



PRIVACY & CIVIL LIBERTIES OVERSIGHT BOARD

**Anti-Harassment Policy
Policy 402-01**

March 4, 2023

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Section 1. Summary of Changes

- I. This document is a major revision to PCLOB Policy 2016-002, Equal Employment Opportunity Policy, dated October 8, 2016, Adoption, Revision, and Recission of Internal Agency Policies and Procedures, dated October 26, 2015.

Section 2. Purpose

- I. The purpose of this policy is to affirm the PCLOB’s commitment to a workplace free from harassment. The PCLOB endeavors to prevent harassment in the workplace and correct any harassment that occurs before it becomes severe or pervasive.

Section 3. Applicability

- I. This policy applies to all current and former Board staff. Equal Employment Opportunity (EEO) concerns all personnel, employment programs, management practices and decisions, including but not limited to recruiting, hiring, and promotions. This policy also applies to job applicants.
- II. This policy shall be effective on the date above, and shall not be retroactive.
- III. This document is an internal agency procedure. Nothing herein creates any legal or enforceable rights, benefits, obligations, or liabilities, whether substantive or procedural, for any parties over and above those that already exist in applicable law.
- IV. A majority of the Board may waive, change, or grant exceptions to this policy, consistent with controlling law and regulations.

Section 4. Definitions

All definitions contained in 42 U.S.C. §§ 2000ee, et seq, 6 C.F.R. §§ 1000, et seq, and PCLOB Policy 201-01 are hereby incorporated unless otherwise specified.

- I. *EEO Counselor* has the same meaning as provided in Policy 401-01.
- II. *Harassment* means any unwelcome verbal, non-verbal, or physical conduct based on Equal Employment Protected categories, such as an individual's race, color, religion, national origin, sex (including pregnancy, sexual orientation, and gender identity), age, disability, genetic information, or reprisal for protected EEO activity.
- III. *Hostile work environment* means when discriminatory intimidation, ridicule or insult is sufficiently severe or pervasive to alter the conditions of employment and create an abusive working environment.
- IV. *Reprisal* means an action that is taken against an individual who has reported harassing conduct or assisted in an inquiry about harassing conduct that is designed to punish, or chill further reports in opposition to harassing conduct.

Section 5. Policy

- I. General. It is the policy of the Board to promote and maintain a work environment free from harassment.
 - A. A harasser can be a supervisor, co-worker, or non-employee (e.g. trainee, contractor). The person who alleges harassment does not have to be the person harassed, but can be anyone impacted by the conduct.
 - B. Harassment becomes unlawful when:
 1. It is severe or pervasive enough that it substantially interferes with an individual's work performance;
 2. It creates a work environment that is intimidating, hostile, or offensive to a reasonable person who is exposed to the same or similar circumstances;
 3. Where sexual harassment is concerned, submission to, or rejection of, such conduct is the basis for an employment decision; or,
 4. It otherwise adversely affects an individual's employment opportunities.
 - C. Examples of harassment include, but are not limited to, slurs, epithets, ridicule, negative stereotyping, insults, jokes, objects or pictures, intimidation, leering, threats, or assaults, based upon a protected category. It may occur in person, or by way of electronic media or other communication method.
 - D. The PCLOB endeavors not to wait for patterns of harassing conduct to become severe or pervasive. Instances of harassment that do not rise to the level of unlawful harassment

actionable under federal law will be addressed by supervisors to create a respectful and equitable workplace by preventing harassment from becoming severe or pervasive.

II. Complaint.

- A. The PCLOB can correct harassing conduct only if it is aware of the behavior.
- B. An employee may bring a complaint to his or her supervisor, the supervisor of the person who he or she alleges engaged in the conduct, other management officials, an Equal Employment Opportunity Counselor, or the Office of the General Counsel (OGC).
- C. Employees are not required to report allegations of harassment to their immediate supervisor when the supervisor is the alleged harasser.
- D. Supervisors and other management officials who observe, are informed of, or reasonably suspect incidents of possible harassment must immediately report such incidents to the OGC, which will initiate an inquiry.
- E. Supervisors receiving an allegation should ask for information including: the individuals involved, possible witnesses, when it occurred, the nature of the harassment, etc.
- F. Failure of supervisors to report incidents of possible harassment may be considered a violation of this policy and be subject to possible disciplinary action.

III. Inquiry.

- A. OGC shall initiate or oversee an inquiry into allegations of harassment within 10 calendar days of receiving a notice of a harassment allegation.
 - 1. In the event the General Counsel is the subject of the complaint, the Chair or Executive Director shall assume the responsibility of this provision. In the event the Chair and Executive Director are absent or have a conflict of interest, the Board shall use a third-party to conduct the inquiry.
 - 2. The alleged harasser shall not have supervisor authority over the person designated to conduct the inquiry, nor have direct or indirect control of the inquiry.
- B. All reports of harassment will be kept confidential to the fullest extent possible, without impeding an inquiry into the allegations, to protect the privacy of the alleged victim and accused. As such, inquiries shall endeavor to maintain confidentiality for all parties during the process.
 - 1. Information will be disclosed only on a "need to know" basis in order to resolve matters as part of an investigation and wherever possible will keep the names of individuals involved confidential. This applies equally with respect

to Board Members; information will be shared with Board Members only if the General Counsel or EEO Director determines it is necessary.

