

**Forest Service Manual  
National Headquarters - Washington Office  
Washington, DC**

**Forest Service Manual 8000 - Work Environment and Performance Office  
Chapter 8100 - Anti-Harassment**

**Amendment:** 8000-2021-1

**Effective date:** March 25, 2021

**Duration:** This amendment is effective until superseded or removed.

**Previous Directive:** 1765 (Amendment 1700-2017-1, 08/17/2017)

**Approved by:** Victoria Christiansen, Chief

**Date approved:** March 25, 2021

**Explanation of changes:** Following is an explanation of the changes throughout the directive by section.

This directive recodes FSM 1765 to FSM 8000 and reorganizes and updates policy and direction. Primary changes include:

**8110.1:** Revises section to include 5 U.S.C. Section 571, Administrative Dispute Resolution Act of 1996; 5 U.S.C. Section 7901 and Departmental Regulation (DR) 4710-001, Alternative Dispute Resolution (April 5, 2006); 5 U.S.C. 552a; and 5 CFR Part 735 and DR 4070-735-001, Employee Responsibilities and Conduct.

**8110.2:** Revises section to include “retaliation”, and “expectations and responsibilities to prevent and address harassment and retaliation”.

**8110.3:** Reorganizes existing direction and sets forth new direction throughout the section.

**8110.4:** Revises section and sets for new direction for the “Chief Executive for the Work Environment and Performance Office”, “Anti-Harassment Case Managers”, and “Case Management Liaisons”.

**8110.5:** Revises section to include the following terms and definitions: “Conflict Management and Prevention Center (CMPC)”, “Contractor or Partner”, “Employee Assistance Program (EAP)”, “Harassment Assessment and Reporting Team (HART)”, “Harassment Reporting Center (HRC)”, “Management Official”, “Personnel Misconduct Investigation (PMI)”, and “Retaliation for Reporting or Opposing Harassment”.

**8111:** Establishes “Assessing Harassing Behaviors” and identifies differences between harassment and non-harassment in the workplace.

**8112:** Revises section, sets forth new direction, and establishes processes for “Reporting Harassment” to include reporting through the Harassment Reporting Center (HRC).

**8112.2 thru 8112.4:** Establishes reporting process for “Affected Individuals”, “Employees Who Witness Harassment”, “EEO Counselors”, and “Managers and Supervisors”.

**8112.5:** Establishes “Time Limits to File a Report.”

**8114:** Revises section and establishes and sets forth new direction for “Harassment Assessment and Review Team (HART) Inquiries” and “Personnel Misconduct Investigations (PMI)”.

**8115:** Sets forth new direction and establishes the closure process for Management Officials.

## Table of Contents

<b>8100 - Anti-Harassment .....</b>	<b>4</b>
<b>8110.1 - Authority.....</b>	<b>4</b>
<b>8110.1a - Labor Relations .....</b>	<b>4</b>
<b>8110.2 - Objectives .....</b>	<b>5</b>
<b>8110.3 - Policy .....</b>	<b>5</b>
<b>8110.4 - Responsibility .....</b>	<b>6</b>
<b>8110.4a - Chief .....</b>	<b>6</b>
<b>8110.4b - Chief Executive, Work Environment and Performance Office .....</b>	<b>6</b>
<b>8110.4c - Deputy Chiefs, Regional Foresters, Station Directors, and Washington Office             Directors are responsible for: .....</b>	<b>7</b>
<b>8110.4d - Managers and Supervisors .....</b>	<b>7</b>
<b>8110.4e - Agency Employees .....</b>	<b>8</b>
<b>8110.4f - Contractors, Partners, Volunteers, and Others Performing Work on Behalf of             the Forest Service .....</b>	<b>9</b>
<b>8110.4g - National Director, Civil Rights.....</b>	<b>9</b>
<b>8110.4h - Field Service Center Civil Rights Directors .....</b>	<b>9</b>
<b>8110.4i - Director, Human Resources Management .....</b>	<b>10</b>
<b>8110.4j - Employee Relations Supervisors and Specialists .....</b>	<b>10</b>
<b>8110.4k - Anti-Harassment Case Managers .....</b>	<b>11</b>
<b>8110.4l - Anti-Harassment Case Management Liaisons .....</b>	<b>11</b>
<b>8110.5 - Definitions.....</b>	<b>12</b>
<b>8111 - Assessing Harassing Behaviors.....</b>	<b>15</b>
<b>8112 - Reporting Harassment.....</b>	<b>16</b>
<b>8112.1 - Reporting Process and Resources for Affected Individuals .....</b>	<b>16</b>
<b>8112.2 - Reporting Requirements for Employees Who Witness Harassment.....</b>	<b>17</b>
<b>8112.3 - Reporting Requirements for EEO Counselors .....</b>	<b>17</b>
<b>8112.4 - Reporting Requirements for Managers and Supervisors .....</b>	<b>17</b>
<b>8112.5 - Time Limits to File a Report.....</b>	<b>18</b>
<b>8112.6 - Alternatives to Reporting Through Harassment Reporting Center.....</b>	<b>19</b>
<b>8113 - Confidentiality .....</b>	<b>20</b>
<b>8114 - Inquiry/Investigation Requirements .....</b>	<b>20</b>
<b>8114.1 - Harassment Assessment and Review Team (HART) Inquiries .....</b>	<b>21</b>
<b>8114.2 - Personnel Misconduct Investigations (PMI) .....</b>	<b>22</b>
<b>8115 - Closure Process, Grievances, Complaints, and Appeals.....</b>	<b>23</b>
<b>8115.1 - Relationship to Grievances, Complaints, and Appeals due to Harassment.....</b>	<b>24</b>

## **8110.1 - Authority**

Title VII of the Civil Rights Act of 1964, Section 703, prohibits employment discrimination based on race, color, religion, sex, and national origin.

