National Aeronautics and Space Administration

Headquarters
Washington, DC 20546-0001

March 4, 2010

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Reply to Attn of: Office of Diversity and Equal Opportunity

TO: Officials-in-Charge of Headquarters Offices
Directors, NASA Centers

FROM: Assistant Administrator for Diversity and Equal Opportunity

SUBJECT: Agency Anti-Harassment Procedures Implementation Guide and Frequently Asked Questions

The Office of Diversity and Equal Opportunity (ODEO) is pleased to provide the enclosed documents: "NASA Anti-Harassment Procedures: An Implementation Guide," and "Frequently Asked Questions (FAQs) on NASA Anti-Harassment Policy and Procedures."

ODEO provides these documents as part of its continuing efforts under NASA Procedural Requirements (NPR) 3713.3, Anti-Harassment Procedures (also enclosed), to provide guidance and technical assistance to the NASA Centers on Agency policy for handling allegations of harassing conduct. The Implementation Guide is specifically designed to provide guidance to Center Anti-Harassment Coordinators and others with roles and responsibilities under the NPR, such as designated Fact-Finders.

The FAQs is designed as a user-friendly resource for all managers, supervisors, and employees to learn more about the Agency's anti-harassment process, and will be posted on the ODEO web site. ODEO requests that Center Anti-Harassment Coordinators and their strategic partners, such as Human Resources, and Equal Opportunity Offices, work together to ensure wide dissemination of the FAQs among Center employees.

We also wish to inform you that ODEO will soon deploy both on-line and classroom-based education and awareness opportunities on the anti-harassment process. For example, ODEO is planning a two day, classroom-based training at NASA Headquarters to take place in the early to mid-May timeframe. This training is designed for Center Anti-Harassment Coordinators and designated Fact-Finders, and Center staff with advisory roles and responsibilities in the process, such as representatives from Equal Opportunity, Human Resources, and Chief Counsels' offices.

Any questions regarding the Implementation Guide or the FAQs should be directed to David Chambers, who is currently acting as the Agency Anti-Harassment Coordinator, or to Richard Torres-Estrada, acting as backup.

Mr. Chambers may be reached on 202-358-2128 or david.r.chambers@nasa.gov or Mr. Torres-Estrada at 202-358-2294 or at richard.torres-estrada@nasa.gov.

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HR Directors

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National Aeronautics and Space Administration

NASA Anti-Harassment Procedures

An Implementation Guide

Office of Diversity and Equal Opportunity

March 2010

www.nasa.gov

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Introduction

NASA ANTI-HARASSMENT PROCEDURES

An Implementation Guide

This guide provides information on the development and implementation of the NASA Center anti-harassment processes under NASA Procedural Requirements 3713.3, Anti-Harassment Procedures (effective date: October 6, 2009). The guide is intended as a desk-reference for managers and supervisors, Center Anti-Harassment Coordinators, Fact-Finders, and other stakeholders (e.g., Equal Opportunity and Human Resources Offices) to assist in ensuring prompt, thorough, and impartial action is taken regarding harassment allegations.[1]

This guide offers considerations to be addressed by NASA Centers[2] regarding specific aspects of the process. These considerations include designating a Center Anti-Harassment Coordinator, informing employees of the process and how to access it, handling reports of harassment, conducting inquiries (fact-finding) into harassment allegations, and tracking and monitoring of such allegations.

The appendices to the guide provide supporting information, including sample forms and formats for some of the key documents which are a part of the anti-harassment processes at NASA, such as a fact-finding report template.

1. INTRODUCTION

NASA's Anti-Harassment Policy and Procedures are intended to ensure that immediate and appropriate action is taken in response to allegations of harassing conduct, including the use of disciplinary action, and to eliminate harassing conduct regardless of whether the conduct violated the law.[3] The ***overarching goal of the policy and procedures is to address harassing conduct at the earliest possible stage, before it can become severe or pervasive***, e.g., behavior that is widespread, common, or repeated.[4]

The ***EEO complaints process and the anti-harassment process are separate and distinct.*** The former is designed to make individuals whole for discrimination that already has occurred and to prevent the recurrence of the unlawful discriminatory conduct. The latter seeks to address and ***resolve harassing*** **conduct** ***before it ever reaches the level of discrimination, as defined under the anti-discrimination laws.*** For this reason the EEOC stresses the need to maintain separate EEO complaints and anti-harassment processes.[5] It is also important to note that the anti-harassment process does not affect an employee's right to file an EEO complaint, nor does it alter required timelines for filing.[6] Employees may access either or both processes.

