

Equal Employment Opportunity

Office of Equal Employment Opportunity (OEEO)

Office of Equal Employment Opportunity

- **EEO Complaints**

- An efficient, fair, and impartial complaint process that includes an option for resolving disputes through alternative dispute resolution

- **Proactive Prevention & Education**

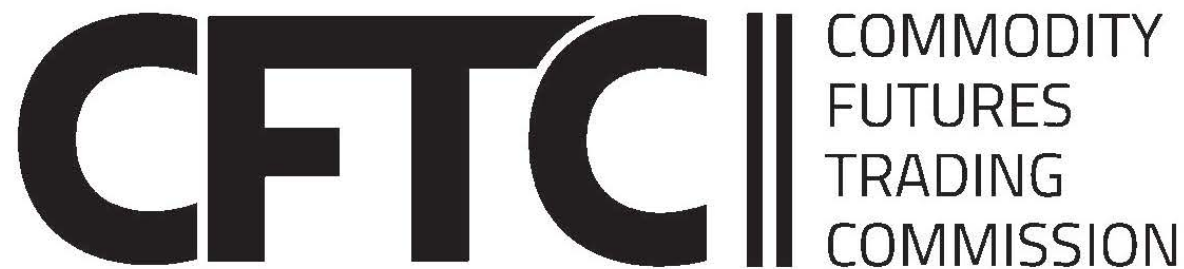
- Training for supervisors and employees
- Educational content and outreach
- Consultation and guidance

- **Compliance & Reporting**

- Legal compliance
- Transparency and accountability

Overview

1. Federal Laws & Regulations Prohibiting Employment Discrimination
2. Theories of Discrimination
3. EEO Complaint Process
4. No FEAR Act



1. Federal Laws and Regulations Prohibiting Employment Discrimination

What is Equal Employment Opportunity?

What is Equal Employment Opportunity?

- Employees have the right to work free from unlawful discrimination.
- Unlawful discrimination occurs when you are being treated differently than others (or are harassed) because of a protected basis.

Statutes Prohibiting Employment Discrimination

- **Title VII of the Civil Rights Act**
 - Race
 - Color
 - Religion
 - Sex
 - National Origin
 - Reprisal (for engaging in protected EEO activities)
- **Rehabilitation Act**
- **Age Discrimination in Employment Act (ADEA)**
- **Equal Pay Act (EPA)**
- **Genetic Information Nondiscrimination Act (GINA)**
- **Pregnant Workers Fairness Act (PWFA)**

Additional Federal Protections from Discrimination

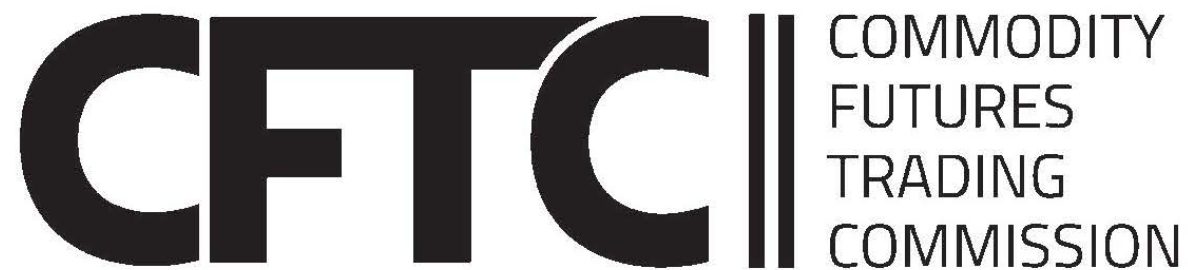
- **EEOC Regulations and Management Directives**
- **Executive Orders**
 - 13152: Parental Status
 - 14173: Ending Illegal Discrimination and Restoring Merit-Based Opportunity
- **CFTC Policies and Procedures**
- **EEO and Anti-Harassment Statement (2024)**
- **Reasonable Accommodation Policy and Procedure (2023)**
- **Anti-Harassment Policy and Procedure (2023)**
- **Master Collective Bargaining Agreement (2019)**

EEO Protected Bases

- Race
- Color
- Religion
- Sex
- National Origin
- Age
- Disability
- Genetic Information
- Pregnancy, Childbirth, or Related Medical Conditions

Examples of Employment Matters

- Hiring and firing
- Performance evaluations
- Assignments
- Pay and benefits
- Training
- Transfer
- Harassment
- Reasonable accommodations
- Constructive discharge
- Employee references
- Terms & conditions



2. Theories of Employment Discrimination

Theories of Discrimination

- Disparate Treatment
- Disparate Impact
- Harassment
- Reprisal
- Failure to Provide Reasonable Accommodation

Disparate Treatment & Impact

- **Disparate Treatment**

- An individual alleges that the agency treated another individual differently because of that individual's membership in a protected class

- **Disparate Impact**

- Agency's neutral policy or practice adversely affects a protected class
- Burden shifts to agency to show business necessity



Harassment True or False?

- Asking a coworker to go out and have lunch together constitutes sexual harassment



Harassment True or False?

- Teasing a coworker daily because of his limp and leg braces, mimicking his gait, and calling him names like “Forrest Gump”

What is Harassment?

- Harassment is any unwelcome verbal or physical conduct, because of a protected basis, that is so subjectively and objectively offensive as to alter the conditions of an individual's employment.
- Harassment becomes unlawful when it:
 - Results in a tangible employment action, or
 - Creates a hostile work environment
 - Severe or pervasive
 - Objectively and subjectively hostile or offensive

Examples of Harassment

- Jokes, slurs, epithets, name calling, mimicking an accent
- Assaults or threats
- Intimidation and insults
- Subtle or blatant pressure
- Physical contact
- Offensive objects or pictures
- Inappropriate conduct outside workplace, including on social media

Harassment Prevention

- Be careful with humor
- Respect personal boundaries
- Think before you speak or act
- Avoid repeated or unwelcome behavior

CFTC's Anti-Harassment Policy

- “It is the policy of the CFTC to address harassment or offensive conduct at the earliest possible stage before it can become “severe or pervasive” harassment within the meaning of antidiscrimination laws.” *CFTC Policy: Anti-Harassment* (APP-250.1-POL), page 2.
- However, “conduct need not rise to the level of illegal harassment to be considered offensive conduct, which is also prohibited by this policy.” *Id.*

Anti-Harassment Procedure

- Report conduct to any supervisor or management official, Workforce Relations Section (WRS), OEEEO, or OIG. CFTC Procedure: Anti-Harassment (APP-250.1-PRO), page 13.
- WRS will hold an intake, conduct a prompt, thorough, and impartial investigation, and prepare a report. Id, page 14-18.
- Separate and apart from the EEO process; you can file with WRS and with EEO concurrently. Id, page 14.
- **Questions or to Report:** ahp@cftc.gov

Supervisory Responsibilities

- Immediate, effective, and corrective action. Report it to Workforce Relations Section (WRS). It is your responsibility as a supervisor to ensure a work environment that is free from offensive or harassing conduct. CFTC Policy: *Anti-Harassment (APP-250.1-POL)*, page 7.
- Reassure the employee that CFTC takes harassment allegations seriously. Ask to be notified of any further incidents. Id, page 7.
- Do not guarantee a complaint will be kept “confidential.” Id, page 4.



What is Reprisal?

- An adverse action taken against an individual because of:
 - Participation in EEO activity, or
 - Opposition to discrimination or harassment in the workplace

What Kind of Adverse Action?

- One that is likely to have a “chilling effect” and deter a reasonable employee from exercising his/her EEO rights
- “Per se” Violations
 - Ex.: “I wish you would have talked to me first . . .”
 - Ex.: Making note of EEO activity during performance evaluation
 - Ex.: Disclosing an employee’s EEO activity inappropriately

What is a Reasonable Accommodation?

