

Title: Harassment-Free Workplace

Submitted by: USDA Forest Service

Requested By: House and Senate Committees on
Appropriations

Congressional Deadline: August 2, 2017

Expected Date to Congress: August 2, 2017

Summary: The Forest Service is expected to provide a report that describes the policy and process changes that have been made to address past harassment incidents. The report should provide detailed actions taken since disciplinary authority was returned.

“Harassment-Free Workplace - The Committees believe all Federal employees have the right to a harassment-free workplace and continue to be deeply concerned about reports of harassment and hostile work environments at some of the agencies funded through this Act, especially the long-term pattern of unacceptable behavior at several national park system units. The Committees direct the Department of the Interior to report to the Committees regarding: 1) what specific corrective actions the National Park Service is taking to preclude additional incidents from occurring in the future, and 2) what steps the Department is taking to ensure that all of its bureaus and offices have strong and consistent anti-harassment policies in place. The Forest Service is also directed to provide a report that describes in detail the policy and process changes it has made to address past incidents. Finally, the EPA Office of Inspector General is directed to provide a report describing existing EPA policy, procedure and training regarding harassment at the Agency and any policy and process changes it has made. The reports shall be provided to the Committees within 120 days of enactment of this Act.”

Forest Service Policy and Processes to Combat Sexual Harassment

Over the past 5 years, the Forest Service has worked diligently to markedly improve the work environment and ensure all employees are valued, safe, and respected. The vast majority of our employees enjoy a positive work environment free from harassment. In those rare situations when harassment or inappropriate behavior occurs, the Forest Service takes immediate action to hold responsible individuals accountable for their unacceptable conduct. As described by Chief Tom Tidwell in a 2016 letter to all employees announcing an amended anti-harassment policy, “The Forest Service is committed to creating and maintaining a work environment in which all people are treated with dignity, fairness, and respect and are free from harassment. Our workplace will be characterized by mutual trust, and the absence of intimidation, oppression, and exploitation.”

Over the past 3 years, the Forest Service has removed or terminated close to 40 employees for engaging in sexual misconduct. The following data reflect a positive trend: 17 employees were removed in 2014, 14 employees in 2015, five employees in 2016, and two so far in 2017. These numbers do not include employees who chose to resign or retire before their discipline could be effectuated.

Background: The Forest Service has a workforce of up to 40,000 employees. Approximately 13,000 are seasonal, temporary employees who work in remote locations. The Agency experiences a lot of turnover in this segment of the workforce. Even with these additional challenges, the Forest Service has experienced a low number of complaints or incidents of sexual harassment.

In addition, the agency is making sustained progress in reducing the number of findings of discrimination. This is attributed to our leaders taking a more proactive approach by more effectively addressing Equal Employment Opportunity (EEO) complaints while in the informal stage and through our agency-wide effort to increase awareness and accountability throughout the workforce.

Beginning in early 2012, the Forest Service developed and implemented several reforms aimed at increasing capacity and accountability in its Employee Relations (ER) and EEO complaint processing staffs to address problems quicker and more consistently, to have higher accountability for wrong doers, and to raise awareness and skill levels of managers and supervisors throughout the agency. These reforms include:

- Realigning Employee Relations into a single line of authority and adding investigators to complete investigations more timely.
- Training and certification of investigators and resolving officials.
- Creating a National Review and Oversight Team to advise and assist the Associate Chief and Deputy Chief for Business Operations, resulting in faster intervention and prompt actions to address misconduct.
- Reorganizing the Office of Civil Rights so that all field Civil Rights Directors report to a National Civil Rights Director, who reports directly to the Chief.

The Forest Service has continued to take actions to enhance our capability and capacity to improve the work environment and to effectively address employee misconduct. The most significant include:

- Increased cadre of resolving officials through providing one-week intensive training on the EEO process, the benefits of early resolution and techniques on how to resolve issues fairly and equitably.
- Provided all Senior Executive Line Officers with competencies to manage the return of limited delegation authority for limited EEO cases.
- Implemented New National Employee Orientation covering a wide range of Civil Rights topics including the Federal Employee Anti-discrimination and Retaliation Act of 2002 (No FEAR Act); Reasonable Accommodations; Section 508 Accessibility; Workplace Bullying; Sexual Harassment; and Workplace Inclusion.
- Publication of a quarterly Discipline and Adverse Action Report available to all Forest Service employees to ensure transparency and demonstrate that agency leadership does in fact hold wrongdoers accountable.

