

Policy and Procedures for Preventing and Eliminating Harassing Conduct in the Workplace

I.

Purpose. It is the Federal Mine Safety and Health Review Commission's (FMSHRC) policy to ensure that every employee and applicant enjoy a non-hostile work environment free of discrimination or harassment of any kind. All employment decisions, such as hiring, promoting, training and rewarding, will be made exclusively on the basis of job-related criteria; e.g. employees' knowledge, skills, abilities and performance. Discrimination of any kind based on race, color, religion, sex (including pregnancy and gender identity), national origin, political affiliation, sexual orientation, marital status, disability, genetic information, age, membership in an employee organization, or other non-merit factor is forbidden and subject to appropriate disciplinary action. This policy is intended to assure that FMSHRC is taking all necessary steps to prevent sexual harassment and other forms of harassing conduct in the workplace, and to correct any harassing conduct that may occur before it becomes severe or pervasive.

II.

Definition of Harassing Conduct. For the purposes of this policy, harassing conduct is defined as any unwelcome verbal or physical conduct based on race, color, religion, sex (including pregnancy and gender identity), national origin, political affiliation, sexual orientation, marital status, disability, genetic information, age, membership in an employee organization, or other non-merit factor when:

- A. The behavior can reasonably be considered to adversely affect the work environment; or
- B. An employment decision affecting the individual is based upon the individual's acceptance or rejection of such conduct.

III.

Policy Against Harassing Conduct. FMSHRC does not tolerate harassing conduct by anyone in the workplace. It is the policy of FMSHRC to maintain a work environment free from harassing conduct described above.

FMSHRC has determined that the most effective way to limit harassing conduct is to treat it as misconduct, even if it does not rise to the level of harassment actionable under Title VII of the Civil Rights Act of 1964, as amended. A hostile environment claim under Title VII usually requires the demonstration of serious, or a pattern of, offensive conduct. FMSHRC will not wait for such a serious conduct or a pattern to emerge before taking remedial action. Rather, FMSHRC will act before the harassing conduct is so pervasive and offensive as to constitute a hostile environment. In the usual case, a single utterance of an ethnic, sexual, or racial epithet that offends an employee would not be severe enough to constitute unlawful harassment in

violation of Title VII; however, it is FMSHRC's view that such conduct is inappropriate, must not be repeated and will be treated as employee misconduct. Similarly, FMSHRC is committed to maintaining a non-hostile workplace free of discriminatory harassment. A hostile work environment can arise from ridicule, abuse, insults or derogatory comments that are directly or indirectly based on race, color, national origin, sex, sexual orientation, religion, age, disability (including pregnancy and gender identity), genetic information, marital status, political affiliation, parental status, or non-job related conduct. Personal conversations that can be overheard by another employee who consider the conversation offensive can also create a hostile environment. Likewise, suggestive pictures, cartoons, calendars, electronic e-mail and internet usage in the work environment that may be seen by other employees as containing offensive material are examples of harassing behaviors which will be treated as misconduct. The prohibition against harassment covers the conduct of both employees and non-employees in FMSHRC workplaces.

FMSHRC will not tolerate retaliation against any employee for making a good-faith report of harassing conduct under this policy, or for assisting in any inquiry into such a report. Complaints of such retaliation shall be handled pursuant to the procedures in this directive.

This Policy supersedes any and all other previous policies on harassment at FMSHRC.

IV.

Procedures and Responsibilities.

- A. Each employee shall be responsible for:
 - 1. Acting professionally and refraining from harassing conduct;
 - 2. Becoming familiar with the provisions of this Policy, complying with all requirements of this Policy, and cooperating with any inquiry under this Policy; and
 - 3. Promptly reporting any incident of harassing conduct that he or she experiences or witnesses before it becomes a pattern of misconduct so pervasive and offensive as to constitute a hostile work environment. FMSHRC cannot correct harassing conduct if the conduct is not known. When an employee unreasonably fails to take advantage of this procedure and does not promptly report an incident of harassing conduct as set forth herein, FMSHRC reserves the right to raise this failure to report as a defense against a suit for harassment.
- B. All supervisors and managers shall be responsible for:
 - 1. Acting promptly and appropriately to prevent harassing conduct in the

workplace, and retaliation against those who complain of harassing conduct;

2. Reporting, pursuant to procedures set forth in this policy, any incident of harassing conduct that they witness or is otherwise brought to their attention;
3. Receiving and handling an allegation of harassing conduct promptly and appropriately, utilizing the procedures set forth in this policy;
4. In consultation with the Chairman, Executive Director and General Counsel, providing interim relief to alleged victims of harassment pending outcome of the investigation to ensure that further misconduct does not occur.