- A change or modification to the way things are normally done or to the work environment to allow employees or applicants to enjoy equal employment opportunities.
- Reasonable accommodations are available:
 - Based on disability
 - Based on religion
 - Based on pregnancy, childbirth, or related medical conditions

Reasonable Accommodations: Disability

- Under the Rehabilitation Act of 1973, the CFTC is required to provide reasonable accommodations to qualified employees or applicants with disabilities unless doing so would cause an undue hardship
- Examples:
 - Purchasing or modifying equipment or devices
 - Arranging for sign language interpretation for an employee who is deaf





Reasonable Accommodations: Religion

- In accordance with Title VII of the Civil Rights Act of 1964, the CFTC must reasonably accommodate an employee's or applicant's sincerely held religious beliefs or practices unless doing so would result in substantial increased costs in relation to the conduct of its particular business
- Examples:
 - Adjusting work schedules or deadlines to observe religious holidays



Reasonable Accommodations: Pregnancy, Childbirth, RMC

- Under the Pregnant Workers Fairness Act, the CFTC must provide reasonable accommodations to qualified employees or applicants with limitations related to pregnancy, childbirth, or related medical conditions, unless such accommodations would cause an undue hardship
- Example:
 - Modifying work schedules for an employee with severe morning sickness

Request

Interactive
Process

Decision

Implementation

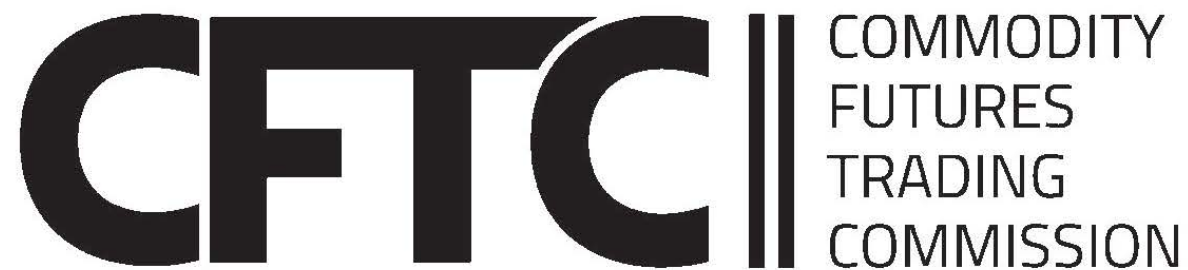
Reasonable Accommodation Process

RA Policy and Procedure are on CFTCNet

Contact: workforcerelations@cftc.gov

Supervisory Responsibilities

- Learn to recognize a request for an accommodation based on disability; requests can be made orally and in “plain English”
- All medical information must be kept strictly confidential, and be kept in a separate locked or secure file
- When in doubt, ask: “How can I help?”
- **Questions?** workforcerelations@cftc.gov



3. EEO Complaint Process

Who Can File an EEO Complaint?

- **Employee (current or former)**
- **Applicant**
- **Contractor**
 - At CFTC, contractors are provided EEO counseling
 - A determination will be made regarding status as an “employee”

When does the EEO Process Start?

- Complainant must contact OEEEO within 45 calendar days of:
 - The alleged discriminatory event, or
 - Effective date of a personnel action, or
 - Awareness of alleged discrimination
- And express an intent to commence the EEO process

Initial Interview

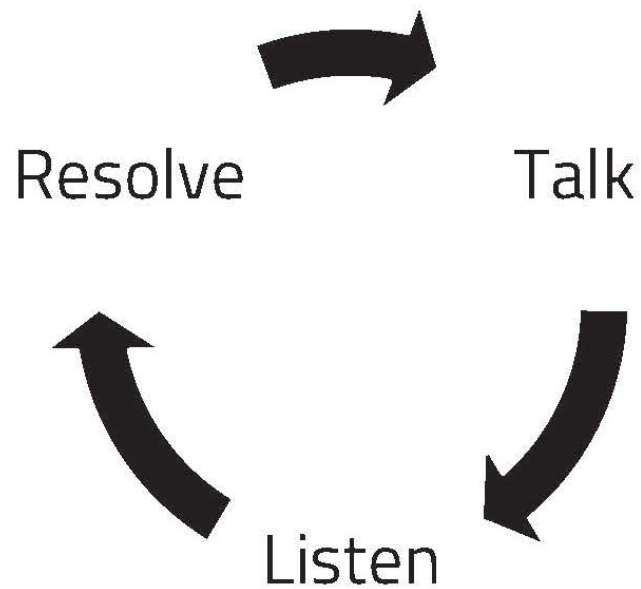
Limited inquiry and
resolution attempts

Notice of Right to File

Informal Stage

30 calendar days, up to 90 days max

Alternative Dispute Resolution



- **Mediation:** a conversation focused on finding resolution
 - Parties in control
 - Neutral mediator
 - Available any time
 - Settlement agreement
 - Avoids expensive costs

Filing of
formal
complaint

Acceptance
or dismissal
of claims

Investigation

Election
Letter

Decision

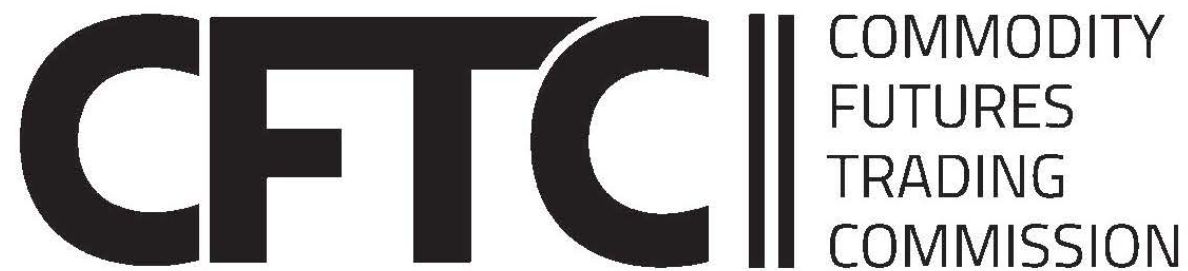
Formal Stage

15 calendar days to file formal complaint

180 calendar days to conduct investigation

Supervisory Responsibilities

- You're a first line of defense, and silence is not neutrality
- Retaliation is strictly prohibited; be mindful of your words and behaviors
- Accommodations start with you
- Know your policies and resources: explore the Commission Learning Academy for extensive free trainings and resources for effective supervision and to develop interpersonal skills



4. No FEAR Act

No FEAR Act

What is the No FEAR Act?

- Congress enacted the Notification and Federal Employee Anti-Discrimination and Retaliation (No FEAR) Act on May 15, 2002
- It requires “Federal agencies be accountable for violations of antidiscrimination and whistleblower protection laws”

How?