1 This guide relies primarily on NPR 3713.3 and on the U.S. Equal Employment Opportunity Commission's (EEOC) established standards and guidelines for developing anti-harassment policies and procedures, *EEOC Enforcement Guidance: Vicarious Employer Liability for Unlawful Harassment by Supervisors, Notice 915.002,* June 18, 1999 (hereafter Vicarious Liability Guidance).
2 Use of the word Center(s) in this text includes NASA Headquarters and the NASA Shared Services Center.
3 NASA Anti-Harassment Policy Statement.
4 NPR 3713.3, P.1, Purpose (b).
5 See generally Vicarious Liability Guidance; see also EEOC, Model EEO Programs Must Have an Effective Anti-Harassment Program (September 2005).
6 NPR 3713.3, P.1, Purpose (e).

2. Anti-Harassment Coordination

2.1 Designation of the Center Anti-Harassment Coordinator

2.1.1 Appointment

Consistent with NPR 3713.3, each Center Director[7] shall appoint an individual to serve as Center Anti-Harassment Coordinator (CAHC).

2.1.2 Separation between EEO Complaints and Anti-Harassment Processes

When selecting a CAHC, Center Directors must take into account the appearance of conflicts of interest with the EEO complaint process. This means that if the CAHC is an employee who works in the EEO office, the office shall ensure that there is a "firewall," that is, a means for avoiding conflict of interest by maintaining a separation between handling of the informal EEO complaints process and the Center's anti-harassment process.[8]

To help ensure that employees raising allegations of harassment are fully aware that the Agency's anti-harassment process is separate and apart from the EEO complaints process, CAHCs should provide employees raising harassment allegations with a Notice of Rights and Responsibilities clearly stating the distinctions between the two processes. (See ***Appendix B. Notice of Rights and Responsibilities of NASA Employees Alleging Harassing Conduct.***)

2.2 Notice to Employees

A notice to employees on the Anti-Harassment Policy and Procedures and contact information for the office of the CAHC should be displayed in public areas throughout the Centers. (See ***Appendix A. Sample Notice to Employees.***)

ODEO will provide Centers with other information to help apprise employees about the anti-harassment process, such as Web postings and brochures. When made available, Centers should ensure that all materials are thoroughly disseminated to managers, supervisors, and employees.

7 Any reference to Center Director(s) in this text includes the Executive Director for the Office of Headquarters Operations and the Executive Director, NASA Shared Services Center.

8 See EEOC, Model EEO Programs Must Have An Effective Anti-Harassment Program (September 2005).

3. REPORTING AND RESPONDING TO HARASSMENT ALLEGATIONS

3.1 Harassment Defined

Harassing conduct, as defined in NPR 3713.3, is any unwelcome conduct, verbal or physical, based on an individual's race, color, gender, national origin, religion, age, disability, genetic information, sexual orientation, status as a parent, gender identity, or retaliation when: (1) the behavior can reasonably be considered to adversely affect the work environment or (2) an employment decision affecting the employee is based upon the employee's acceptance or rejection of such conduct.

Allegations or claims outside the purview of the Agency's Anti-Harassment Procedures must be filed with the appropriate office with jurisdiction to process the matters. The CAHC and other designated officials will advise alleged harassees of the different avenues of redress available.

3.2 Employees' Responsibilities

Employees who believe that they have been subjected to harassing conduct by another civil service employee or contractor employee in violation of NASA policy are expected to report the matter immediately to their first-line supervisor, the CAHC, or other official(s) as designated by the Center Director.[9] In the event that the employee's first-line supervisor is the alleged harasser, the employee shall contact the second-line supervisor, the Center Anti-Harassment Coordinator, or other(s) officials as designated. ***When the person to whom the alleged harassment is reported fails to take prompt action, the employee should immediately report the alleged incident of harassment to the CAHC*** **or other official as designated by the Center Director.**

3.3 Managers' and Supervisors' Responsibilities

When an allegation of harassment is reported by a NASA employee, the supervisor (or designated official) shall assess the situation immediately, and consult with the CAHC and/or with subject matter experts to determine whether a fact-finding or other action is warranted.[10] The supervisor should take the following steps:

3.3.1 Ensure that the CAHC is notified. A manager or supervisor receiving an allegation falling within the purview of the anti-harassment process will notify the CAHC as a matter of course. ***Managers and supervisors should be generally familiar with the definition of harassing conduct under the Agency Anti-Harassment Policy and Procedures*** (see 3.1, above).