29 CFR Part 1604.11 states that harassment based on sex is a violation of section 703 of Title VII of the Civil Rights Act of 1964.

7 CFR Part 15 prohibits discrimination in Federally assisted programs of the U.S. Department of Agriculture (USDA).

Age Discrimination in Employment Act of 1967 (ADEA) prohibits discrimination in employment based on age (40 years or older); it also prohibits retaliation against individuals exercising their rights under the statute.

Rehabilitation Act of 1973 prohibits discrimination based on mental and physical disabilities, as well as retaliation for exercising rights under the Act.

Equal Employment Opportunity Commission (EEOC) Management Directives 110 and 715 provide guidance relating to the processing of employment discrimination complaints and establishing and maintaining effective EEO programs. *See also*, USDA Anti-Harassment Policy, dated May 22, 2020.

5 U.S.C. Section 571, Administrative Dispute Resolution Act of 1996 provides statutory framework for Federal agency use of alternative dispute resolution (ADR). *See also*, Departmental Regulation (DR) 4710-001, Alternative Dispute Resolution (April 5, 2006).

5 U.S.C. Section 7901 establishes services to Federal employees. *See also*, USDA DR 4430-792-1, (March 12, 2012), which establishes requirements for USDA to develop and implement an Employee Assistance Program, which is designed to assist in the identification and resolution of work-related and non-work-related productivity issues.

5 U.S.C. 552a establishes Agency rules for maintaining individual records.

5 CFR Part 735 outlines Employee Responsibilities and Conduct. *See also*, USDA DR 4070-735-001, Employee Responsibilities and Conduct.

5 U.S.C. 2302(b), Prohibited Personnel Practices prohibit any employee who has the authority to take, direct others to take, recommend, or approve any personnel action from discrimination against any employee or applicant for employment.

## **8110.1a - Labor Relations**

To the extent that any bargaining obligations exist in relation to this policy, they have been addressed and are reflected in separate Memoranda of Understanding or Waivers of Bargaining with the respective unions representing Agency employees.

Any future changes to this policy that implicate such bargaining obligations will be addressed by affording the respective unions notice and opportunity to negotiate.

### **8110.2 - Objectives**

1. To make Forest Service programs, activities, and work environment free of harassment and retaliation.
2. To provide training for employees, periodic notification to employees, and appropriate notification in programs and activities concerning the prohibitions against harassment and the steps to take if harassment or retaliation is experienced or observed.
3. To take actions to prevent harassment and retaliation from occurring and to take appropriate corrective actions, to include disciplinary actions, against those responsible when harassment or retaliation does occur.
4. To establish expectations and responsibilities to prevent and address harassment and retaliation, and to sustain a productive, respectful work environment.

### **8110.3 - Policy**

The Forest Service is committed to maintaining a work environment in which all people are treated with dignity, fairness, and respect, and are free from harassment, bullying, and retaliation. This policy applies to all Forest Service employees in their working relationship with other Federal employees, non-Federal employees, and the public. The policy also applies to persons working under contract or other formal agreements with the Forest Service, such as Administratively Determined (AD) and volunteers.

The Agency prohibits the following conduct, as further defined in section 8110.5:

1. Sexual Assault/Violence;
2. Sexual Harassment;
3. EEO-Based Harassment;
4. Other Workplace Harassment (non-EEO, including bullying); and
5. Retaliation against employees who report or oppose harassment.

Forest Service employees shall take appropriate steps to address harassment. This may include implementing appropriate corrective and disciplinary action when an inquiry supports a finding that harassment has occurred, or when an employee, Manager, or Supervisor fails to follow the procedures in this policy. Forest Service employees shall not retaliate against employees who

experience, oppose, identify, allege, report, investigate, or participate in investigations or inquiries regarding harassment.

Reports of harassment will be handled in a confidential manner, to the extent allowed by applicable law. Just as the Agency must protect the rights of those who report harassment, it must also provide due process and protect the privacy rights of employees who are accused of harassment. Reports of harassment will be disseminated only to those who have a need to know, including people who are responsible for investigating allegations, determining whether harassment occurred, developing recommendations, and implementing corrective measures.

Employees who believe they have experienced harassment are encouraged to voice their objections concerning this behavior to the offending person and/or report such incidents as provided in section 8112.

#### **8110.4 - Responsibility**

##### **8110.4a - Chief**

The Chief of the Forest Service is responsible for:

1. Establishing the Forest Service's anti-harassment policy;
2. Issuing an annual notice regarding the anti-harassment policy;
3. Providing overall direction for Agency-wide implementation of the anti-harassment program; and
4. Establishing anti-harassment training requirements.