- Post information on the CFTC’s public No FEAR Act website quarterly, and report to Congress annually
- Train and notify employees on rights and responsibilities under anti-discrimination, whistleblower protection, and retaliation laws
- Reimburse Treasury Judgment Fund for payments made

Contact Us

- Tanisha Cole Edmonds, Director, OEEEO
- Debra Roberts, Executive Assistant to Director
- John Sim, Associate Director
- Sarah Pauly, EEO Specialist
- Tonia Patterson, EEO Analyst

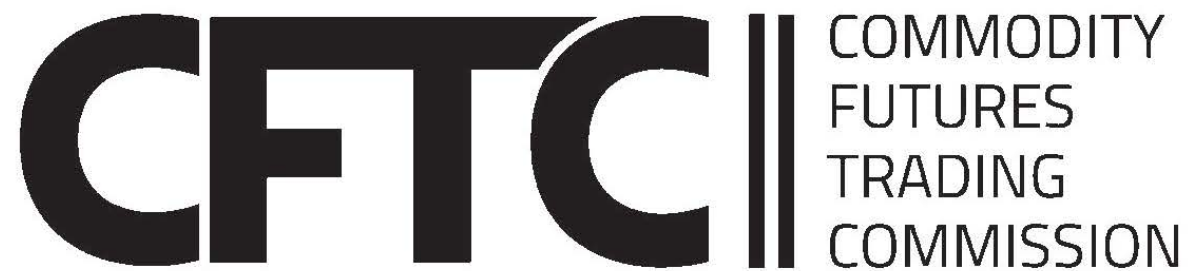
- **Office of Equal Employment Opportunity**

eeo@cftc.gov

202.418.5000

www.cftc.gov/eeo

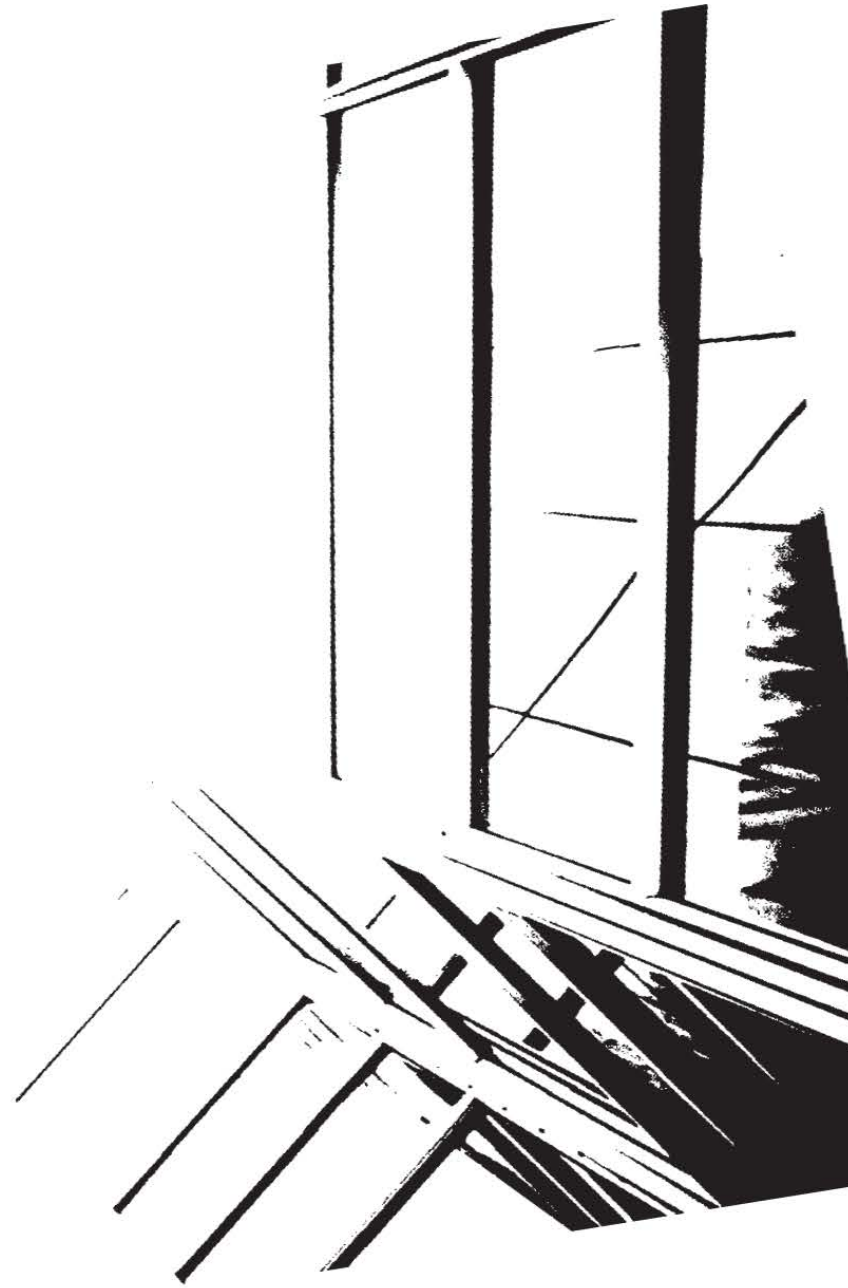
<https://cftcusgov.sharepoint.com/eeo>



Questions, Comments?

EEO Training for Supervisors & Managers

September 21, 2023 | MS Teams
John Sim, Associate Director, EEO
OMWI





Executive Order 9980

- After WWII, African-American veterans returned home and met racism and violence
- On July 26, 1948, President Truman issues EO 9980 and 9981, ordering the desegregation of the federal workforce and the military
- 16 years later, President Johnson signs the Civil Rights Act of 1964



29-C-8-39 Card Punch operators working on population cards, Negro section. Approximately 328,342,293 cards in 151 different forms were punched for the decennial census.



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EXECUTIVE ORDER

REGULATIONS GOVERNING FAIR EMPLOYMENT PRACTICES WITHIN THE FEDERAL ESTABLISHMENT

WHEREAS the principles on which our Government is based require a policy of fair employment throughout the Federal establishment, without discrimination because of race, color, religion, or national origin; and

WHEREAS it is desirable and in the public interest that all steps be taken necessary to insure that this long-established policy shall be more effectively carried out:

NOW, THEREFORE, by virtue of the authority vested in me as President of the United States, by the Constitution and the laws of the United States, it is hereby ordered as follows:

1. All personnel actions taken by Federal appointing officers shall be based solely on merit and fitness; and such officers are authorized and directed to take appropriate steps to insure that in all such actions there shall be no discrimination because of race, color, religion, or national origin.

2. The head of each department in the executive branch of the Government shall be personally responsible for an effective program to insure that fair employment policies are fully observed in all

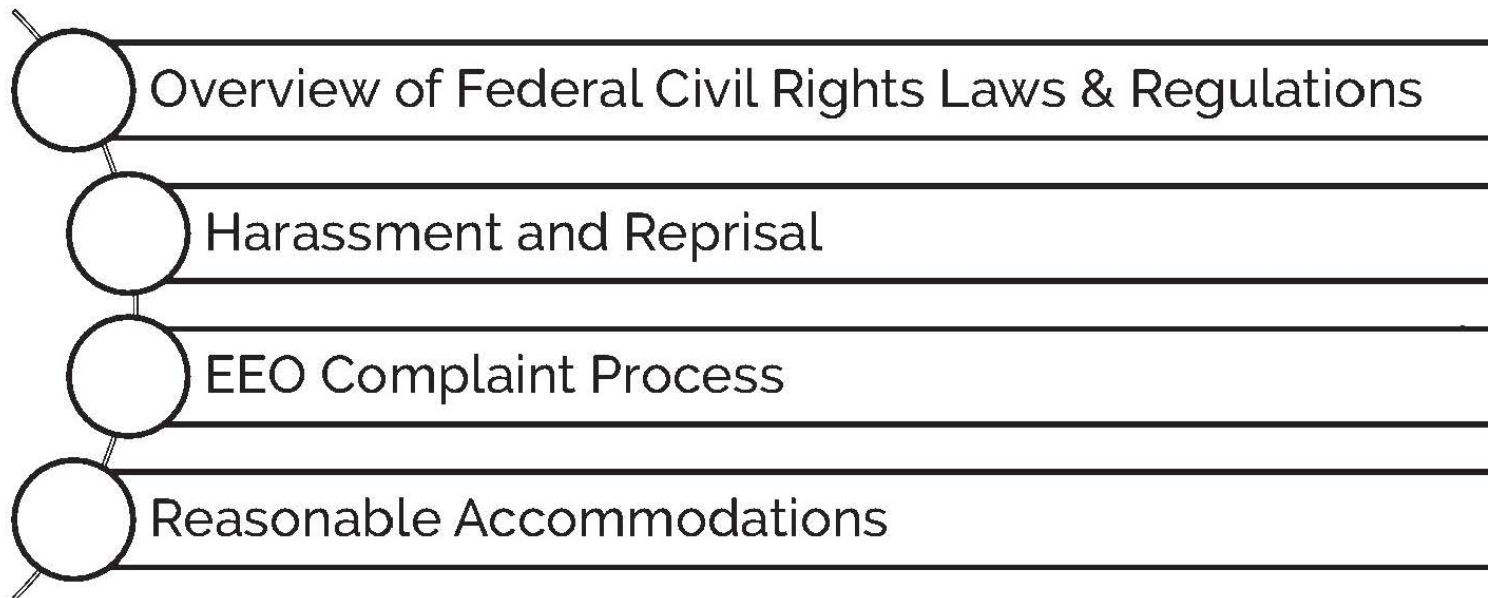
Opening Questions

What is discrimination?

