

**RAILROAD RETIREMENT BOARD
ANTI-HARASSMENT POLICY STATEMENT AND COMPLAINT PROCEDURE
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BACKGROUND:

Workplace harassment adversely affects the work environment by undermining productivity and professionalism. It insults the dignity of workers, and may also, depending on the extent and severity of the misconduct, violate civil rights laws. The number of complaints that include allegations of non-sexual harassment continues to grow in both the private and federal sectors.

Harassment in the workplace violates Federal statutes and policy when it is based on the protected Equal Employment Opportunity (EEO) classes:

- Title VII of the Civil Rights Act of 1964, as amended, prohibits harassment of an applicant or employee based on race, color, sex (including pregnancy, sexual orientation and gender identity), religion, or national origin;
- The Age Discrimination in Employment Act (ADEA) of 1967 prohibits harassment of applicants or employees who are age 40 or older on the basis of age;
- The Rehabilitation Act of 1973, as amended under the Americans with Disabilities Act Amendments Act of 2008, prohibits harassment based on disability (mental and/or physical); and
- The Genetic Information Nondiscrimination Act (GINA) of 2008 prohibits harassment of an applicant or employee based on genetic information (including family medical history).

All of the anti-discrimination statutes enforced by the EEOC prohibit retaliation for complaining of discrimination or participating in complaint proceedings.

In addition, all employees and applicants are to be free from harassment without regard to their parental status under Executive Order 13152 (signed May 2, 2000) and/or marital status and political affiliation under the Civil Service Reform Act of 1978.

Harassment involves employee conduct which should be immediately addressed and corrected. The federal formal equal employment opportunity (EEO) complaint process does not, by itself, fulfill the obligation to set up a mechanism for a prompt, thorough and impartial fact-finding inquiry into alleged harassment. The federal EEO process is designed to make

individuals whole for discrimination that already has occurred through damage awards and equitable relief paid by the agency and to prevent the recurrence of the unlawful discriminatory conduct. The RRB's Anti-Harassment Policy and Procedure on the other hand, is intended to take immediate and appropriate corrective action, including the use of disciplinary actions, to eliminate harassing conduct regardless of whether the conduct violated the law.

This policy replaces the RRB's Anti-Harassment Policy dated May 2017. It provides examples of harassing conduct, explains the rights and responsibilities of all employees under this policy and explains the system of accountability.

PURPOSE:

The purpose of RRB Anti-Harassment Policy Statement and Complaint Procedure is to ensure that the RRB takes all steps necessary to prevent harassing conduct in the workplace and to correct harassing conduct that does occur before it becomes severe or pervasive. This Anti-Harassment Policy and Complaint Procedure serves as a guide to identifying prohibited conduct, reporting allegations of harassment, and taking appropriate corrective action regarding workplace harassment.

POLICY:

It is the policy of the RRB to maintain a workplace environment that is free from harassing conduct, whether sexual or non-sexual, as well as other forms of discrimination for all of its employees. This policy prohibits unwelcome conduct, as well as unlawful harassment, because the goal of this policy is to stop unwelcome conduct before it rises to the level of unlawful harassment and to prevent unwelcome conduct from recurring. The RRB will not tolerate unlawful discrimination or harassment of any kind and will discipline behavior that violates this policy.

This policy/procedure is in addition to the federal EEO complaint of discrimination procedures. Filing a complaint under this policy does not satisfy the requirements to initiate the federal EEO complaint of discrimination process, nor does it delay the time limits for initiating the EEO complaint.

Harassing conduct based on a characteristic that is not protected under federal employment civil rights laws and related Federal Executive Orders may be pursued through alternative means, such as the negotiated or administrative grievance procedures.

AUTHORITY:

The laws that guide the implementation of the RRB's Anti-Harassment Policy and Complaint Procedure include, but are not limited to:

- a. Title VII of the Civil Rights Act of 1964, as amended;
- b. The Age Discrimination in Employment Act of 1967;
- c. The Rehabilitation Act of 1973, as amended under the Americans with Disabilities Act Amendments Act of 2008;
- d. Title II of the Genetic information Nondiscrimination Act of 2008; and
- e. The Inspector General Act of 1978, as amended.