##### **8110.4b - Chief Executive, Work Environment and Performance Office**

The Chief Executive for the Work Environment and Performance Office (WEPO) is responsible for:

1. Providing strategic framework, national program objectives, technical assistance, support, and oversight to ensure compliance with this policy;
2. Disseminating the anti-harassment policy to all Agency employees annually;
3. Instructing all Supervisors and Managers to disseminate the anti-harassment policy to their respective contractors, partners, volunteers, and others performing work on behalf of the Forest Service;
4. Establishing and updating policies, procedures, and guidelines to administer the Forest Service's anti-harassment program, in consultation with Civil Rights (CR) and Human Resources Management (HRM);

5. Developing, coordinating, and conducting anti-harassment training for employees, Supervisors, and Managers at least annually, in consultation with CR, HRM, and Office of General Counsel (OGC);
6. Reassigning the matter to another program or to one of the regions or stations when a conflict of interest arises;
7. Ensuring all established WEPO processes and procedures are followed; and
8. Periodically reviewing anti-harassment data to identify trends in the overall work environment and areas of the organization that require additional attention from leadership.

**8110.4c - Deputy Chiefs, Regional Foresters, Station Directors, and Washington Office Directors are responsible for:**

1. Ensuring employees are informed of the Forest Service's anti-harassment policy and procedures;
2. Promoting efforts of management and employees to eliminate harassment and retaliation based on harassment;
3. Enforcing the anti-harassment policy and procedures;
4. Evaluating subordinate Managers and Supervisors on their performance under this policy;
5. Providing employees with periodic notification concerning prohibitions against harassment and retaliation and methods for reporting incidents; and
6. Displaying or making available copies of relevant policies and procedures.

**8110.4d - Managers and Supervisors**

All Managers and Supervisors play a unique role within the Agency in leading by example and living the Agency's Values and demonstrating the Agency's Code and Commitments through their leadership and supervision of their staffs.

Every Manager and Supervisor is responsible for:

1. Fostering a workplace free of harassment and retaliation and setting a personal example of appropriate workplace conduct;
2. Addressing non-harassment workplace conflicts among their employees through appropriate supervision, disciplinary or performance actions, training, mentoring, or referrals to Employee Assistance Program (EAP), Conflict Management Prevention Center, or other available resources;

3. Taking immediate action to stop harassing behavior when it occurs, such as verbally instructing employees to stop the behavior and temporarily separating employees (to avoid any real or perceived retaliation, if separation of the parties is necessary, the alleged offender should be moved, unless the affected individual specifically requests to be moved);
4. Ensuring their employees know the required procedures for dealing with harassment and that employees receive training on these procedures and on awareness and prevention of harassment;
5. Following all reporting requirements described in subsection 8112.4 or otherwise required by law;
6. Preventing retaliation against those who experience, oppose, identify, allege, report, investigate, or participate in investigations or inquiries regarding harassment;
7. Handling notifications of harassment promptly, thoroughly, and appropriately, in accordance with the procedures in this policy;
8. Offering assistance to the affected individual (which may include such things as referral to EAP, offer of Alternative Dispute Resolution, a cooling-off period, temporary work assignments, telework in accordance with Departmental Regulation 4080-811-002, or alternate work locations) and working with the affected individual to identify assistance that is appropriate for the situation;
9. Cooperating and collaborating with the Work Environment and Performance Office, Anti-Harassment Case Managers, Employee Relations (ER), and Civil Rights to ensure that Agency employees comply with the requirements of this policy;
10. Initiating and/or conducting management inquiries, when assigned to do so, for a case that is not assigned for formal misconduct investigation or a Harassment Assessment and Review Team (HART) inquiry, as provided in sections 8111 and 8112.5, below;
11. Assisting all authorized investigations and HART inquiries by facilitating the availability and cooperation of employees for interviews and statements, as may be required; and
12. Working with Agency ER staff to take appropriate disciplinary, performance, or other corrective action against those employees who have violated the Agency's anti-harassment policy.

#### **8110.4e - Agency Employees**

All Agency employees are responsible for:

1. Acting professionally, refraining from engaging in harassment or retaliation, and adhering to a standard of conduct that is respectful and courteous to others;



2. Understanding the provisions of this policy, complying with all requirements, and cooperating with any inquiry/investigation;
3. Participating in periodic anti-harassment training; and
4. Promptly reporting witnessed incidents of harassment in accordance with the procedures under section 8112. of this policy.

#### **8110.4f - Contractors, Partners, Volunteers, and Others Performing Work on Behalf of the Forest Service**

Contractors, partners, volunteers, and others performing work on behalf of the Forest Service are expected to avoid behaviors prohibited by this policy. The Agency will take action to address reported incidents in order to provide a safe and harassment-free environment for employees. Forest Service Supervisors and Managers responsible for administering these contracts, partnerships, grants and agreements, volunteers, and others performing work on behalf of the Agency will disseminate the anti-harassment policy and take appropriate steps to identify and correct behaviors that are not consistent with Forest Service policy. Agency Supervisors and Managers will ensure their staffs notify their respective Agency contractors and partners about the anti-harassment policy whenever such contractors or partners sign, extend, or otherwise renew a contract or agreement.

#### **8110.4g - National Director, Civil Rights**

The Agency's National Director of Civil Rights is responsible for:

1. Providing technical assistance, support, and oversight to ensure compliance with this policy; and
2. Collaborating with the Field Service Center Civil Rights Directors and Chief Executive, Work Environment and Performance Office (WEPO), to:
  - a. Support the establishment and updating of policies, procedures, and guidelines to administer the Agency's anti-harassment program; and
  - b. Support the development, coordination, and delivery of anti-harassment training for employees, Supervisors, and Managers, collaborating with WEPO, Human Resources Management, and the Office of General Counsel.