What is equal employment opportunity?



Roadmap



Laws & Regulations



Equal Employment Opportunity @ CFTC

"... the CFTC should be a model workplace where all employees have the right to work and advance on the bases of merit and ability."

- Chairman Behnam, April 14, 2022



Equal Employment Opportunity @ CFTC

"... the CFTC should be a model workplace where all employees have the right to work and advance on the bases of merit and ability."

- Chairman Behnam, April 14, 2022



Federal Civil Rights Statutes

- Title VII of the Civil Rights Act of 1964
 - Race
 - Religion
 - Color
 - National Origin
 - Sex (Includes pregnancy, sexual stereotyping, gender identity)
 - Reprisal (for engaging in Protected EEO Activities)
- Age Discrimination in Employment Act (ADEA)
- Equal Pay Act (EPA)
- Rehabilitation Act
- Genetic Information Nondiscrimination Act (GINA)
- Pregnant Workers Fairness Act (PWFA)



Additional Protections

- EEOC Regulations at 29 CFR 1614
- Executive Orders
 - 13087: Sexual Orientation
 - 13152: Parental Status
- EEOC Management Directives 110 and 715
- CFTC's EEO and Anti-Harassment Statement (2022)



Types of Employment Matters

- Hiring and firing
- Performance evaluations
- Assignments
- Pay and benefits
- Training
- Transfer
- Harassment
- Reasonable accommodations
- Terms & Conditions
- Constructive discharge
- Employee references



Theories of Discrimination

- Disparate Treatment
- Disparate Impact
- Harassment
- Reprisal (for prior EEO activity)
- Failure to Provide a Reasonable Accommodation



Disparate Treatment & Disparate Impact

- Disparate Treatment
 - An individual alleges that the agency treated another individual differently because of that individual's membership in a protected class.
- Disparate Impact
 - Agency's neutral policy or practice adversely affects a protected class
 - Burden shifts to agency to show business necessity



Harassment & Reprisal



True or False?

If your intentions are good or harmless, your behavior cannot be considered harassment.



True or False?

Inviting your co-worker out to lunch constitutes sexual harassment.



What is Harassment?

Harassment is any unwelcome verbal or physical conduct, because of a protected basis, that is so subjectively and objectively offensive as to alter the conditions of an individual's employment.

- The conduct results in a tangible employment action, or
- The conduct was sufficiently severe or pervasive to create a hostile work environment



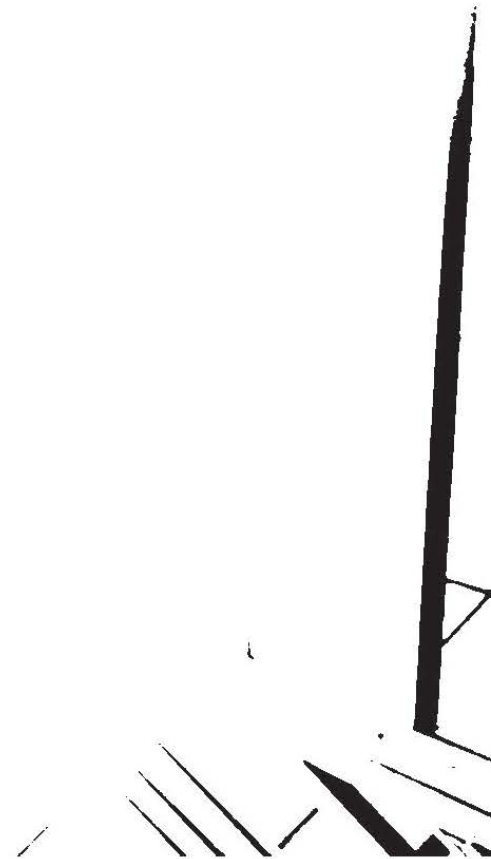
Who can be a harasser or be harassed?

- Harasser can be supervisor, co-worker, or another employee
- Victim does not have to be person harassed, but can be anyone affected by the offensive conduct



Examples of Harassment

- Jokes, slurs, epithets, name calling
- Assaults or threats
- Intimidation and insults
- Subtle or blatant pressure
- Physical contact
- Offensive objects or pictures
- Mimicking an accent
- Inappropriate conduct outside workplace



When is it Unwelcome Conduct?

“Unwelcome” conduct is where the individual did not solicit or invite the conduct and regarded the conduct as undesirable.

- Did the individual explicitly or implicitly communicate that the conduct was unwelcome?
- Submission does not mean the conduct was welcome
- Active participation may defeat the claim



Tangible Employment Action

A change in the employment status or benefits of an individual (e.g., promotion, demotion, hiring, termination).

- Only individuals with supervisory or managerial responsibility can commit this type of harassment
- If tangible employment action is shown to have resulted from harassment by a supervisor, the agency is automatically liable.



Hostile Work Environment

Unwelcome comments or conduct based on a protected basis, which unreasonably interferes with an individual's work performance, or creates an intimidating, hostile or offensive work environment.

Requirements:

- Severe or pervasive
- Objective and subjective



Agency Liability - HWE

If the HWE is by a management official, then . . .

Agency is liable even if management did not know about the harassing conduct unless:

- The agency can show it exercised reasonable care to promptly correct and prevent any harassment; AND
- The employee unreasonably failed to take advantage of any preventative or corrective opportunities offered by the agency or to avoid harm otherwise.



Agency Liability – HWE (con't)

If the HWE is by a non-management official, then . . .

Agency is liable if it knew or should have known of the harassment and failed to take immediate, effective and corrective action.

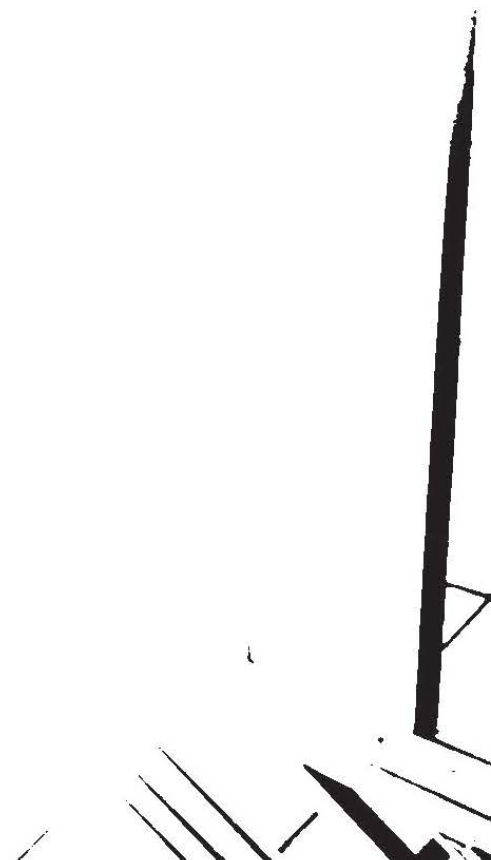
Agency knowledge is assumed if:

- The individual complains about the harassment, or
- The conduct occurred in the presence of a supervisor, or
- The conduct is widespread



What is immediate, effective, corrective?

