



FMCS

FEDERAL MEDIATION & CONCILIATION SERVICE

Anti-Harassment Policy Statement **December 19, 2018**

I am pleased to announce that the Federal Mediation and Conciliation Service (FMCS) has a new anti-harassment Directive, the **Elimination and Prevention of Harassment Directive (Directive 5809)**. This is very important to me and to our Agency. I strongly encourage you to read the Directive, attend the upcoming training (to be announced), and join me in working to ensure that FMCS remains a model employer free from harassment.

FMCS is the U.S. government's premier mediation and conflict resolution agency. We are also ranked number one in the government's "best places to work" among small agencies. We are committed to maintaining a workplace free from all forms of harassment and discrimination. Toward that end, all FMCS employees and contractors must be committed to ensuring a professional and productive working environment by engaging in respectful behavior that reflects the highest standard of conduct at all times. This includes refraining from engaging in any form of discrimination or harassment. All employees must fully support this policy and refrain from engaging in harassing conduct.

Harassment in the workplace, like other forms of discrimination, has an adverse impact on employee morale and productivity. Harassment includes, among other things, demeaning remarks or insulting jokes, epithets or slurs, negative stereotyping, disparaging or derogatory remarks about a person's accent or attire, and ridicule or insults about a person's physical or mental disability. Sexual behavior at work can create an intimidating hostile work environment, if pervasive or condoned by management. Examples of inappropriate sexual behavior are pressure for dates, threats and promises based on trading sexual favors, or any behavior with sexual overtones that is intimidating or offensive to the recipient or observer of the behavior.

Managers and supervisors should take prompt action to address all complaints of harassment and ensure that the individual who initiates a complaint of harassment or provides information related to the complaint is not subjected to retaliation. Employees, managers, or supervisors found to have engaged in harassing conduct will be subjected to appropriate disciplinary or adverse action, up to and including reprimand, suspension, demotion, or removal. Preventing harassment is everyone's responsibility and all reports of harassment will be taken seriously and handled appropriately.

In an effort to prevent harassment, we have developed the Elimination and Prevention of Harassment Directive that clarifies the avenues employees have to address harassment complaints and provides a new process within the Office of Human Resources. Under this Directive, any employee who witnesses harassment or who feels he or she is being harassed, even if such conduct is not severe or pervasive, should immediately report the behavior to any supervisor or manager, the Equal Employment Opportunity (EEO) Director, an EEO Counselor, or the Director of Human Resources. There is no such thing as an innocent bystander to harassment.

Please review the attached Directive 5809. If you have additional questions, please contact the FMCS EEO Director, Denise McKenney, at (202) 606-5448 (dmckenney@fmcs.gov) or the Human Resources office.

Sincerely,

A handwritten signature in blue ink that reads "Richard Giacalone".

Richard Giacalone, Acting Director
Federal Mediation & Conciliation Service



DIRECTIVE 5809: ELIMINATION AND PREVENTION OF HARASSMENT

1. Purpose:

- a. This Directive is intended to ensure that the Federal Mediation and Conciliation Service is taking all necessary steps to prevent and eliminate sexual harassment and other forms of harassment which are prohibited by applicable federal law. This Directive: (1) informs employees about what types of behavior are prohibited in the workplace; (2) establishes an effective complaint reporting procedure; and (3) sets forth responsibilities and procedures for addressing allegations of harassment. The procedures establish an alternative to the Equal Employment Opportunity (EEO) process to address harassment allegations in the workplace and provide appropriate officials with the opportunity to promptly correct harassing conduct. This anti-harassment Directive is part of FMCS' ongoing efforts to provide a model workplace for its employees. Discriminatory harassment against federal employees, contractors or applicants for employment will not be tolerated at FMCS.
- b. It is the intent of FMCS to prevent harassment of any kind and to stop it before it rises to the level of a violation of federal law. Therefore, any employee who engages in such improper conduct will be subject to appropriate disciplinary action. Supervisory or management officials who either condone or fail to act promptly to correct alleged harassing conduct that is brought to their attention will also be subject to appropriate disciplinary action.
- c. Confidentiality of allegations will be maintained to the fullest extent possible. Complete confidentiality cannot be guaranteed, since an effective investigation may require the disclosure of certain information to the alleged harasser, potential witnesses and agency officials. Information about the harassment complaint will be shared only with those individuals who need to know.

2. Authority: Federal laws prohibit harassment in the workplace due to race, color, religion, sex, national origin, age, physical/mental disability, or genetic information. These laws also prohibit retaliation against any employee or applicant who opposes an unlawful employment practice or who participates in any procedure alleging a discriminatory practice made unlawful by Title VII of the Civil Rights Act of 1964, as amended, the Equal Pay Act of 1963, the Age Discrimination in Employment Act of 1967, the Rehabilitation Act of 1973, as amended, the Civil Rights Act of 1991, the Americans with Disabilities Act of 1990, and the Genetic Information Nondiscrimination Act of 2008. See also the Whistleblower Protection Act of 1989. Executive Orders 13087 and 13152 prohibit discrimination and harassment against federal employees and applicants on the basis of sexual orientation and parental status.