#### **8110.4h - Field Service Center Civil Rights Directors**

Field Service Center Civil Rights (CR) Directors are responsible for:

1. Providing technical assistance and support to Anti-Harassment (AH) Case Managers as requested to ensure compliance with this policy and provide advice and guidance as needed;

2. Supporting Managers and Supervisors in fulfilling their responsibilities throughout the harassment reporting process, including consultation on interim measures and notification to the affected individuals of their Equal Employment Opportunity (EEO) rights;
3. Collaborating with the Work Environment and Performance Office (WEPO), Human Resources Management (HRM) and local leadership to annually disseminate the anti-harassment policy to all Agency employees;
4. Collaborating with WEPO, HRM, and local leadership to jointly develop, coordinate, and conduct anti-harassment training for employees, Supervisors, Managers, and others doing work on behalf of the Agency; and
5. Providing AH Case Managers with appropriate information or documentation related to pending harassment inquiries or investigations, in accordance with applicable law, rule, or regulation.

#### **8110.4i - Director, Human Resources Management**

The Agency's Director of Human Resources Management is responsible for:

1. Providing technical assistance, support, and oversight to ensure compliance with this policy; and
2. Supporting the following, in collaboration with the Agency's National Director of Civil Rights and Chief Executive, Work Environment and Performance Office:
  - a. Establishment and updating of policies, procedures, and guidelines to administer the Forest Service's anti-harassment program; and
  - b. Development, coordination, and delivery of anti-harassment training for employees, Supervisors, and Managers.
3. Ensure all established Employee Relations processes and procedures are followed in addressing issues of conduct and performance.

#### **8110.4j - Employee Relations Supervisors and Specialists**

Agency Employee Relations (ER) Supervisors and Specialists are responsible for:

1. Providing technical assistance and support to Anti-Harassment Case Managers, as required, to ensure compliance with this policy;
2. Collaborating with the Work Environment and Performance Office, Civil Rights, and local leadership to jointly develop, coordinate, and conduct anti-harassment training for employees, Supervisors, Managers, and others doing work on behalf of the Agency;

3. Providing guidance, advice, and assistance to management in requesting a formal misconduct investigation when appropriate; and
4. Following applicable ER processes and procedures for cases of disciplinary and performance actions arising under this policy.

#### **8110.4k - Anti-Harassment Case Managers**

Anti-Harassment (AH) Case Managers are responsible for:

1. Providing advice and guidance to Managers, Supervisors, and all others who have responsibilities under this policy, and assisting them to meet their obligations;
2. Facilitating discussions with Employee Relations (ER), Civil Rights, the Work Environment and Performance Office (including, but not limited to, the Conflict Management and Prevention Center), and Labor Relations, as needed;
3. Monitoring procedural timelines and appropriately reporting when those timelines and other requirements are not met;
4. Determining, in accordance with this policy, if reports of harassment should be:
  - a. Assigned to the Harassment Assessment and Review Team (HART) for inquiry;
  - b. Referred to ER for a formal Personnel Misconduct Investigation; or
  - c. Referred to a designated Management Official for inquiry, consistent with sections 8111 and 8112.5, below;
5. Ensuring the accuracy, completeness, and quality of HART reports of inquiry; and
6. Collecting data as needed to update the case-management system.

#### **8110.4l - Anti-Harassment Case Management Liaisons**

Forest Service Case Management Liaisons are responsible for working in conjunction with Case Managers to ensure that affected individuals under this policy are informed as early as possible in the process of:

1. The requirements, procedures, and timeframes involved in the process;
2. The potential outcomes;

3. Other available resources (such as administrative or negotiated grievance procedures, informal or formal Equal Employment Opportunity complaints, the Conflict Management and Prevention Center, or Employee Assistance Program) without providing any opinions or guidance as to which resource may be appropriate for the affected individual under the circumstances; and
4. The availability of the Liaison to serve as a point of contact for additional questions throughout the inquiry process.

Generally, this initial contact should occur before the affected individual is contacted by an inquiry official for an interview.

The Case Management Liaison will re-contact the affected individual prior to the case being referred to the employee's Supervisor or Manager for a close-out meeting on the findings of the inquiry, to explain the closure process.

#### **8110.5 - Definitions**

Affected Individual. Any individual, to include non-employees, who experiences harassment as defined within this policy, by an employee or while on Forest Service controlled property.

Alleged Offender. An individual who is alleged to have engaged in harassing behavior as described within this policy. Alleged offenders can be non-employees if harassing behavior is directed toward a Forest Service employee during the performance of official duties or while on Forest Service controlled property.

Conflict Management and Prevention Center (CMPC). A program within the Workplace Environment and Performance Office that offers alternative dispute resolution and related assistance to all employees.

Contractor or Partner. For purposes of this policy, contractors are those who sign, extend, or otherwise renew formal contracts with the Agency. Partners are those who sign, extend, or otherwise renew formal partnership grants and agreements with the Agency.