The Office of Equal Opportunity (OEO) is responsible for creating, updating and ensuring this policy is approved by the Equal Employment Opportunity Commission and is in effect at the RRB. Although the OEO is responsible for ensuring that an anti-harassment policy is in place, OEO will not be involved in the investigation or determination of allegations of harassment under this policy.

COVERAGE:

This policy and procedure covers any person employed directly by the RRB. While the RRB does not have the authority to address harassment of a contractor employee by another contractor employee, it is expected that all contractor employees in the RRB facility or performing work for the RRB will refrain from engaging in harassing conduct. For allegations of harassment by a contractor employee, the RRB shall immediately contact the appropriate Contracting Official.

DEFINITION OF HARASSING CONDUCT:

Harassment under this policy and procedure is defined as unwelcome verbal or physical conduct (such as intimidation, ridicule, insults, etc.) based on race, color, religion, national origin, sex (including pregnancy, sexual orientation and gender identity), age (40 years and older), disability (mental or physical), genetic information (including family medical history), parental status, marital status, political affiliation and/or retaliation (for prior EEO activity), when:

- The conduct had the purpose or effect of unreasonably interfering with an employee's work performance; or
- The conduct is sufficiently severe or pervasive so as to alter the terms, conditions or privileges of the employee's employment creating an intimidating, hostile or offensive work environment; or
- A supervisor's harassing conduct results in a tangible change in an employee's employment status or benefits (for example, demotion, termination, failure to promote, etc.).

Sexually harassing conduct is deliberate, unsolicited, or unwelcomed sexual advances. It includes sexual favors, sexual advances and/or other sexual conduct when (1) submission is either explicitly or implicitly a condition affecting employment decisions; (2) the behavior is sufficiently severe or pervasive so as to create an intimidating, hostile or offensive environment; or (3) the behavior persists despite objection by the person to whom the conduct is directed

CONDUCT NOT COVERED:

Not all unwelcome conduct is considered harassing conduct under the Anti-Harassment Policy. For example, it is not harassing conduct for a supervisor to tell an employee that s/he is not performing a job adequately. However, a supervisor may not treat employees who are similar in their work performance differently because of a protected characteristic. Also, occasional and innocuous compliments generally do not constitute harassing conduct, but rather reflect the reality of human experience and common courtesy.

PROHIBITED BEHAVIOR:

The following kinds of behavior or other behaviors with a similar harassing effect are absolutely prohibited whether they occur in person, on social media or another manner:

- Offensive jokes, comments, objects or pictures
- Negative stereotyping
- Unwelcome questions about a person's sexual identity or preference
- Undue and unwelcome attention
- Bullying
- Ridicule or mockery
- Insults or put-downs
- Vulgar gestures or language,
- Unwelcome touching or physical contact
- Slurs or epithets
- Stalking
- Threats or other forms of intimidation (even if claimed to be "jokes" or "pranks") which relate to any of the protected categories as defined above; and
- Physical or sexual assault. (Harassing conduct on the basis of sex need not be sexual in nature)

The touchstone of this policy is that if conduct is based on another person's protected characteristic and it is *unwelcome*- that is the conduct is unwanted or undesired- the conduct should *not occur*. This policy does not require that the person who has engaged in the conduct agree that the conduct is wrong. This policy does not seek to change what people think. Rather, it explains how the RRB expects its employees to act in the workplace.