3. Applicability: This Directive applies to all FMCS employees, contractors, interns and job applicants.



4. Definition of Harassment in the Workplace:

- a. Harassment in the workplace is any unwelcome verbal or physical conduct based on race, color, religion, sex, national origin, age, physical or mental disability, sexual orientation, transgender status, genetic information, reprisal for participating in protected EEO activity or any other protected group status. Harassment becomes unlawful when:
 - b. Enduring the offensive conduct becomes a condition of continued employment; or
 - c. The conduct is severe or pervasive enough to create a work environment that a reasonable person would consider intimidating, hostile, or abusive; or
 - d. The harassing conduct causes significant change in the employee's terms, privileges, or conditions of employment.

5. Forms of Harassment:

- a. A hostile environment can result from the unwelcome conduct of FMCS employees, customers, contractors, or anyone else with whom the employee interacts on the job, when the unwelcome conduct renders the workplace atmosphere intimidating, hostile, or offensive.
- b. Prohibited behaviors in the Workplace include but are not limited to:
 - telling off-color jokes concerning race, sex, disability, or other protected bases;
 - epithets or slurs about a person's race, national origin, or religious beliefs;
 - disparaging or derogatory remarks about a person's accent or attire;
 - negative stereotyping;
 - ridicule or insults about a person's physical or mental disability;
 - profanity or vulgar language directed toward members of one protected group;
 - graffiti or materials in the workplace that disparage a group, such as sexually suggestive or racially insensitive pictures;
 - unnecessary touching;
 - commenting on physical appearance;
 - using indecent gestures or crude language;
 - sabotaging a person's work;
 - engaging in hostile physical conduct such as obstructing a person's path or grabbing a person;
 - general uncivil conduct (slamming files, throwing objects, etc.).



c. Unwelcome conduct is conduct that the employee did not invite or solicit and that the employee regards as undesirable or offensive. The standard for determining whether verbal or physical conduct is sufficiently severe or pervasive to create a hostile work environment is whether a reasonable person in the same or similar circumstance would find the conduct intimidating, hostile, or abusive. Whether an instance or a pattern of harassing conduct is severe or pervasive is determined on a case-by-case basis, with consideration paid to the following factors:

- the frequency of the unwelcome discriminatory conduct;
- the severity of the conduct;
- whether the conduct was physically threatening or humiliating, or a mere offensive utterance;
- whether the conduct unreasonably interfered with work performance;
- the effect on the employee's psychological well-being; and
- whether the harasser was a superior within the organization.

6. Rights and Responsibilities:

a. All FMCS employees shall be responsible for:

- 1) Acting professionally and refraining from harassing conduct;
- 2) Becoming familiar with the provision of this Directive, complying with all requirements of the Directive, and cooperating with any inquiry under this Directive; and
- 3) Promptly reporting harassing workplace conduct with the goal of eliminating such conduct quickly and effectively, even in cases in which the reported conduct may not be so severe and pervasive so as to constitute a violation of federal law.

b. All FMCS supervisors and managers shall be responsible for:

- 1) Acting promptly and appropriately to prevent harassment in the workplace and to prevent retaliation against those who complain of harassment;
- 2) Reporting, pursuant to procedures set forth in section 7 of this Directive, any incident of harassing conduct brought to their attention or personally witnessed;
- 3) Receiving and handling allegations of harassing conduct promptly and appropriately, utilizing the procedures set forth in section 7 of the Directive;
- 4) In consultation with the HR Director, providing interim relief to alleged victims



of harassment pending the outcome of the investigation to ensure that further misconduct does not occur; and

- 5) Using the procedures set forth below, in consultation with the HR Director, taking prompt and appropriate corrective and disciplinary action, up to and including removal, against personnel who have engaged in harassing conduct.

7. Procedure for Reporting Harassment:

- a. An employee who believes he or she or others are being subjected to conduct that may constitute harassment or a hostile or intimidating environment is strongly encouraged to report the behavior or situation immediately to the Director of Human Resources. Harassment could include third party situations in which harassing comments are overheard. If the employee feels uncomfortable discussing the issue with the Director of Human Resources, the employee should contact his or her supervisor or another management authority.
 - b. In consultation with the appropriate departments, the Office of Human Resources will conduct a prompt, impartial and thorough investigation of all the circumstances surrounding the alleged incident, and will keep the complaint and investigation confidential to the extent practicable.
 - c. If the employee makes an allegation of harassment against someone outside the Agency (such as a vendor, subcontractor, or consultant), the Office of Human Resources will contact appropriate representatives of the outside firm to report the allegation.
 - d. Any FMCS employee who attempts to retaliate against a person who files a harassment complaint or who assisted in the investigation of a discrimination complaint will be subject to swift appropriate disciplinary action in accordance with FMCS Collective Bargaining Agreement and Directive 5805 (Disciplinary and Adverse Actions).
8. This Directive and its reporting procedures are separate and distinct from the EEO process, which focuses on making employees whole after they have experienced an allegation of illegal discrimination (including harassment) by issuing remedial relief, such as compensatory damages. This Directive does not replace an employee's EEO or other rights, including rights to file negotiated or administrative grievances and other appeals. Filing a report under this Directive does not satisfy the requirements for filing an EEO complaint, negotiated grievance or other procedure and obtaining remedies pursuant to them. Nor does this directive delay the time limits for initiating those procedures. If an employee wishes to file an EEO claim of discrimination, report harassment, seek guidance, counseling or file a claim of discrimination through EEO procedures, he or she should contact the FMCS EEO Director or an EEO Counselor within 45 days of the latest incident.