Recent Changes in Policy and Process:

The Forest Service has expanded emphasis on the work environment and intensified efforts to train managers and supervisors at all levels in the agency to understand their responsibilities for a safe and supportive working environment. In September 2016, the agency issued an Agency-wide Anti-Harassment policy, including sexual harassment, sexual assault, and workplace bullying. The policy requires all employees who witness or are aware of harassment to report it to a management official. The intent of this policy is to strengthen our current Anti-Harassment Policy to better assist Agency leaders in maintaining a positive, safe work environment and in carrying out their responsibilities when allegations of harassment are raised. The updated policy outlines the Forest Service's commitment and strong, zero tolerance stance for any type of harassment. Key aspects of the enhanced policy are focused on:

- 1) Ensuring those found to have engaged in harassment are held accountable for their actions;

- 2) Taking safety precautions immediately and providing victims necessary support;
- 3) Providing and maintaining a confidential reporting process along with guidelines for employees alleging harassment or employees who witness harassment;
- 4) Defining the types of harassment and types of behaviors that constitute harassment;
- 5) Mandating new requirements and parameters for supervisors and managers to conduct mandatory inquiries and request subsequent formal investigations into allegations of harassment;
- 6) Establishing mandatory notification requirements and defining the roles of responsible officials upon receipt allegations of harassment are made; and
- 7) Requiring a more stringent/enhanced notification, reporting, and tracking requirements for cases alleging sexual harassment.

The enhanced policy is incorporated within Forest Service Manual (FSM) 1700, Chapter 1765.

Policy Statement:

The Forest Service is committed to creating and maintaining a work environment in which all people are treated with dignity, fairness, and respect, and are free from harassment. This includes both Equal Employment Opportunity (EEO) related and non-EEO related harassment. This policy applies to all Forest Service employees in their working relationship with Federal employees, non-Federal employees, and the public. The policy also applies to persons employed under contract or other formal agreements with the Forest Service.

The Forest Service workplace will be characterized by mutual trust and the absence of intimidation, oppression, and exploitation. The Agency will not tolerate:

1. Sexual harassment which is a particularly egregious form of harassment and a form of sex discrimination prohibited by law and regulation. Sexual harassment is not condoned in Forest Service programs, activities, in the work environment, or in situations that impact the work environment (FSM 1765.05).
2. Any use of derogatory words, phrases, epithets, gestures, pictures, drawings, or cartoons that:
 - a. Deal with or target race, color, religion, age (40 years or older), disability (physical or mental), national origin, sex (gender), sexual orientation, genetic information, marital, and /or parental status regardless of the means of delivery (that is, verbal or electronic communication); or
 - b. Intimidates, abuses, offends, or creates a hostile work environment.
3. The use of Government issued and/or provided electronic devices (computers, cellular telephones, tablets, internet, email and/or other equipment) to harass, demean, or degrade another. This prohibition includes the viewing, downloading, storage, or distribution of pornographic or sexually explicit material on such devices whether in the workplace or not, whether on duty or off duty, and whether or not another employee witnesses it.

4. Viewing or displaying pornographic or sexually explicit materials that may be viewed by other employees during the course of employment regardless of the means or methods (such as, but not limited to, print, hard copy, audio or electronic).

5. Retaliation against any employee for reporting matters under this policy, or for assisting in an inquiry related to such a report.

Reports of harassment must be handled in a confidential manner, to the extent allowed by law (FSM 1765.07). Only individuals who need to know in order to determine if harassment occurred and to develop recommendations and implement corrective measures shall be made aware of harassment reports. As appropriate, measures will be taken to ensure that retaliation will not occur before and during the inquiry or investigation.