C. Reporting Harassment. The procedures for reporting incidents of harassing conduct are as follows:

Any person who believes that he or she has been the subject of an incident of harassing conduct should report this matter to at least one of the following contacts: any FMSHRC supervisor or manager; either of the independent human resource specialists provided by Bureau of Fiscal Services (“BFS”), Natasha Anderson at (304) 480-8174 or Dawn Medaglio at (304) 480-8204; or EEO Director Tanya Whisnant at (202) 434-9973.

D. The supervisor, manager, EEO Director, or BFS Human Resource specialist who receives an allegation or witnesses harassing conduct shall immediately:

1. Inform either the General Counsel, the Executive Director, or the Chairman and seek guidance as to further actions;
2. Document the allegation received and his or her efforts to address it;
3. Following a report of harassing conduct, management officials are responsible for monitoring the situation to prevent further incidents of harassment or retaliation against individuals who have reported harassment or participated in the inquiry.

E. Upon receipt of an allegation of harassing conduct, the General Counsel, the Executive Director, or the Chairman shall promptly:

1. Initiate an inquiry or investigation into the alleged harassing conduct in conjunction with the Human Resources Specialists at BFS;
2. Take action to stop any harassing conduct and prevent further harassment

while the allegations are being investigated, including granting interim relief to the alleged victim of harassing conduct if appropriate;

3. Ensure that a written summary of the inquiry or investigation is prepared. The summary of the investigation or inquiry and other documentation prepared under this procedure shall be kept confidential to the extent possible. Information may only be disclosed to those officials and employees with a need to know in order to carry out the purpose and intent of this policy or in litigation in which the information may be relevant.
4. Upon completion of the inquiry, shall promptly evaluate the evidence and determine the appropriate action to take.
5. Where the inquiry establishes that an employee did engage in harassing conduct, he or she shall be subject to appropriate corrective action, up to and including removal.
6. Where the inquiry establishes that a manager or supervisor did not properly carry out the responsibilities provided for under this policy, he or she shall be subject to appropriate corrective action up to and including removal.
7. If any official is the alleged offender, he or she will not take part in conducting the inquiry or the determination of appropriate corrective action.

V.

Federal Remedy Equal Employment Opportunity (“EEO”) Complaint Process

The procedures contained in this policy are separate from the EEO complaint process. An employee or applicant who chooses to pursue a Federal remedy alleging harassment or other discrimination based on race, color, religion, sex (including pregnancy, gender identity and sexual orientation based on sex-stereotyping), national origin, disability, genetic information, age or retaliation, and who wishes to file a complaint must contact FMSHRC’s EEO Director, Tanya Whisnant, **within 45 days of the discriminatory action or incident**. The only circumstances where complaint allegations may be raised beyond the 45-day time frame are continuing violations, situations where the employee was unaware an action might have been taken based on discrimination until a later action occurs; or extreme extenuating circumstances. In order to pursue a Federal remedy, refer to the procedures set forth in FMSHRC’s EEO Discrimination Complaint Process, posted on the employee bulletin board and on FMSHRC’s website at www.fmshrc.gov.

VI.

Remedy for Discrimination based on Sexual Orientation, Political Affiliation, Marital Status, Membership in an Employee Organization or Other Non-merit Factor

Any employee who believes that they have experienced harassing conduct or discrimination based on sexual orientation, political affiliation, marital status, membership in an employee organization or other non-merit factor is encouraged to report such concerns according to the procedures set forth in this policy so that the matter may be addressed. An employee who chooses to pursue a Federal remedy based on these bases must contact:

U. S. Office of Special Counsel
Complaints Examining Unit
1730 M Street, NW, suite 218
Washington, DC 20036
Telephone 800-872-9855 or 202-254-3691
(TTY) 1-800-877-8339
www.osc.gov

VII.

For Additional Information

Relating to the Federal complaint processing procedures, contact Tanya Whisnant, EEO Director, at 202-434-9973, twhisnant@fmshrc.gov.

Relating to laws enforced by the Equal Employment Opportunity Commission (“EEOC”), refer to www.eeoc.gov or call 800-669-4000; (TTY) 1-800-669-6820.

Relating to laws enforced by the Office of Special Counsel (“OSC”), refer to www.eeoc.gov or call 1-800-872-9855; (TTY) 1-800-877-8339.