EEO-Based Harassment. Any type of unwelcome intimidation, ridicule, insults, comments, or verbal or physical conduct, that is based on race, color, religion, age (40 years or older), disability (physical or mental), national origin, reprisal, sex/gender (whether or not of a sexual nature), sexual orientation, disability, marital and/or parental status when:

- a. Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment;

- b. A Manager/Supervisor/team leader makes an employee's submission to or rejection of such conduct the basis for employment decisions affecting the employee; or
- c. The conduct is intended to or has the effect of unreasonably interfering with an individual's work performance or creates an intimidating, hostile, or offensive work environment.

Employee Assistance Program (EAP). A program offered by the Agency to counsel employees on personal issues.

Harassment Assessment and Reporting Team (HART). HART is a cadre of trained specialists and/or contractors not assigned to a specific region, station, or area. HART will conduct inquiries on most harassment allegations that do not require a formal personnel misconduct investigation.

Harassment Reporting Center (HRC). The HRC is staffed by contracted representatives to receive reports of harassment at the toll-free number: (844) 815-8943.

Management Official. The Agency representative responsible for disposition of a specific matter under this policy. Generally, the Management Official will be at or above the level of Forest Supervisor, or equivalent position.

Other Workplace Harassment (non-EEO based, including Bullying). Any form of unwelcome, pervasive, persistent, and unsolicited verbal, non-verbal, written, or physical conduct that is objectively offensive and could alter the affected individual's terms and conditions of employment. It includes both workplace harassment and bullying.

- a. Workplace harassment culminates in a tangible employment action by being sufficiently severe or pervasive as to interfere with an employee's work performance by creating an intimidating, abusive, offensive, or hostile work environment.
- b. Bullying is repeated abusive behavior that is threatening, humiliating, or intimidating. It may be direct or indirect, whether verbal, physical or otherwise, by one or more persons against another or others, at the place of work and/or during employment.

Personnel Misconduct Investigation (PMI). An administrative investigation into allegations of employee misconduct, carried out in accordance with USDA Departmental Personnel Manual 751, Subchapter 3.

Retaliation for Reporting or Opposing Harassment. Retaliation is imposing any administrative action, failing to take action, or engaging in any form of harassment or bullying, against any employee for reporting matters covered under this policy, for being involved in an inquiry or investigation related to such a report, or for exercising any other rights granted them under this policy.

Sexual Assault/Sexual Violence. Any type of sexual contact or behaviors that are attempted or completed without the individual's consent, or when an individual cannot consent because of age, disability, the influence of alcohol or drugs, or any other reason preventing the individual from providing consent. Examples may include, but are not limited to, forced or attempted sexual intercourse, voyeurism, exposure to exhibitionism, public display of images that were taken in a private context or when the individual was unaware, fondling, grabbing, unwanted sexual contact and attempted rape.

Sexual Harassment. Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of sexual nature when:

- a. Submission to such conduct is made, either explicitly or implicitly, a term or condition of an individual's employment;
- b. Submission to, or rejection of, such conduct by an individual is used as the basis for employment decisions affecting such individual; or
- c. Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive work environment.

Sexual harassment can occur at any time and any location, regardless of whether the acts occur on or off the workplace or Federal property, and whether they occur during or outside work hours. It may consist of an isolated incident or a pattern of repeated behavior with a sexual connotation.

Examples of sexual harassment include, but are not limited to:

- a. Graphic verbal commentaries, verbal exchanges, or jokes with a sexual connotation;
- b. Behavior with sexual overtones which is intimidating or offensive to the recipient, or to one who observes such behavior or other displays;
- c. Using sexually degrading words to describe an individual;
- d. Unnecessary or inappropriate touching or grabbing, or making lewd gestures;

- e. Pressuring for sexual activity;
- f. Repeated unwelcomed flirtations or requests for dates;
- g. Offensive sexual flirtation, advances, or propositioning;
- h. Suggestive comments about or references to someone's anatomy, or ridicule or teasing regarding an employee's gender identity, gender expression, or sexual orientation; and/or
- i. Viewing or displaying pornographic or sexually explicit materials that may be seen or heard by other employees during employment, regardless of the means or methods (such as, but not limited to, print, hard copy, audio or electronic).

### **8111 - Assessing Harassing Behaviors**

The difference between harassment and non-harassment in the workplace can be difficult to define. In most cases, an employee's conflict with coworkers or Supervisors is not considered harassment. However, conflict can escalate into harassment if not properly resolved.

The following are examples of what is typically not considered harassment, unless alleged as part of a pattern of harassing behavior or as retaliation for reporting or opposing harassment:

1. Experiencing minor slights or annoyances;
2. Experiencing normal stress associated with work;
3. Having minor disagreements with coworkers;
4. Disagreeing with a Supervisor's instruction or Forest Service policy;
5. Receiving objective and constructive feedback about work performance;
6. Changing work assignments or work schedules;
7. Receiving discipline for misconduct, performance-based actions, or other administrative actions;
8. Being required to cooperate in an official inquiry or investigation; or
9. Being accused of harassment or misconduct by another employee.

Reports limited to the issues listed above, or single occurrences, or other issues or allegations that do not rise to the level of harassment as defined in this policy, will usually be closed without investigation or inquiry and referred to the appropriate management official to address

and/or the Conflict Management and Prevention Center to assist in mitigating or resolving the conflict.