Appropriate steps must be taken to investigate any known incidents or reports of harassment and to remedy situations (FSM 1765.08). This includes implementing appropriate corrective and disciplinary action when a record of inquiry supports a finding that harassment has occurred, or when an employee, Manager, or Supervisor fails to follow the procedures in this policy.

Employees who believe they have experienced harassment are encouraged to voice their objections concerning this behavior to the offending person and to report such incidents to a management official or report the harassment through one of the harassment hotlines (FSM 1765.05).

Investments to Support the Revised Policy:

In 2016, the agency had three EEO complaints alleging sexual harassment and received 44 complaints based on gender. This is the lowest level in the last 5 years. While there are positive trends, there is still needed improvement, both with regard to the EEO program and creating an overall work environment free of harassment. In fiscal year (FY) 2017, the Forest Service is increasing investment in improving the work environment and prevention of harassment through structured and enhanced program initiatives. The FY 2017 investments focus on components of the Anti-Harassment program that are necessary to enhance the program's effectiveness. These components and investments include:

- **Add additional formal misconduct investigators** - Supports the Agency's ability to conduct a formal misconduct investigation in every case involving harassment/misconduct of a sexual nature. Funding supports up to 90 additional investigations per year. Status - Completed February 2017.
- **Centralized Harassment Reporting Center** - Establish a Centralized Harassment Reporting Center staffed by professionally trained contractors (3-4 people). Reporting Center includes: 1) 24-hour hotline; 2) automated system to simultaneously notify appropriate leaders as well as Employee Relations and Civil Rights staff and; 3) dedicated web-site and email reporting mechanism. The call in center allows employees to make anonymous complaints, ensuring confidentiality. Status—expected mid-July 2017.

- **Robust Data/Metrics Analysis, Program Compliance** - Currently being developed in-house, this capability will include the review of individual cases to objectively and collectively identify trends, determine appropriate case handling, and make recommendations to leadership on necessary changes. This tool will support the agency's ability to quickly search, analyze, and upwardly report cases status. Status - expected mid-July 2017.
- **Design and Implement Marketing and Awareness Strategy** – Developing and distributing a variety of media and web tools, develop wallet card sized information, and posters for worksites. Also developing short videos that describe the agency's stance on harassment and retaliation as well as identify these behaviors and publish the hotline number and web address for reporting inappropriate behavior.
- **Agency-wide training** - Civil Rights and Employee Relations provided anti-harassment training to Agency leadership in April 2017 and again to new employees at New Employee Orientation in California in May 2017. Civil Rights and Employee Relations continue to work collaboratively to fine-tune the training and will deliver the training to all FS employees in the fall of 2017. The Agency plans to continue a long-term, sustained training effort to change the culture and address harassment in workplace.

Results of the Policy to Date:

The amended anti-harassment policy, and the continued dedication of Forest Service leadership time and attention to this most important issue of employee conduct, is improving the work environment in the Forest Service for all employees. Since the policy went into effect at the end of September 2016, 57 cases of sexual harassment have been reported and 35 of those cases have been closed.

Of the closed cases, some type of sexual misconduct was substantiated and the responsible individual was disciplined. In some cases more than one individual was associated with a case. In 14 cases the charges were not substantiated. The substantiated cases resulted in the following disciplinary actions:

- 2 Removals/Terminations
- 5 Suspensions
- 2 Letters of Reprimand
- 7 Letters of Warning
- 6 No action due to employees' resignation, retirement, or otherwise being off the payrolls.

In summary, over the past 3 years the Forest Service has removed or terminated close to 40 employees for engaging in sexual misconduct. In addition to the two above in 2017, 17 employees were removed in 2014, 14 employees in 2015, and five employees in 2016. These numbers do not include employees who chose to resign or retire before their discipline could be effectuated.

The Forest Service is an agency that is proud of its employees, their accomplishments, and the services we provide to the American people. We are making sure every employee understands our commitment to fair and equitable treatment will be strictly followed and recognized as an integral part of every aspect of being a Forest Service employee.