECTRONIC MAIL ONLY

GP Policy Memorandum ADM-03

MEMORANDUM

To: All Great Plains Region Employees

From: Michael J. Ryan
Regional Director

Subject: Equal Employment Opportunity (EEO) and Zero Tolerance of Discriminatory Harassment

Policy:

It is the policy of the Great Plains Region to provide equal opportunity in employment and advancement without regard to race, color, national origin, sex, age, religion, genetic information or disability. Moreover, employees and applicants for employment who believe they have been subjected to unlawful discrimination and enter the EEO complaint process – or those who request reasonable accommodation, express opposition to a discriminatory practice, or participate in the complaint process by providing assistance or testimony – will not be subject to reprisal for doing so. Unlawful discrimination is unacceptable and will not be tolerated.

The United States Supreme Court (Court) has ruled that employers are subject to vicarious liability for unlawful harassment by supervisors. An individual qualifies as an employee's supervisor if the individual has authority to undertake or recommend tangible employment decisions affecting the employee, or if the individual has authority to direct the employee's daily work activities.

The Standard of Liability is based on two principles: (1) An employer is responsible for the acts of its supervisors, and (2) employers should be encouraged to prevent harassment, while employees should be encouraged to avoid or limit the harm from harassment. An employer is liable for a supervisor's harassment if it results in a tangible employment action. If it does not, the employer may not be liable or may limit damages if (a) The employer exercised reasonable care to prevent and promptly correct any harassing behavior, and (b) the employee unreasonably failed to take advantage of any preventive or corrective opportunities provided by the employer, or to otherwise avoid harm.

An employer may be held liable for harassment between co-workers if an agent of the employer (i.e., supervisors and managers) knew or should have known of the misconduct, unless the employer can show that immediate and appropriate corrective action was taken. The same is true in the case of non-employees, but the employer's control over such individuals' misconduct must be considered.

Since the Court has placed responsibilities on employees at all organizational levels, including an expectation that persons alleging harassment take reasonable advantage of available preventive or corrective opportunities, it is incumbent on all Great Plains Region employees to understand what constitutes unlawful harassment and what preventive or corrective opportunities are available.

Unlawful discriminatory harassment must involve a protected group (members are identifiable by race, color, national origin, sex, age, religion, genetic information or disability), and the behavior must: (1) Be unwelcome, offensive and, unless very severe, repeated; (2) be sufficiently threatening or intimidating to make a person feel uncomfortable; and (3) have a negative effect on a person's ability to perform his/her job. Sexual harassment would involve behavior of a sexual nature that meets the above criteria.

Alleged harassing behavior must be viewed in context, including frequency, severity and effect. Harassment must involve behavior that is both objectively and subjectively offensive such that a reasonable person would find the resulting work environment to be hostile and abusive. It must be threatening or humiliating – as opposed to a mere offensive utterance – and unreasonably interfere with a person's job performance. It must cause actual harm or personal loss with regard to a term or condition of employment.

In this regard, it is important to note that EEO policies do not constitute a general civility code. Simple teasing or isolated incidents that are not sufficiently pervasive and severe may not result in a finding of discriminatory harassment. Nevertheless, such behavior is discouraged in the workplace, and all allegations of harassment will be taken seriously and handled accordingly.

The Great Plains Region has a zero-tolerance policy for unlawful harassment. Any employee found to have violated this policy shall be subject to appropriate disciplinary action, up to and including dismissal.

Individuals who believe they are being harassed should take advantage of the Bureau of Reclamation's preventive or corrective opportunities, or otherwise avoid harm. Examples of how to do this are: (1) Identify and communicate the unwelcome behavior to the harasser and ask the person to stop; (2) tell a manager or supervisor about the harassment – what happened, where and when it happened, who was involved, and who witnessed the incident(s); and (3) contact the Great Plains Region EEO Manager at 406-247-7626.

If you have reason to believe you have been subjected to a discriminatory practice, including harassment, you must report it within 45 calendar days to your supervisor or an EEO official. Procedures for processing individual complaints of discrimination are attached. For additional information on harassment, unlawful discrimination and EEO, please call the Great Plains

Region EEO Manager or refer to the information available on our EEO Intranet site at <http://intra.gp.usbr.gov/eoo/welcome.html>. Contact information for the EEO Office is also available there as well as on EEO posters located in all regional offices and facilities.

Managers and supervisors are responsible for informing employees of this policy and for taking immediate and appropriate corrective action when problems arise. All employees are personally responsible for their own actions.

Effective Date: This memorandum supersedes GP Policy Memorandum ADM-03 dated March 2, 2010, and is effective upon issuance.

Expiration Date: This memorandum will remain in effect until canceled or superseded.

Authorities: Title VII of the Civil Rights Act of 1964 as Amended; Age Discrimination in Employment Act of 1967; Rehabilitation Act of 1973; Equal Pay Act of 1963; Americans with Disabilities Act Amendments Act of 2008; Genetic Information Nondiscrimination Act of 2008; Executive Orders 13087, 13145, 13152 and 13164; 29 CFR § 1614; and EEOC Management Directive 110.