REPORTING HARASSING CONDUCT:

In general, anyone who is subjected to conduct s/he believes to be harassing, should inform the person who engaged in the conduct to stop. If the target of the perceived harassing conduct is uncomfortable confronting the person who engaged in the conduct, or if the conduct continues, the target of the conduct should report the conduct to any of the following:

- (1) The target's immediate supervisor;
- (2) The supervisor of the alleged harasser;

- (3) Any management official with supervisory authority;
- (4) The Anti-Harassment Coordinator, who can be reached at stop.harassment@rrb.gov (excluding complaints against Office of the Inspector General (OIG) staff) or
- (5) The Inspector General (IG), the Assistant Inspector General for Audit (AIGA) or the Assistant Inspector General for Investigations (AIGI) as applicable, if the harasser is a part of the OIG staff.

Employees who observe apparent harassing conduct directed at others are encouraged to report the conduct, as soon as possible, to any individual shown above.

NOTE: An employee who reports harassment in accordance with this policy has not filed an EEO complaint. An employee who wishes to file an EEO complaint must contact the Office of Equal Opportunity within 45 days of the alleged harassment.

RESPONSIBILITIES:

Anti-Harassment Coordinator [also referred to as The Coordinator]: The agency's Anti-Harassment Coordinator is responsible for ensuring that a swift, thorough, impartial and appropriate fact-finding inquiry is conducted when s/he becomes aware of harassing conduct or receives a complaint of harassment, in which the fact-finding inquiry or investigation must begin within 10 calendar days. The Coordinator will, on a case-by-case basis, determine the necessary scope of the investigation and will decide who will conduct the investigation. The Coordinator will take prompt action, when necessary, to separate the harasser and the target of the alleged harassment until a fact-finding inquiry or investigation is completed and any appropriate action is taken. The Coordinator should provide timeframe updates to the person who reported the conduct (and the harassee if different from the person who reported it) and an explanation if the required investigation timeframe is delayed past 30 calendar days.

After the investigation is completed, the Coordinator will provide his/her recommendation along with the written fact-finding inquiry or investigative report to the Director of Administration (unless the complaint involves someone in the Office of Administration, OIG or Board offices. See Exceptions below) within 30 calendar days from the day the Coordinator was made aware of the alleged harassment.

The Director of Administration: The Director of Administration shall designate a staff member in the office to serve as the Anti-Harassment Coordinator, whose duties under this policy are described above.

The Director of Administration will promptly review the investigative report and make a determination as to whether harassment occurred and what preventive and/or corrective action should be taken. The harasser's supervisor/manager will administer the preventive and/or corrective action, if any, according to the Director of Administration's determination and decision.

Supervisors and Managers: Supervisors and managers are held accountable for creating and upholding a workplace free from harassment. Upon seeing or becoming aware of harassment, a supervisor or manager should *immediately* intervene to stop the objectionable behavior and, within 1 business day, report it to their Director (unless the Director is the alleged harasser) and the Anti-Harassment Coordinator. If the supervisor/manager has information pertinent to the complaint, s/he should schedule a meeting with the Anti-Harassment Coordinator prior to the completion of the investigation.

In all cases, the supervisor or manager to whom the incident is reported must inform the employee of his or her right to initiate a complaint through the Anti-Harassment Coordinator.

Employees: Employees are strongly encouraged to report any matter they perceive to be harassment, whether they personally experienced it, witnessed it, or an incident was reported to them. As soon as the incident occurs, employees may either report it to their first level supervisor, the supervisor of the alleged harasser, any management official with supervisory authority, or to the Anti-Harassment Coordinator. As federal employees, all employees have a duty to cooperate during a fact-finding inquiry of harassment. An employee who chooses to follow the procedures set forth in this policy may also file an EEO complaint, use the negotiated or administrative grievance procedures or pursue other processes granted to employees by law.

EXCEPTIONS:

Complaint within the Office of Administration

Should the complaint involve an employee within the Office of Administration, the Anti-Harassment Coordinator shall inform the General Counsel (GC) who will appoint someone in their office to investigate the complaint and provide a written fact-finding report along with their recommendation to the GC within 30 calendar days from the day the GC was made aware of the complaint. The GC will review the report and make a determination as to whether harassment occurred and what preventive and/or corrective action should be taken. The harasser's supervisor/manager will administer the preventive and/or corrective action according to the General Counsel's determination and decision.

