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UNITED STATES INTERNATIONAL TRADE COMMISSION

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WASHINGTON, DC 20436

September 22, 2020

**MEMORANDUM TO ALL U.S. INTERNATIONAL TRADE COMMISSION EMPLOYEES**

**FROM:** The Chair

**SUBJECT:** Anti-Harassment Policy Statement

**Our Commitment.** The U.S. International Trade Commission is committed to maintaining a workplace that fosters mutual trust and respect, and that inspires employees, contractors, volunteers, visitors, interns, and stakeholders to fully engage and perform to their optimum potential, free from harassing behaviors. Therefore, the Commission will not tolerate harassment of any kind.

Harassment undermines the integrity of the employment relationship and interferes with work productivity. The Commission will take appropriate action to prevent harassment in the workplace and correct harassing behavior, before it becomes severe or pervasive. Consequently, harassing behavior by a Commission employee does not need to rise to the level of unlawful harassment for it to constitute actionable misconduct.

**Unlawful Harassment.** Unlawful harassment is any unwelcome verbal, non-verbal, or physical conduct based on protected categories that include race, age, color, religion, national origin, physical or mental disability, sex (including pregnancy, sexual orientation, and gender identity), parental status, marital or familial status, political beliefs, or protected genetic information. It can also be based on prior participation in the equal employment opportunity (EEO) process (retaliation) or opposition to any practice made unlawful under any of the federal antidiscrimination laws.

Unlawful harassment occurs when, as a consequence of the unwelcome conduct, based upon one or more of the protected categories, either:

- an employee actually suffers a personal loss or harm with regard to a term, privilege,

- or condition of employment; or
- the conduct can reasonably be considered severe or pervasive, thereby creating an intimidating, hostile, or offensive work environment.

Conduct constituting unlawful harassment may involve written, verbal, electronic communications, physical gestures or contact, images, or objects. It also includes slurs, derogatory or disrespectful remarks, spreading rumors, swearing, jokes, obscenities, incessant teasing, expressing or insinuating threats, threatened assault, hitting, punching, other unwanted touching, and malicious or insulting gestures.

Bullying conduct may also constitute unlawful harassment when it involves, among other things, threats, hate messages, intimidation, or otherwise inappropriate or unacceptable language intended to humiliate or demean an individual or group of individuals.

**Sexual Harassment.** Sexual harassment is a form of sex discrimination that involves unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when:

- Submission to or rejection of such conduct is made, either explicitly or implicitly, a term or condition of a person's job, pay, or career, or
- Submission to or rejection of such conduct by a person is used as a basis for career or employment decisions affecting that person, or
- Such conduct interferes with an individual's work performance or creates an intimidating, hostile, or offensive environment.

**Retaliation.** The Commission prohibits any retaliation against an employee who reports a concern about workplace harassment or other inappropriate behavior, who acts as a witness, or who assists in any inquiry about such a report.

**Reporting and Filing Complaints and Grievances on Harassment.** Employees may report harassment, file an EEO complaint on harassment, or submit a grievance on harassment, as follows:

### **1. Reporting Harassment**

All Commission employees are strongly encouraged to report harassing behavior to a supervisor, management official, Office of the Inspector General, the Director, Office of Human Resources (OHR), or to the official designated by the Director, OHR, as the agency's Anti-Harassment Coordinator. In matters involving contractors, employees may also report harassment to a contracting officer's representative (COR). Employees may submit reports in person, in writing (via email or otherwise), or over the phone.

Confidentiality of Reports of Harassment. The confidentiality of individuals reporting harassment, as well as the information underlying the report, shall be preserved to the extent possible. In effect, confidential information should be shared only with those

persons with a “need to know” during the course of the investigation and in response to the reported conduct, including taking appropriate steps to prevent further harassing conduct.

Obligation of supervisors, CORs, and management officials: Having received a report involving harassment, or otherwise having personal knowledge of allegations or conduct involving harassment, supervisors, CORs, and management officials must immediately notify the Director, OHR, or the agency’s Anti-Harassment Coordinator, of the allegations. “Immediate” usually means within 48 hours of receipt or knowledge. Failure of a supervisor, COR, or management official to immediately report harassment under this paragraph may result in administrative action, including discipline.

All supervisors and managers must set the tone for a positive and professional work environment, and act promptly to prevent or cease reported or observed incidents of harassment.

Review and Investigation of Reported Harassment: Within 10 business days of receipt, the Anti-Harassment Coordinator shall be responsible for initiating an appropriate review and any necessary investigation of a report of harassment. Otherwise, any such review or investigation shall be conducted promptly, thoroughly, and impartially.

The Anti-Harassment Coordinator’s investigation may consist of witness interviews and review of any written or electronic information about the alleged harassment. At the completion of a review or investigation, the Anti-Harassment Coordinator will forward a written report to an appropriate management official who will determine if harassment occurred, and whether to propose corrective action. However, in some instances, prompt intervening action may be warranted in advance of receiving the written report, to prevent further harassment. Such action may include changing the work location of the alleged harasser or victim.

Corrective Action: In matters involving substantiation of harassment or other improper conduct by employees, corrective action shall be considered by appropriate supervisors and managers, including disciplinary action in accordance with USITC Directive 4504.0 (Personnel Disciplinary and Adverse Action).

## **2. Filing an EEO Complaint on Discriminatory Harassment.**

To initiate EEO complaint procedures, contact the Office Equal Employment Opportunity within forty-five (45) calendar days of the most recent incident of the alleged discrimination, in accordance with 29 C.F.R. § 1614.105(a)(1).

After receiving written notice from the Office of Equal Employment Opportunity of the right to file a formal EEO complaint, an employee’s election to proceed under Equal Employment Opportunity Commission complaint processing is indicated by the timely

filing of a formal EEO complaint, and forecloses proceeding on the same matter under negotiated grievance procedures [described below? Or are there others?]. However, the Anti-Harassment Coordinator will investigate all reports of harassment irrespective of whether the alleged victim files an EEO complaint on the same matter.

### **3. For Bargaining-Unit Members – Filing a Negotiated Grievance**

For employees in the bargaining unit, file a written grievance within thirty (30) calendar days after the incident of alleged harassment or within thirty (30) calendar days after the employee became aware of the incident of alleged harassment, in accordance with Article XVII of the 2016 Agreement between the U.S. International Trade Commission and the American Federation of Government Employees.

An election to proceed under a negotiated grievance procedure is indicated by the filing of a timely written grievance (Step 2 grievance); such an election forecloses proceeding under EEO complaint processing on the same matter. However, the Anti-Harassment Coordinator will investigate all reports of harassment irrespective of whether the alleged victim files a grievance on the same matter.

Bargaining-unit employees may contact their union representative at any time regarding discrimination or harassment.

### **4. For Non-Bargaining Unit Employees – Filing an Administrative Grievance**

For employees not in the bargaining unit, file a written grievance within twenty-one (21) calendar days after the incident of the alleged harassment or within twenty-one (21) calendar days after the employee became aware of the incident of the alleged harassment, in accordance with Section 5 of USITC Directive 4506.1 (Administrative Grievance Procedure). However, the Anti-Harassment Coordinator will investigate all claims of harassment irrespective of whether the alleged victim files an administrative grievance on the same matter.



JASON E. KEARNS  
Chair  
U.S. International Trade Commission