2. Any individual who compromises the confidentiality may be subject to possible disciplinary action.

C. The aggrieved shall be informed of:

1. The procedural steps of the inquiry;
2. That an inquiry into the alleged conduct will be as timely as possible and will depend on the circumstances of the case, such as its complexity;
3. That the alleged misconduct and related information will be maintained on a confidential basis to the extent practicable, and that pertinent information will be provided to relevant offices and people as necessary to conduct a thorough and fair inquiry and resolution, and as required by law;
4. The right of the aggrieved to file an EEO complaint, including the related deadlines.

D. All inquiries will endeavor to be thorough and impartial. They shall generally have three stages:

1. A factual development stage which includes reviewing documents and conducting interviews;
2. An analysis stage, in which the factual record is considered with reference to applicable laws, regulations, and policies; and,
3. Recommendations for any needed corrective action.

E. Upon conclusion of an inquiry, if harassment is substantiated, the Board will take prompt corrective action as deemed appropriate to correct harassing conduct.

1. Initiation of any proposed discipline shall be in accordance with the disciplinary procedures in Policy 301-01, Managing Employee Conduct and Performance, and occur within 60 days of conclusion of the inquiry.
2. The Board will consult with the victim before taking any action, including making the victim aware of the proposed remedies.

IV. Interim Relief.

A. Interim relief may be granted based upon the circumstances of the allegations. Such relief may be modified as new information is discovered.

B. Interim measures may include a variety of actions, including:

1. Physical separation of the alleged harasser from the aggrieved's workspace;
2. Telework for the alleged harasser or aggrieved;
3. A directive to the alleged harasser to limit communication with the aggrieved to business needs, to copy the supervisor on all communications with the aggrieved, or to refrain altogether from communicating with the aggrieved;

Section 6. Responsibilities

- I. All Employees. All Members and Employees are responsible for:
 - A. Acting professionally and refraining from harassing conduct;
 - B. Reporting incidents of harassment they witness; and,
 - C. Becoming familiar with the provisions of this policy and complying with all requirements of the policy.
 - D. Attending anti-harassment training mandated by the agency on annual basis.
- II. Supervisors. All supervisors are responsible for:
 - A. Modeling professional behavior that fosters and promotes a work environment free from harassment;
 - B. Taking prompt and appropriate actions to prevent harassment in the workplace, and to assist in inquiries of harassment as requested;
 - C. Taking steps to prevent retaliation against employees who complain of harassment, or who assist in conducting inquiries;
 - D. Protecting the confidentiality of employees who allege or report harassment, to the extent possible while permitting the agency to take immediate action;
 - E. Protecting the confidentiality of the accused, to the extent possible while taking immediate interim action and development of the facts;
 - F. Providing interim relief to alleged victims of harassment, pending the outcome of an inquiry to ensure that further misconduct does not occur;
 - G. Consulting with internal and external EEO officials and OGC; and,
- III. EEO Director. The EEO Director is responsible for:
 - A. Ensuring that this policy is available and accessible to all employees;

- B. Advising relevant supervisors, in coordination with the OGC and Human Resources, on how to provide interim relief to individuals alleging harassment. This will ensure that further misconduct does not occur pending the outcome of an inquiry;
- C. Advising the Board Members and other agency employees who need to know of the allegations of harassment and the resolution of those allegations under this policy;
- D. Providing technical assistance and support to ensure compliance with this policy; and,
- E. Providing appropriate anti-harassment training to Board Members, supervisors, and staff.

Section 7. Impact on EEO Process

- I. The harassment process is entirely separate and apart from the EEO complaint process. Filing a harassment complaint pursuant to this policy does not affect rights under the EEO complaints process.
- II. This means that an employee who reports allegations of harassment in accordance with this policy has not filed an EEO complaint but may do so.
 - A. An employee who wishes to file a discrimination complaint should contact an EEO Counselor as specified in the PCLOB's EEO policy.
 - B. An employee may also pursue both avenues of redress simultaneously.
- III. If an employee raises allegations of harassment in an EEO complaint, then the EEO Director may bring those allegations to the attention of the OGC.

Section 8. Whistleblower Activity

- I. It is the policy of the Board to promote and maintain a work environment free from harassment or reprisal for any action taken by an individual appropriately to report waste, fraud, and abuse.
- II. The Board does not tolerate harassment or retaliation against employees who reports violations of laws, rules, or regulations or report mismanagement, waste, fraud, or abuse to the Office of Special Counsel or other individuals authorized to receive such disclosures.
- III. The Board and its employees will not take or fail to take, threaten to take or fail to take, direct others to take, recommend, or approve any personnel action against an employee or applicant because of disclosure of information, or lawful assistance to an individual disclosing information that is reasonably believed to evidence violations of:
 - 1. Law, rule or regulation; or,
 - 2. Gross mismanagement; gross waste of funds; an abuse of authority; or a substantial and specific danger to public health or safety.

- IV. Unless disclosure of such information is specifically prohibited by law and such information is specifically required by Executive Order to be kept secret in the interest of national defense or the conduct of foreign affairs, retaliation against an employee or applicant for making a protected disclosure is prohibited.

Appendix A

References

- I. Prohibited Personnel Practices, 5 U.S.C. § 2302.
- II. Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000(e) et seq.
- III. Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § 633(a).
- IV. Rehabilitation Act of 1973, as amended, 29 U.S.C. § 791.
- V. Genetic Information Nondiscrimination Act of 2008, 29 U.S.C. § 2000ff.
- VI. 29 C.F.R. Part 1614, Federal Sector Equal Employment Opportunity.
- VII. Equal Employment Opportunity Management Directive, MD 715, Model Agency Title VII and Rehabilitation Act Programs.
- VIII. Whistleblower Protection Act, 5 U.S.C. § 1201 et seq.