Take it seriously. Look into it. Do something.



What is immediate, effective, corrective?

Take it seriously. Look into it. Do something.

- Obtain relevant information from victim. Who, what, where, etc.
- Is there documentation or any witnesses?
- Ask victim how would you like to see the matter resolved?
- Ask harasser for a response, and if not true, ask why
- Don't assumptions and temporarily suspend judgment
- Set a positive example and show respect
- May need to make a credibility determination



What is immediate, effective, corrective?

Take it seriously. Look into it. Do something.

- Designed to end the harassment and ensure non-recurrence
- Did the action taken effectively remedy the hostile work environment?
 - Separating the alleged harasser and the harassed employee – the harassed employee should not be the one who is moved or transferred
- Did the action taken prevent further harassment from occurring?
 - Is corrective action necessary? If so, what kind of corrective action?
 - Is training needed for the entire staff?



Harassment Responses Suggestions

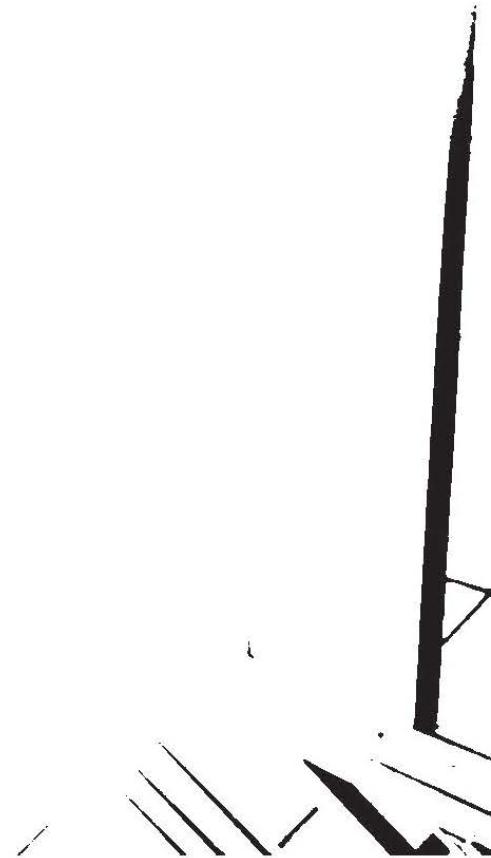
Take it seriously. Look into it. Do something.

- Reassure the employee that CFTC takes harassment allegations seriously
- Ask to be notified of any further incidents
- Do not guarantee that a complaint will be kept confidential – “need to know”
- Contact HR, OGC, OMWI for guidance



Harassment Prevention

- Conduct yourself professionally at all times
- Think before you speak
- Be careful with humor in the workplace
- Don't allow peer pressure to inappropriately influence you
- Promptly report harassing conduct to a supervisor or higher-level manager, or if necessary, to a personnel officer in your office or component



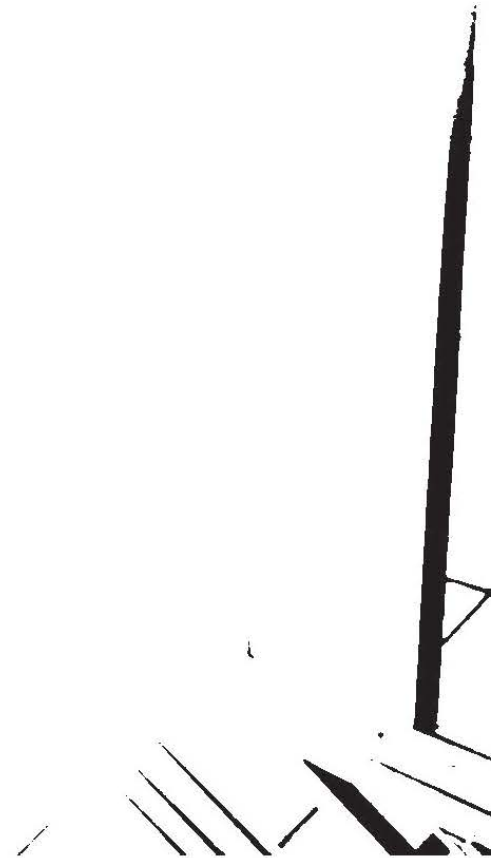
CFTC Anti-Harassment Policy (2023) Goals

1. Stop intimidating, hostile or abusive conduct (i.e., offensive conduct) before it rises to a level prohibited by Federal employment civil rights laws and related authorities.
2. Ensure that appropriate officials are notified of and investigate allegations of harassment or offensive conduct.
3. Address claims of harassment or offensive conduct upon the completion of an investigation.
4. Protect against retaliatory conduct stemming from claims of harassment or offensive conduct.



Expectation of CFTC Employees

- Applies to all CFTC employees
- Helps foster a harassment free work environment
- Strongly encourages the reporting of harassment or offensive conduct so that prompt action can be taken
- Supervisors and managers must take prompt and appropriate corrective action, to include disciplinary action if warranted



What is Reprisal

An adverse action taken against an individual because of:

- Participation in EEO activity, or
- Opposition to unlawful employment discrimination



What kind of Adverse Action?

- Need not qualify as an “ultimate employment action”
- Rather, one that is likely to have a “chilling effect” and deter a reasonable employee from exercising his/her EEO rights



Examples of Chilling Effect

- By making note of an employee's EEO activity, a supervisor could demonstrate that actions taken regarding the employee were motivated by the employee's EEO activity
 - "I wish you wouldn't have filed that EEO complaint."
- Inappropriate disclosure of an employee's EEO activity can lead to agency liability (no intent required)

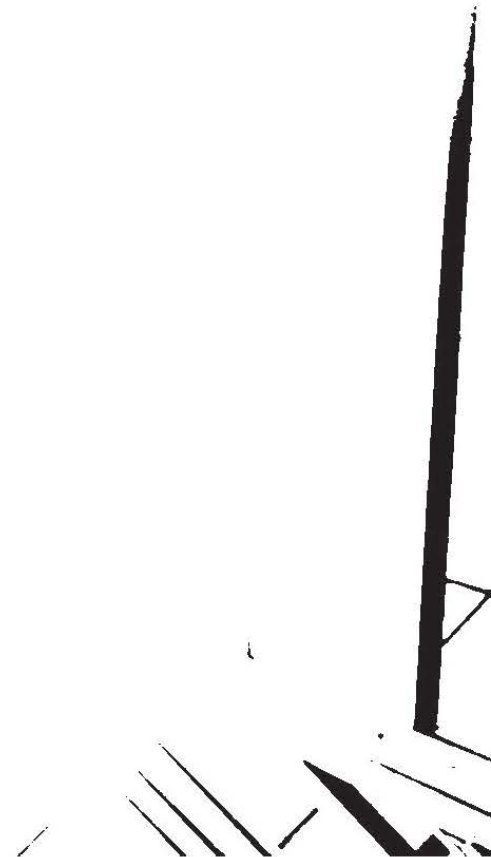


Reprisal Scenario

Jack files an EEO complaint alleging that he was racially harassed by his second-line supervisor, Jamie, as well as by his co-workers.

After learning about the complaint, Jamie suggests to Drew, Jamie's first-line supervisor, that they should look into transferring Jack into another division.

Is this reprisal?



EEO Complaint Process



Who can File an EEO Complaint?