Complaint within the Office of the Inspector General (OIG)

Should the complaint involve an employee within the Office of the Inspector General (OIG), the Assistant Inspector General for Investigations (AIGI) is the Anti-Harassment Coordinator for the investigations staff; the Assistant Inspector General for Audit (AIGA) is the Anti-Harassment Coordinator for the audit staff; and the Inspector General (IG) is the Anti-Harassment Coordinator for staff directly reporting to the IG. The RRB recognizes that the IG has independent authority to formulate policies and procedures for addressing harassment in the workplace. OIG personnel should follow the requirements of the Inspector General Act of 1978, as amended, and any Executive Orders applicable to the OIG for allegations and investigations of OIG personnel. The AIGI, AIGA and the IG are responsible for imposing appropriate preventive and/or corrective actions.

Complaint within the Office of the Board Members

Should the complaint involve an employee within one of the Board offices (excluding the Board Member), the Anti-Harassment Coordinator will secure an independent contractor to investigate the matter. After receiving the report from the contractor, the Anti-Harassment Coordinator will forward the report to the two Board Members whose offices are not involved in the complaint. They will take on the responsibility of making a determination, based on the information provided in the fact-finding report/investigation. The two Board Members must agree and make a determination as to whether

harassment occurred and what if any, preventive and/or corrective action should be imposed on the employee in question.

TIMEFRAMES:

When alleged harassing conduct is reported to the Anti-Harassment Coordinator, s/he must make all reasonable efforts to fully investigate the complaint and if necessary, propose interim relief in the meantime. The investigation must begin within 10 calendar days of receiving notice of the harassment allegation. Once the investigation is completed, the Anti-Harassment Coordinator will submit the fact-finding/investigative report with his/her recommendation, to the appropriate official (Director of Administration, General Counsel, or the appropriate Board Members) within 30 calendar days from the date the report/complaint was received. The agency must then reach a decision and, if necessary, take corrective action within 60 calendar days of receiving notice of the allegation.

When alleged harassing conduct is reported to a supervisor or manager, or if the supervisor or manager becomes aware of the alleged harassing conduct, s/he must notify his/her Director (unless the Director is the alleged harasser) and the Anti-Harassment Coordinator as soon as possible, but no later than 1 business day, after becoming aware of the alleged conduct.

When alleged harassing conduct is reported to the AIGI, AIGA or the IG, s/he must follow the requirements of the Inspector General Act and Executive Orders applicable to OIGs for allegations and investigations of OIG personnel.

ANTI-HARASSMENT COMPLAINT PROCEDURE:

The complaint procedure discussed below is independent from the one related to the processing of employment discrimination complaints governed by the Equal Employment Opportunity Commission's regulations in 29 CFR Part 1614.¹

¹*If an employee also intends to file a separate complaint of discrimination under federal regulation 29 CFR Part 1614, they must notify OEO within 45 calendar days of the date of the alleged harassment. The employee should not wait until the agency's internal harassment inquiry is complete before initiating the discrimination complaint with OEO.*

If you believe you are the subject of harassment of any kind or harassment based on your race, color, religion, national origin, sex (including pregnancy, sexual orientation and gender identity), age (40 years and older) disability (mental or physical), genetic information (including family medical history), parental status, marital status, political affiliation, or retaliation for prior protected EEO activity, you should report the incident(s) to your supervisor, any member of management with whom you feel comfortable discussing the problem and/or the Anti-Harassment Coordinator. If you believe you are being harassed by your immediate supervisor, you should notify your supervisor's manager, any member of management with whom you feel comfortable discussing the problem and/or the Anti-Harassment Coordinator.

Once a report of harassment is received, the Anti-Harassment Coordinator will contact the person who reported the harassment and acknowledge the complaint, in writing within 5 business days.