Contacts: Regional Equal Employment Opportunity Manager, 406-247-7626

Date of Last Review

(Month)

(Year)

(Initial/GP-Code)

Attachment

Filing Instructions:

Remove:
GP Policy Memorandum ADM-03
Dated March 2, 2010

Insert:
GP Policy Memorandum ADM-03
Dated **APR 29 2011**

PROCEDURES FOR PROCESSING A STANDARD INDIVIDUAL COMPLAINT OF DISCRIMINATION¹

BASED ON

RACE, COLOR, NATIONAL ORIGIN, SEX, AGE, RELIGION, DISABILITY,
GENETIC INFORMATION OR REPRISAL

1. The aggrieved person (employee or applicant for employment alleging discrimination) must contact the Equal Employment Opportunity (EEO) Manager or an EEO Counselor within 45 days² of the alleged discriminatory event or effective date of a personnel action and initiate the informal complaint process³ (process followed prior to filing a formal complaint). During the informal process, the primary focus is on resolving the complaint. The aggrieved person may participate in EEO Counseling or Alternative Dispute Resolution (ADR) as a means of attempting resolution. In addition, the EEO Counselor will conduct a limited inquiry into the allegations to address jurisdictional questions and to identify the basis and issue of the potential formal complaint.
2. If the aggrieved elects counseling, the EEO Counselor will assist the parties in their efforts to resolve the matter. Counseling can be extended for up to 60 additional days if both parties agree to do so, but the informal process cannot exceed 90 days.
3. If the aggrieved elects ADR, parties to the dispute meet with a neutral third party (certified mediator), who will assist them in developing their own resolution. No extensions are available, and the informal process cannot exceed 90 days.
4. If the matter is not resolved during the informal process, the aggrieved will receive a Notice of Final Interview (NOFI) advising him/her of the right to file a formal complaint of discrimination. A formal complaint must be filed within 15 days of receipt of the NOFI.
5. If the aggrieved files a formal complaint, the formal process begins. The aggrieved is now a complainant and the agency must conduct an investigation of the complaint and issue a Report of Investigation (ROI) to the complainant within 180 days of the date the complaint was filed. If both parties agree in writing, the time to complete the investigation can be extended by up to 90 days.

¹ For additional information, refer to the GP EEO Intranet at: <http://intra.gp.usbr.gov/eoo/welcome.html>.

² All days are calendar days.

³ The Equal Pay Act of 1963 (EPA) and the Age Discrimination in Employment Act of 1967 (ADEA) provide that an aggrieved person alleging equal pay discrimination based on sex or discrimination based on age may bypass the administrative complaint process (informal and formal processes as well as Departmental and EEOC decisions on the merits of a case) and file a civil action directly in U.S. District Court. The statute of limitations for filing suit under the EPA is two years, or three years if a willful violation is alleged. Persons filing suit under the ADEA must give the EEOC written notice of intent to sue. This notice must be filed within 180 days of the date of the alleged discriminatory action. Once a timely notice of intent to sue under the ADEA is filed with the EEOC, the aggrieved person must wait at least 30 days before filing a civil action. Notice of intent to sue must be submitted to: Equal Employment Opportunity Commission, Office of Federal Operations Federal Sector Programs, P.O. Box 19848, Washington, DC 20036.

6. Upon receipt of the ROI, the complainant has 30 days to request either an immediate final agency decision (FAD) from the Department's Office of Civil Rights or a hearing before an Equal Employment Opportunity Commission (EEOC) Administrative Judge (AJ).
7. If the complainant requests a FAD, the agency must issue its decision within 60 days.
8. If the complainant requests a hearing, the EEOC will appoint an AJ to hear the case. Upon appointment to a case, the AJ assumes full responsibility for the complaint. The AJ will review the complaint file, preside over discovery or other fact-finding, hold a hearing and issue a decision. The AJ must issue a decision within 180 days from the date the AJ receives the complaint file from the agency. The AJ also has authority to dismiss all or part of a complaint or render a decision without a hearing.
9. The AJ will send the hearing record and decision to the agency and the complainant. Upon receipt of the AJ decision, the agency has 40 days to issue a final order on the complaint. The final order will notify the complainant whether or not the agency will fully implement the AJ decision and will contain notice of the complainant's civil action and appeal rights. If the agency's final order does not fully implement the AJ decision, the agency must simultaneously file an appeal with EEOC.
10. Either the FAD or final order will be the agency's final action. Upon receipt of the agency's final action, the complainant may appeal to the EEOC Office of Federal Operations (OFO) within 30 days, or may file suit in U.S. District Court⁴ within 90 days.
11. Upon issuance of the OFO ruling, the complainant has 30 days to request reconsideration by the EEOC, or 90 days to file suit in U.S. District Court. The agency also can request reconsideration within 30 days, but cannot file suit.
12. Upon reconsideration, the complainant has 90 days to file suit in U.S. District Court, and may subsequently take the case to the U.S. Court of Appeals, and ultimately the Supreme Court.

⁴ The complainant may leave the administrative process and file suit in U.S. District Court any time after 180 days have passed from the date he/she filed the formal complaint if there has been no final agency action and no appeal. If there has been an appeal, the complainant may go to U.S. District Court any time after 180 days have passed from the date the appeal was filed if the EEOC has not issued a decision. Filing a civil action terminates processing of an individual complaint by the agency or the EEOC.