- Current Employee
- Former Employee
- Applicant
- Contract Employees
 - Protection under the federal civil rights statutes is based on the individuals status as an "employee"
 - At CFTC, contractors are provided with EEO counseling



Four States of the EEO Process

Informal (Counseling) – 30 to 90 Days

Formal (Investigation) – 180 to 360 Days

Adjudication (Decision) – 45 to 60 Days

Appeal



When Does the EEO Process Start?

Complainant must contact OMWI within 45 calendar days of:

- The alleged discriminatory event, or
- Effective date of a personnel action, or
- Awareness of alleged discrimination



Informal Stage

Initial Interview

Limited inquiry
and resolution
attempts

Notice of Right
to File

30 calendar days, up to 90 max



Mediation

Mediation is a conversation focused on finding a resolution. Mediation is a problem solving process.

- Parties are in control; opportunity to mend relationships.
- Available at any time during the EEO complaint process
- Settlement terms are memorialized in a written agreement
- Avoids expensive costs



Formal Stage

Filing of
formal
complaint

Acceptance
or dismissal
of claims

Investigation

Election
Letter

15 calendar days to file formal complaint
180 calendar days to conduct the investigation



Who Decides if there is Discrimination?

Elect a Final
Agency Decision

Appeal Rights to
EEOC or Civil
Action

EEOC Hearing

Agency Final
Order

Appeal Rights
to EEOC or
Civil Action



EEO "Things to Know"

- Complaints are filed against the CFTC Chair; individuals/supervisors/managers are witnesses
- Complainant must prove nexus between agency event/action/decision and prohibited discriminatory basis; standard is a preponderance of evidence
- Remedies generally include "make whole" relief, and compensatory damages are also available for future losses, pain, suffering, mental anguish, etc. (maximum \$300,000)



Reasonable Accommodations



Reasonable Accommodation – PWFA

The Pregnant Workers Fairness Act (PWFA) went into effect on June 27, 2023. Regulations went into effect on June 18, 2024.

Requires: Provision of reasonable accommodations, absent undue hardship, to qualified employees and applicants with known limitations related to, affected by, or arising out of pregnancy, childbirth, or related medical conditions

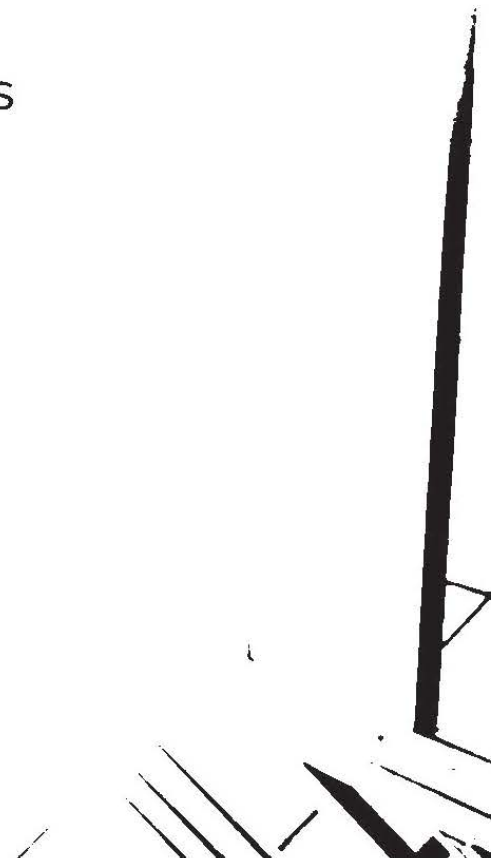


Reasonable Accommodation - Religious

Under Title VII, CFTC has a duty of reasonably accommodating its employees for sincerely held religious beliefs and practices unless to do so would cause an undue hardship (*i.e.*, significant cost or other non-cost factors, such as office disruption).

Examples of religious accommodations:

- Granting leave for religious observances
- Granting time and/or a place to pray
- Accommodating certain hairstyles or grooming habits



Religious Accommodation Undue Hardship

Prior: “more than a *de minimis* cost.” TVA v. Hardison (1977)

Now: To deny a religious accommodation, an employer must show that the burden of accommodation “is substantial in the overall context of an employer’s business.” Groff v. DeJoy (2023)

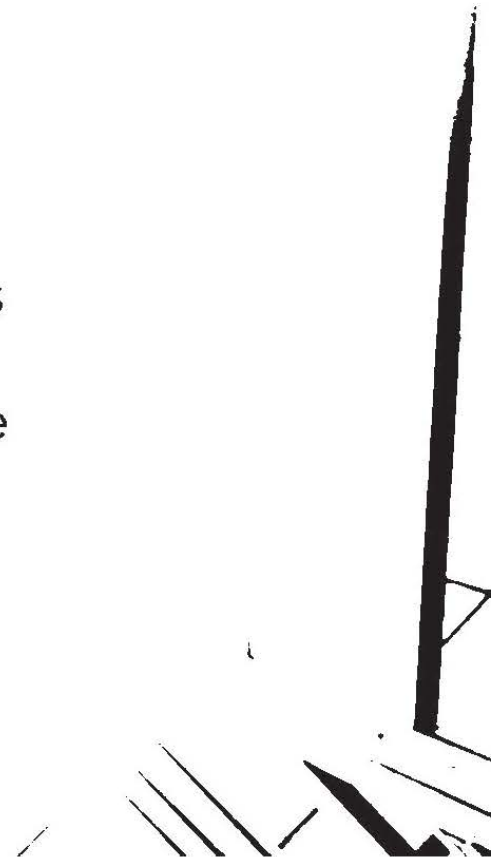
- SCOTUS offered little guidance on how to apply this new test
- Instructed a case-by-case approach in a “common-sense manner” and the “practical impact” of a particular accommodation in light of all the facts at hand, and given the size and nature of the employer’s business.



The Rehabilitation Act (Rehab Act)

Happy 50th Anniversary!

- Prohibits discrimination on the basis of disability
- Requires an employer to provide a reasonable accommodation to known physical or mental limitations of an otherwise qualified individual with a disability, unless to do so would impose an undue hardship on the employer.



What is a “Disability?”

- A disability is a physical or mental impairment which substantially limits a major life activity or major bodily function
- Disability can be established by:
 - Having a record of having a disability
 - Being regarded as having a disability
 - Being associated with a person who has a disability



What does “Substantially Limits” mean?

- Substantially limits: ability of an individual to perform a major life activity as compared to most people in the general population.
 - Construed broadly in favor of expansive coverage to the maximum extent permitted by the ADA; not a demanding standard
- An impairment need not prevent, or significantly or severely restrict, the individual from performing a major life activity in order to be considered substantially limiting. Nonetheless, not every impairment will constitute a disability within the meaning of this section.



What are Major Life Activities?

- Major life activities are basic activities that most people in the general population can perform with little or no difficulty. These life activities include but are not limited to:
 - Caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, sitting, reaching, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, interacting with others, eating, sleeping and working.
- Major bodily functions include functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, cardiovascular, endocrine, lymphatic, musculoskeletal, and reproductive functions.



Who is Entitled to an Accommodation?

A qualified person with a disability is a person who:

- Satisfies the requisite skills, experience, education and other job related requirements of the position
- Able to perform the essential functions of the job with or without a reasonable accommodation



What are Essential Functions?