An investigation or fact-finding inquiry (depending on the depth and scope needed to make an informed determination) will be initiated within 10 calendar days and conducted and completed within 30 calendar days from the date the Coordinator receives a complaint of harassment under this policy. The investigation/fact-finding inquiry will include an interview with the person(s) alleging the harassment, those accused of the alleged misconduct and, as appropriate, individuals who are witnesses to, or have knowledge of the alleged harassment. **All employees involved in the investigation and/or fact finding inquiry are allowed to secure representation; however, the timeframes must be adhered to under this policy.**

Upon completion of the investigation/fact-finding inquiry, a written report will be prepared. The report will minimally include the following:

1. The name, position, office location of the employee alleging the harassment, the specific nature of the incident(s), date and place of the incident(s), names of all parties involved, how the harassing action affected the harassee, detailed report of all pertinent facts, as well as the basis of the harassment (race, religion, age, disability, etc.)
2. Signed statements of fact:

- a. From the employee alleging the harassment – a detailed description of the alleged prohibited conduct, the date(s), time(s) and location(s) of the alleged actions/comments, their response or action to the alleged prohibited conduct, as well as the names of any witnesses to, or persons with knowledge of the alleged actions/comments;
 - b. From those accused of the alleged misconduct – a detailed response regarding each of the allegation(s); and
 - c. From others who have knowledge of the alleged misconduct – a detailed account regarding what they witnessed/heard or any information regarding the allegation(s).
3. As necessary, additional documentation regarding the alleged misconduct.
 4. An assessment of the allegation(s) and any recommendation(s) for corrective action if appropriate from the Anti-Harassment Coordinator.

The fact-finding report/investigation will be submitted to the appropriate official for a determination and corrective action if/as necessary. The Anti-Harassment Coordinators (including those in the OIG) and/or the person who conducted the investigation in the OGC, shall maintain a record of all fact-finding inquiries conducted in accordance with the record retention plan and inform the OEO as needed for the purpose of the agency's annual EEO reporting requirements.

DECISION:

The Director of Administration, or appropriate official, shall promptly evaluate the fact-finding report and issue the decision as to whether harassment occurred and if so, the appropriate and prompt preventive and/or corrective action that will be taken within 60 calendar days from the date the alleged harassment was reported. The report will be the basis for the decision and the appropriate corrective action(s) when necessary.

Not all forms of harassing conduct will warrant the same preventive and/or corrective action. A fair and credible approach to stopping and remedying harassing conduct demands a response that is proportionate to the

conduct. The severity and frequency of the conduct will be considered when determining preventive and/or corrective action.

COOPERATION AND CONFIDENTIALITY:

All parties, to include the person who reports harassing conduct and the target of the alleged conduct, if different from the person who reported it, the alleged harasser, and any potential witnesses, will be expected to cooperate with an investigation so that it can be conducted in a prompt, thorough, and fair manner.

The RRB will keep reports and investigations of harassing conduct confidential to the greatest extent possible, as consistent with the law and a thorough and fair process. This means that only individuals *who need to know* about alleged harassing conduct will be informed about it.

In some instances, an employee may request that a supervisor or manager keep their allegations of harassment confidential. In such instances, the member of management must inform the employee that the agency cannot guarantee complete confidentiality because it has an affirmative duty to prevent and correct harassment. The member of management is still obligated to immediately inform the Anti-Harassment Coordinator and the alleged harasser's Director about the allegations of harassment, as well as the request for confidentiality.

RETALIATION:

The RRB prohibits any form of retaliation against any employee for making a good faith report or complaint of harassment under this policy, for opposing harassing conduct or for assisting in a fact-finding inquiry regarding a complaint of harassment. Any employee who retaliates against any of these individuals will be disciplined appropriately and promptly. Management will be held accountable for preventing and promptly stopping and correcting any retaliatory conduct.

TRAINING:

A Power Point training is available on RRB University for all employees to review.

*The Office of Equal Opportunity is responsible for this policy.
All questions/concerns regarding the policy should be addressed to OEO.*