However, a Harassment Assessment and Reporting Team inquiry or misconduct investigation, as appropriate, is required for all incidents alleging sexual assault, sexual violence, sexual harassment, EEO-based harassment, a pattern of harassing behavior, or retaliation for reporting or opposing harassment (unless time limits as provided in section 8112.5 below are not met).

## **8112 - Reporting Harassment**

Since the Agency can only take action if it knows about incidents of harassment, certain reporting requirements and procedures have been established. Different types of reporters have different reporting requirements, as set forth in the subsections that follow.

To simplify the reporting process for all forms of harassment, the Agency has established the Harassment Reporting Center (HRC). The HRC is staffed by contracted representatives and can be reached by calling their toll-free number: (844) 815-8943.

While employees may report harassment to any Supervisor or Manager, they are strongly encouraged to make reports directly to the HRC to ensure timeliness and accuracy. If a Manager or Supervisor is the alleged offender and the harassment is reported to that same Manager or Supervisor, then that Manager or Supervisor shall:

1. Provide the HRC toll-free number to the affected individual for them to file a timely report; and
2. Notify their own first-line Supervisor of the incident.

Supervisors, Managers, and other employees are prohibited from retaliating against employees who experience, oppose, identify, allege, report, investigate, or participate in investigations or inquiries regarding harassment.

### **8112.1 - Reporting Process and Resources for Affected Individuals**

Affected individuals are encouraged to resolve incidents at the lowest organizational level possible. In many cases, this may include confronting the offending person, when it is safe to do so, and asking them to stop. If an affected individual is not comfortable confronting the alleged offender, or the alleged offender was confronted and the behavior did not stop, the affected individual may report instances of harassment by calling the Harassment Reporting Center or notifying any Agency Supervisor or Manager.

Reporting harassment does not replace, prevent, or alter the deadlines for an employee using other administrative procedures (Equal Employment Opportunity complaints, grievances, Merit System Protection Board appeals, and so forth) to address the alleged harassment.



Affected individuals may contact the Conflict Management and Prevention Center (CMPC) at any time, whether the behavior rises to the level of harassment. Contacting CMPC does not constitute making a report of harassment. CMPC Managers are covered under the ADR Act and are not mandatory reporters under this policy.

### **8112.2 - Reporting Requirements for Employees Who Witness Harassment**

Employees who directly witness harassment are required to report what they witnessed to the Harassment Reporting Center within three calendar days and shall provide complete details of the incident. Witnesses may remain anonymous but should provide enough information for the Agency to effectively look into the matter. This includes providing dates, times, and the names of the affected individual and alleged offender.

### **8112.3 - Reporting Requirements for EEO Counselors**

Consistent with law, rule, or regulation, EEO Counselors shall report sexual assault/violence, as provided in section 8112.4.

### **8112.4 - Reporting Requirements for Managers and Supervisors**

The reporting requirements for Managers and Supervisors are determined by the nature of the harassment that has occurred.

1. Sexual Assault/Sexual Violence. Managers and Supervisors who witness, become aware of, or receive a report of sexual assault or sexual violence, as defined in this policy, are required to:
  - a. Contact local law enforcement immediately, not to exceed 24-hours. This notification includes filing a criminal report on behalf of the affected individual, if a report does not exist or is not known to exist. If a criminal report exists, request to obtain any/all releasable information (at least the report or case number);
  - b. Report the incident to the Harassment Reporting Center (HRC) within 24-hours if a report does not exist or is not known to exist;
  - c. Contact Employee Relations (ER) and Civil Rights (CR) within one duty day; and
  - d. Ensure affected individuals are provided appropriate resources and support. Case Managers are available to provide assistance in identifying appropriate resources.
2. Sexual Harassment and Equal Employment Opportunity (EEO) Harassment. Managers or Supervisors who witness, become aware of, or receive a report of

sexual harassment or EEO-based harassment, as defined in this policy, are required to:

- a. Report the incident to the HRC within 24-hours, if a report does not exist or is not known to exist;
  - b. Contact ER and CR within one duty day; and
  - c. Ensure affected individuals are provided appropriate resources and support. Case Managers are available to provide assistance in identifying appropriate resources.
3. Other Workplace Harassment (Including Bullying). Managers or Supervisors who witness, become aware of, or receive a report of an incident of other workplace harassment or bullying, as defined in this policy, are required to:
  - a. Report the incident to the HRC within three calendar days, if a report does not exist or is not known to exist, and contact ER and CR; and
  - b. Ensure affected individuals are provided appropriate resources and support. Case Managers are available to provide assistance in identifying appropriate resources.

#### **8112.5 - Time Limits to File a Report**

The following time limitations apply for reporting different types of harassment or harassing behavior under this policy. This section does not alter the timelines for filing Equal Employment Opportunity complaints, grievances, or other processes described in Section 8112.6, below.

1. Sexual Assault/Sexual Violence and Sexual Harassment. Reporting requirements in this policy apply regardless of how long ago the alleged sexual assault, sexual violence, or sexual harassment occurred, and all such reports will be accepted. However, the age of an incident can have an impact on the investigation due to potential unavailability of witnesses or evidence.
2. EEO-Based Harassment and Other Workplace Harassment (Including Bullying). Incidents of harassment, other than sexual assault, sexual violence, and sexual harassment, reported more than 90 days after the most recent incident or occurrence will generally not be considered timely for a Harassment Assessment Reporting Team inquiry and will instead be closed and referred to the appropriate Manager or Supervisor. A referral may also be made to the Conflict Management and Prevention Center, the Employee Assistance Program, or other employee support programs.