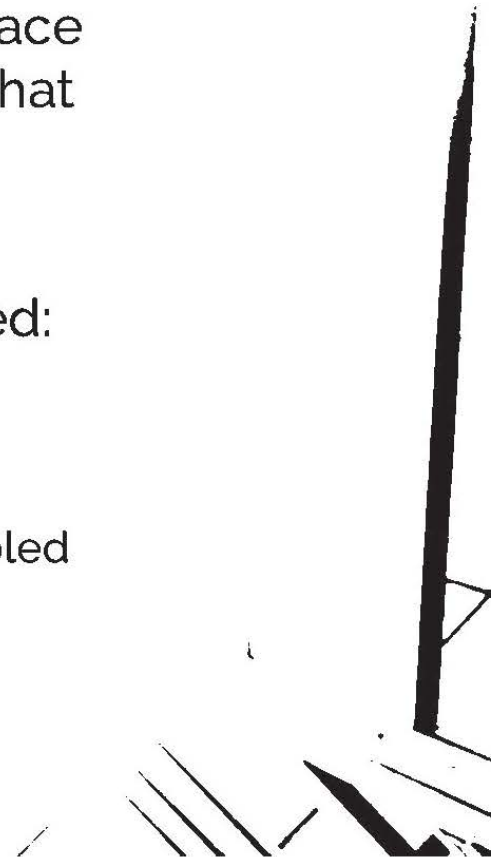
A job function may be considered essential for any of several reasons, including but not limited to:

- The reason the position exists is to perform that function;
- The function may be essential because of the limited number of employees available among whom the performance of that job function can be distributed; and/or
- The function may be highly specialized so that the incumbent in the position is hired for his or her expertise or ability to perform the particular function.



Reasonable Accommodation – Disability

- A reasonable accommodation is a change in the workplace environment or in the way things are customarily done that enables an individual with a disability to enjoy equal employment opportunities.
- Three areas where an accommodation may be requested:
 - Job application process
 - Ability to perform the essential functions of the job
 - Enjoy equal benefits and privileges of employment as non-disabled employees



When is there an Undue Hardship?

Undue hardship: with respect to the provision of an accommodation, significant difficulty or expense incurred by a covered entity, when considered in light of:

- The nature and net cost of the accommodation needed;
- The overall financial resources of the agency, the number of persons employed at the agency, and the effect on expenses and resources;
- The impact of the accommodation upon the operation of the facility, including the impact on the ability of other employees to perform their duties and the impact on the facility's ability to conduct business.



RA Process Simplified

Request

Interactive
Process

Decision

Implement



How Can an Employee Request?

- A request can be made at any time, by the employee, applicant, or third party on behalf of the employee or applicant
- The request can be made orally, in writing, or implied
- The request can be in "plain English" and need not reference (ADA or Rehabilitation Act) or the term "reasonable accommodation"
- The request seeks an adjustment or change to a working condition because of a medical condition



Examples – Are Any of these Requests?

- An employee tells her supervisor, "I'm having trouble getting to work at my scheduled starting time because of medical treatments I'm undergoing"
- A new employee, who uses a wheelchair, informs her supervisor that her wheelchair cannot fit under the desk in her office
- An employee tells his supervisor that he would like a new chair because his present one is uncomfortable



What are the Employee's Responsibilities?

- Employee must direct an oral or written request for an RA to immediate supervisor, or supervisor or manager in chain of command, OMWI or HR, or the Disability Program Manager.



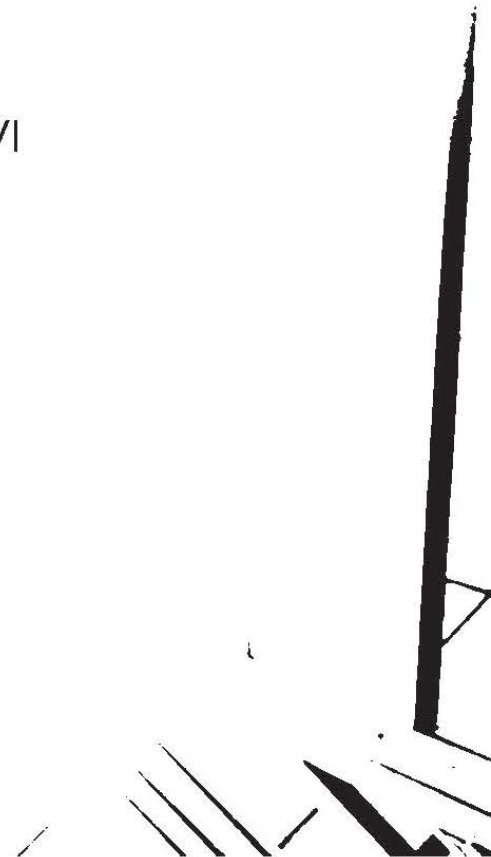
What are the Respective Responsibilities?

- **Employee:**

- Must direct an oral or written request for an RA to immediate supervisor, or supervisor or manager in chain of command, OMWI or HR, or the Disability Program Manager (DPM)
- Complete the Confirmation of Request for RA Form
- Submit to DPM supporting medical documents, if requested

- **Supervisor/Manager:**

- Engaged in an interactive process – a dialogue
- Discuss barriers, ask clarifying questions about limitations



What Must be Kept Confidential?

- ☆ All medical information, including information about diagnosis, functional limitations, and reasonable accommodation needs obtained in connection with a request must be kept confidential. And, all medical information must be kept in files separate from employee's Official Personnel File or any unofficial personnel file.
- Strict confidentiality and disclosed only to individuals on a need-to-know basis



Common Types of Accommodations

- Altering facilities to make them accessible
- Acquiring assistive devices
- Modifying workstations
- Modifying work schedules
- Restructuring of job
- Permitting the use of accrued leave and unpaid leave
- Modifying documents into alternative formats
- Providing readers or interpreters
- Personal assistant to aid with daily living actions
- Reassignment to another vacant position (last resort)



Who Decides Among Accommodations?

- The Deciding Official is the Disability Program Manager, who at the CFTC is the Chief Human Capital Officer.
- **Timelines:**
 - Decision to grant or deny in 15 calendar days, unless extenuating circumstances such as needing more medical documents
- **Dispute:**
 - Request for reconsideration from the Executive Director, or file an EEO complaint, or pursue applicable union procedures



What if No Accommodation is Possible?

- Reassignment as reasonable accommodation of last resort (RRAOLR)
- CFTC is not required to create a position, but can consider same CT-level or below.
- All actively vacant positions, or positions HR anticipates will become vacant over the next 60 days



Closing Thought

Dignity > Discrimination



Office of Minority & Women Inclusion

John Sim, Associate Director, EEO
jsim@cftc.gov | 202.418.5079

eeo@cftc.gov
www.cftc.gov/eeo





Brownbag Lunch & Learn on Anti-Harassment Policy & Procedure

Open to All Staff
December 12, 2023

Informational and Inspirational



Anti-Harassment Policy – July 24, 2023

Organization

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Date Certified	November 10, 2023
Certified By	Janska Perera, Acting Executive Director
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“... to address harassment or offensive conduct at the earliest possible stage before it can become “severe or pervasive” harassment within the meaning of antidiscrimination laws.”

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- CFTC will take “prompt and proportionate corrective action if misconduct or harassment is determined to have occurred.”
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- One may allege harassment under the AH policy and also file an EEO complaint simultaneously.
 - Remember! The EEO process must be commenced within 45 calendar days of the most recent incident of alleged harassment.



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Must Harassment be Reported up through the Chain of Command?

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No Guarantee of Confidentiality.

- Even if an individual expresses a desire for confidentiality or non-action, CFTC supervisors or executives must still take action.

However:

- Identity of reporter, witness, and target will be kept confidential, to the extent possible.
- Information gathered as part of an investigation will be kept confidential, to the extent possible.