## 8112.6 - Alternatives to Reporting Through Harassment Reporting Center (HRC)

The reporting procedures in this policy are not a substitute for, and do not replace or preclude or alter the deadlines for other procedural avenues for addressing harassment as described below.

The anti-harassment process is separate and distinct from any rights or obligations in the Equal Employment Opportunity Commission (EEOC), Merit Systems Protection Board (MSPB), or internal grievance processes. Filing a report through the anti-harassment process does not extend any timeframes to file a complaint, grievance, or appeal.

In addition to or instead of reporting harassment through the HRC, employees may use one or more of the following processes. Employees should note that each process may have its own important time limits for filing.

1. EEO Complaint. Anyone who believes they have been subjected to unlawful discrimination under the civil rights rules and regulations governed by the EEOC or Agency policy, including sexual harassment or reprisal for harassment-related Civil Rights activity may also file a complaint of discrimination by contacting an EEO Counselor at (404) 347-1908, within 45-calendar days after becoming aware of such unlawful discrimination. The EEO reporting process is different from the anti-harassment reporting process and has different timeframes. Filing an anti-harassment report does not extend or change EEO filing timeframes.
2. USDA Office of Inspector General (OIG) Hotline. This hotline is available for reporting incidents of sexual harassment, reprisal, and any other reports of fraud, waste, abuse, or employee misconduct. The OIG Hotline can be reached by calling: (800) 424-9121, (202) 690-1622, or (202) 690-1202 (TDD). Written reports can be mailed to: USDA, OIG, PO Box 23399, Washington, DC, 20026-3399. You can also visit the OIG website (<https://www.usda.gov/oig/hotline>) to submit a report online.
3. Office of Special Counsel (OSC). Under the Whistleblower Protection Act of 1989, an individual who alleges that a personnel action was taken, or not taken, or threatened because of “whistleblowing” may file a complaint with the Special Counsel, asking that the Special Counsel seek corrective action with MSPB. An individual may seek corrective action from MSPB directly if the Special Counsel does not seek corrective action on his or her behalf. Additional information regarding the OSC complaint process may be found at: <https://osc.gov/Pages/File-Complaint.aspx>.
4. Agency Administrative Grievance Procedure. For direction on filing a grievance related to harassment under the administrative grievance system, see Departmental Regulation, 4070-771, Administrative Grievance System (AGS). This regulation outlines matters covered in the AGS. Issues appealable to the Equal Employment Opportunity Commission (EEOC), to include EEO complaints, are excluded from the AGS.

5. Negotiated Grievance Procedure. Bargaining unit employees may file grievances related to harassment under applicable negotiated procedures for their represented unit, which may be found on the Forest Service Labor Relations web site located at: <http://fsweb.wo.fs.fed.us/hrm/labor-relations/index.php>.

### **8113 - Confidentiality**

Reports of harassment will be handled in a confidential manner, to the extent allowed by law. Just as the Agency must protect the rights of those who report harassment, it must also provide due process and protect the privacy rights of employees who are accused of harassment and/or receive discipline or other corrective action as a result of misconduct. Reports of harassment will be disseminated only to those who have a need to know, including people who are responsible for investigating allegations, determining whether harassment occurred, developing recommendations, or implementing corrective measures.

### **8114 - Inquiry/Investigation Requirements**

Reports of harassment, as defined in this policy, will be assigned for inquiry or formal personnel misconduct investigation (PMI) based on the nature of the allegation and circumstances. Matters determined not to be harassment, as described under section 8111, or reported beyond the timeframe provided under section 8112.5, above, may be closed and referred to the appropriate Manager or Supervisor for further action.

1. Sexual Assault/Sexual Violence. All allegations of sexual assault or sexual violence will be assigned for a PMI once the criminal investigation is complete or law enforcement has issued a declination to pursue criminal prosecution. If a criminal investigation or other investigative report exists and the report includes sufficient evidence, no further investigation is necessary.
2. Sexual Harassment. Allegations of sexual harassment will be assigned for a PMI unless the circumstances of a particular case indicate that a Harassment Assessment Review Team (HART) inquiry would be sufficient to determine the facts or the alleged offender is not a Federal employee, as determined by the Anti-Harassment (AH) Case Manager in consultation with the Employee Relations (ER) Supervisor and Management Official.
3. EEO-Based and Other Workplace Harassment (including Bullying). Allegations of EEO-based and other workplace harassment or bullying will be assigned for HART inquiry unless particular circumstances justify a PMI or referral for the appropriate Management Official for inquiry.
4. Retaliation for Reporting or Opposing Harassment. Allegations of retaliation will be referred for HART inquiry unless particular circumstances justify a PMI or referral to

the appropriate Management Official for inquiry, as determined by the AH Case Manager in consultation with the ER Supervisor, and Management Official.

The inquiry or investigation report will be provided to the Management Official. If the report identifies potential misconduct or performance issues, the report will also be provided to ER.

Upon receipt of a report of harassment, Management must take such action as is necessary and appropriate to prevent any further harassment or retaliation before, during, and after the inquiry/investigation.