Section 5: Roles & Responsibilities

1. Chairman

2. Division of Administration, Human Resources Branch (HRB)

- Receives complaints, conducts an investigation, advises management on interim relief
- Works with OMWI to ensure all individuals received periodic training concerning prevention of harassment, and managers are trained in their requirements; evaluate trends; coordination on reporting
- Provide assistance to managers and supervisors in taking corrective action, including disciplinary action, if a violation is found, and monitoring implementation



Section 5: Roles & Responsibilities

3. Chief Diversity Officer

- Provides advice, technical assistance, and support to managers, supervisors, employees, and others, as needed, in relation to this policy

4. Office of the General Counsel

- Reviews harassment reports, and provides counsel concerning interim relief and corrective action

5. Division Directors

- Helping establish a workplace free of harassment, and encouraging employees to report harassment



Section 5: Roles & Responsibilities

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- "Taking prompt and appropriate corrective action"
- Ensuring subordinate supervisors and managers are aware of these requirements and acting promptly to address harassment

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8. Employees

- Helping foster an environment free from harassment
- Refraining from harassment
- Participating in anti-harassment training



Section 6: Definitions

- Harassment is a form of employment discrimination covered by civil right statutes, and can become unlawful if enduring it becomes a condition of continued employment, or it creates a hostile work environment.
- Offensive conduct may include, but is not limited to, offensive jokes, slurs, epithets or name calling, unwanted physical contact, or threats, intimidation, ridicule or mockery, insults or put-downs, offensive objects or pictures.



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Sexual Harassment is Harassment!

- “[U]nwelcome sexual advance(s), request for sexual favor(s), or other verbal, non-verbal or physical conduct of a sexual nature.”
- Both victim and harasser can be of the same gender or any gender.
- Examples include:
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 - Making sexually explicit statements, comments, questions, jokes, innuendos, anecdotes, or gestures
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 - Displaying sexually suggestive objects, pictures, magazines, cartoons, or images



Section 6: Definitions

Retaliation is the act of “punishing employees for asserting their rights to be free from employment discrimination including harassment or offensive conduct.”

- Participating in a complaint process under this policy is protected
- However, participating in the complaint process does not shield an employee from all discipline or discharge.



Anti-Harassment Procedures – July 24, 2023

How to Report an Incident of Harassment?

- Encouraged to tell the harasser to stop the unwelcome conduct. If uncomfortable doing so or the conduct continues, then promptly report the conduct to any of the following:
 - Supervisor of the harasser
 - Any supervisor or other management official
 - Workforce Relations Section (WRS)
 - Office of Minority and Women Inclusion (OMWI)
 - The Office of the Inspector General



Anti-Harassment Procedures – July 24, 2023

When to Report it?

- **Individual experiencing harassment:** “[A]s promptly as possible, and generally no later than 60 days from the date of the incident.”
- **Supervisors or executives:** Those who observe or are notified of harassment must report the incident to WRS within two business days

Who Finds out about the Reporting?

- The identity of a reporter will remain confidential, to the extent possible
- An employee who suspects that their harassment information was shared beyond need-to-know staff can report the situation to the Privacy Office



Anti-Harassment Procedures – July 24, 2023

What Happens After Reporting?

- Upon receipt of a report, WRS will schedule an intake call, within two business days, to complete a CFTC Form 474: Intake Form for Complaints of Harassment & Offensive Conduct
- Information collected will include: name, title, unit of parties involved; dates and locations; names of witnesses; alleged bases; steps taken; and whether (and when) conduct was previously reported
- WRS will work with OGC to determine if interim relief is necessary, and assign an Investigator
- WRS will send an acknowledgment to the individual involved in the incident, and provide the name of the Investigator and other rights and responsibilities under the process



Anti-Harassment Procedures – July 24, 2023

What Happens in an Investigation?

- Prompt, thorough, and impartial investigation of the alleged conduct
- Investigation will normally be completed within 60 calendar days of the submission of the complaint, but occasionally, more time may be needed
- The scope and extent of the investigation will depend on the allegations
- Investigator will interview the complaining individual, and request relevant documents, and do the same with the alleged harasser.



Anti-Harassment Procedures – July 24, 2023

What Happens after Investigation?

- Investigator prepares and submits a report regarding the alleged harassment that contains:
 - Statement that the investigation was conducted pursuant to the CFTC Policy
 - Description of the allegations raised, the alleged harasser's response if any, and any relevant information from witnesses
 - Signed statements or other relevant documents obtained
- Report is submitted to WRS, and WRS will review with OGC.
- If harassment has occurred, the report will be submitted to the appropriate supervisor for further action, which may include disciplinary action.



Anti-Harassment Procedures – July 24, 2023

What Kind of Corrective Actions May be Taken?

- **If harassment is found:**
 - Responsibility for taking corrective action normally rests with the first line supervisor of the alleged harasser
 - Corrective action may depend on severity and pervasiveness
 - If a corrective actions has not been taken, WRS will notify the next level supervisor

- **If harassment is not found:**
 - Report will be submitted to the appropriate supervisor for further action, which may include reversing interim relief



For More Information, Please Contact

For Anti-Harassment

Human Resources Branch
Workforce Relations Section

WorkforceRelations@cftc.gov
202.418.5491

For EEO

Office of Minority & Women Inclusion
EEO Program

eeo@cftc.gov
202.418.5400





Brownbag Lunch & Learn on Anti-Harassment Policy & Procedure

Managers & Supervisors Only

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Anti-Harassment Policy – July 24, 2023

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 - Workforce Relations Section (WRS)
 - Office of Minority and Women Inclusion (OMWI)
 - The Office of the Inspector General



Anti-Harassment Procedures – July 24, 2023

When to Report it?

- **Individual experiencing harassment:** “[A]s promptly as possible, and generally no later than 60 days from the date of the incident.”
- **Supervisors or executives:** Those who observe or are notified of harassment must report the incident to WRS within two business days

Who Finds out about the Reporting?

- The identity of a reporter will remain confidential, to the extent possible
- An employee who suspects that their harassment information was shared beyond need-to-know staff can report the situation to the Privacy Office



Anti-Harassment Procedures – July 24, 2023

What Happens After Reporting?

- Upon receipt of a report, WRS will schedule an intake call, within two business days, to complete a CFTC Form 474: Intake Form for Complaints of Harassment & Offensive Conduct
- Information collected will include: name, title, unit of parties involved; dates and locations; names of witnesses; alleged bases; steps taken; and whether (and when) conduct was previously reported
- WRS will work with OGC to determine if interim relief is necessary, and assign an Investigator
- WRS will send an acknowledgment to the individual involved in the incident, and provide the name of the Investigator and other rights and responsibilities under the process



Anti-Harassment Procedures – July 24, 2023

What Happens in an Investigation?

- Prompt, thorough, and impartial investigation of the alleged conduct
- Investigation will normally be completed within 60 calendar days of the submission of the complaint, but occasionally, more time may be needed
- The scope and extent of the investigation will depend on the allegations
- Investigator will interview the complaining individual, and request relevant documents, and do the same with the alleged harasser.



Anti-Harassment Procedures – July 24, 2023

What Happens after Investigation?

- Investigator prepares and submits a report regarding the alleged harassment that contains:
 - Statement that the investigation was conducted pursuant to the CFTC Policy
 - Description of the allegations raised, the alleged harasser's response if any, and any relevant information from witnesses
 - Signed statements or other relevant documents obtained
- Report is submitted to WRS, and WRS will review with OGC.
- If harassment has occurred, the report will be submitted to the appropriate supervisor for further action, which may include disciplinary action.



Anti-Harassment Procedures – July 24, 2023

What Kind of Corrective Actions May be Taken?

- **If harassment is found:**
 - Responsibility for taking corrective action normally rests with the first line supervisor of the alleged harasser
 - Corrective action may depend on severity and pervasiveness
 - If a corrective actions has not been taken, WRS will notify the next level supervisor

- **If harassment is not found:**
 - Report will be submitted to the appropriate supervisor for further action, which may include reversing interim relief



For More Information, Please Contact

For Anti-Harassment

Human Resources Branch
Workforce Relations Section

WorkforceRelations@cftc.gov
202.418.5491

For EEO

Office of Minority & Women Inclusion
EEO Program

eeo@cftc.gov
202.418.5400