#### **8114.1 - Harassment Assessment and Review Team (HART) Inquiries**

HART is a cadre of trained specialists and/or contractors working under the direction of the Anti-Harassment (AH) Case Managers. HART inquiries will be conducted on most harassment allegations that do not require a formal personnel misconduct investigation (PMI). This function is located within the Work Environment and Performance Office.

1. Once an inquiry is assigned to HART, the inquiry should begin within seven calendar days and normally be completed within 30 calendar days of the start of the inquiry. Complex inquiries may take longer, based upon the number of interviews required, the availability of witnesses, and amount of evidence collected.
2. Employees must respond within three workdays to HART Inquiry Officials' requests to schedule an interview unless there are extenuating circumstances.
3. Management Officials are responsible for ensuring all employees are available within this timeframe and notifying the AH Case Manager of any absences or other extenuating circumstances that may result in delays.
4. Affected individuals may decline to participate in the inquiry without being subject to disciplinary action for not cooperating. The HART inquiry may continue if there is sufficient information, and the affected individual's declination will be noted in the report.
5. An affected individual's request to terminate the inquiry will be considered; however, particular circumstances (such as the egregiousness of the conduct or prior history of harassment by the alleged offender) may justify its continuation, and the affected individual's request will be noted in the report.
6. AH Case Managers will provide a copy of the final HART report of inquiry and all supporting documentation and evidence to the Management Official. The Management Official shall thoroughly review the report and conduct a meeting within seven calendar days with the AH Case Manager to discuss the findings. The Case Manager will include Employee Relations, Civil Rights, Labor Relations, or the

Conflict Management and Prevention Center in the discussion for their advice, as appropriate, based on the findings and next steps under consideration.

7. When potential misconduct or performance issues are identified, the report will be referred to the appropriate Employee Relations staff for assessment and recommendation to the appropriate Management Official regarding necessary corrective action and/or determination that a formal personnel misconduct investigation is necessary.

#### **8114.2 - Personnel Misconduct Investigations (PMI)**

Requests for PMIs must be prepared by a Manager or Line Officer who can authorize an investigation, normally a Forest Supervisor or equivalent. Managers should submit requests within seven calendar days to the Agency's PMI Program Manager for assignment to an investigator. Employee Relations (ER) will advise and assist in the preparation of the request.

1. PMIs should begin within 14 calendar days of receiving the request and be completed within 45 calendar days of the investigation start date. Complex investigations may take longer based upon the number of interviews, availability of witnesses, and amount of evidence collected.
2. Employees must respond to personnel misconduct investigators' requests for interviews within three workdays, unless there are extenuating circumstances.
3. Management Officials are responsible for ensuring all employees are available within this timeframe or notifying the PMI Program Manager of any absences or other extenuating circumstances that may result in delays.
4. Affected individuals may decline to participate in the investigation without being subject to disciplinary action for not cooperating. The investigation will continue if there is sufficient information to proceed, and the affected individual's declination will be noted in the report.
5. An affected individual's request to terminate the investigation will be given due consideration, but the Agency will determine whether the nature of allegations justify its continuation.
6. The PMI Program Manager shall forward a copy of the investigative report to the requesting Management Official, AH Case Manager, and Employee Relations. The Management Official shall thoroughly review the report and conduct a meeting within seven calendar days to discuss the findings with the Anti-Harassment Case Manager and ER.
7. ER will assess each report of investigation in accordance with normal ER processes and procedures. This includes making a recommendation to the appropriate

Supervisor, Manager, or Line Officer on necessary corrective action(s).

### **8115 - Closure Process, Grievances, Complaints, and Appeals**

The intent of the closure process is for the Management Official to provide closure to the affected individual(s) and the alleged offender(s), as well as getting to the root cause, restoring relationships, resolving conflict and improving the work environment. This is a very critical stage, and if not done or if done improperly, the issue can remain unresolved and could have an increased negative impact on the individuals and the unit. Whether or not misconduct is substantiated, the Management Official shall appropriately address any underlying or contributing factors identified by the investigation or inquiry. This may include reference to our Code and Commitments, referral to the Conflict Management and Prevention Center (CMPC), clarifying expectations for workplace behavior and/or identifying training, counseling, and teambuilding activities.

Upon notification from the Anti-Harassment (AH) Case Manager that the case is ready for closure, the Manager or Supervisor must:

1. Meet with the affected individual(s) and the alleged offender(s) separately and within seven calendar days of completion of the inquiry/investigation to discuss the matter. These meetings may be conducted by phone or in person, as appropriate;
2. Discuss available options to address conflict, such as services from CMPC or Employee Assistance Program, training, coaching, mentoring, and more;
3. Communicate clear expectations on how the employees should conduct themselves in the workplace;
4. Remind employees of the prohibition against retaliation and inform them to report any retaliation immediately; and
5. Provide a summary of the closure meetings to the AH Case Manager via email. The AH Case Manager will then ensure an automatic closure notice is sent to the appropriate individuals.
6. If corrective action was taken on proven misconduct, no closure meeting is necessary for the alleged offender. The corrective action notice is considered the closeout in those situations.

Managers or Supervisors shall not provide copies of reports of inquiries or investigations, either as part of the closure process or upon request.

#### **8115.1 - Relationship to Grievances, Complaints, and Appeals due to Harassment**

The anti-harassment process does not include any procedures to challenge or appeal the finding of Agency inquiries or investigations, or the actions of management that result or do not result from a harassment report.