3.3.2 Determine the extent to which a fact-finding is needed*.* A manager should consult with the CAHC and relevant subject matter experts for this determination. Managers and supervisors should take all allegations of harassing conduct seriously. ***They should determine the extent of the fact-finding needed on a case-by-case basis*****.** For example, if the allegation involves a single instance, and there are no witnesses other than the alleged harassee and the alleged harasser, the fact-finding should be relatively simple. On the other hand, if the alleged harassee describes more than one instance of harassing conduct, or indicates that there are others who may have witnessed the conduct, the fact-finding will involve more interviews in addition to the alleged harasser and alleged harassee. Finally, managers and supervisors should not allow the fact that there is no initial corroboration of the alleged harassee's allegation to prevent them from taking some initial remedial measures. When faced with an allegation that cannot be immediately substantiated, the Agency shall consider remedial measures such as increased monitoring of employee behavior or, if deemed necessary, separating the involved employees.[11]

9 NPR 3713.XX, Sec. 1.1.
10 NPR 3713.XX, Sec. 1.2.
11 Vicarious Liability Guidance, V.C.1.e.iii.

3.3.3 Act as or designate a Fact-Finder immediately, when it is determined that a fact-finding is necessary. As stated in the NPR, managers and supervisors dealing with allegations of harassing conduct should avail themselves of the expertise of subject matter experts and the CAHC throughout this process, including whom to appoint to serve as the Fact-Finder.

3.3.4 Ensure that a prompt, thorough, impartial, and appropriate fact-finding is conducted. The elements of a fact-finding are discussed in Section 4, below.

3.4 Confidentiality

3.4.1 Generally

All information obtained from allegations of harassing conduct must be maintained on a confidential basis to the greatest extent possible. Managers and supervisors should make this clear to employees. ***The Agency will not guarantee complete confidentiality, since it cannot conduct an effective fact-finding without revealing certain information to the alleged harasser and potential witnesses.*** However, information about the allegation of harassment should be shared only with those who need to know about it. Records relating to harassment complaints will be kept confidential on the same basis.[12]

When an employee complaining of harassment requests confidentiality, tension will likely arise as a result of the employee's desire for confidentiality and the supervisor's obligation to take action in response to the allegation. ***Supervisors have an obligation to take immediate action regardless of an employee's confidentiality request. Supervisors should explain that they will maintain as much confidentiality as possible, but they must investigate the matter.*** Inaction by the supervisor in such circumstances could lead to Agency liability and possible disciplinary action against the supervisor.[13] Further, EEOC states that "While it may seem reasonable to let the employee determine whether to pursue a complaint, *the employer must discharge its duty to prevent and correct harassment*."[14]

3.4.2 Privacy Act Compliance

It is the responsibility of the CAHC to ensure that all records pertaining to allegations of harassment are compliant with the Privacy Act of 1974 and retained in accordance with NPR 1382.1, NASA Privacy Procedural Requirements. (See also Sec. 5.2.)

CAHCs, managers, and supervisors receiving allegations of harassment should provide the alleged harasee with a Privacy Act Statement. During fact-finding, Fact-Finders should provide all witnesses in the fact-finding a copy of the Privacy Act Statement. Consistent with Privacy Act requirements, the alleged harassee shall not receive a copy of the Fact-Finding report. (See also Sec. 5.2.)

12 Id., Sec. V.C.1.d.
13 Id.
14 Id.

3.5 Harassment Allegations Involving NASA Contractors

As stated in the NPR, ***while NASA does not have the authority to address contractor-on-contractor issues pertaining to harassment, it is expected that all contract employees on NASA facilities will refrain from engaging in harassing conduct.***[15] For contractor-on-contractor allegations of harassment, NASA supervisors or the CAHC shall immediately contact the Director of Procurement for referral to the appropriate Contracting Official.

In instances ***where a contractor is alleging harassing conduct by a civil servant or vice versa, the allegations should be reported to the CAHC for further processing consistent with the NPR.*** This should include a determination as to the scope of the alleged harassing conduct. The CAHC may also raise the matter with the Director of Procurement for referral to the appropriate Contracting Official, as appropriate.

It should be noted that, where only one of the parties is a contractor or when a contractor has been identified as a witness, NASA Fact-Finders need to request access through the Director of Procurement or designee, before the Fact-Finder interviews any contract employee. Therefore, NASA cannot compel cooperation by the contracting organization; it would be voluntary on the part of the contract employee. It is important for CAHCs to know this and to communicate this to managers, supervisors, and employees.

15 NPR 3713.3, fn. 1.

4. Fact-Finding

4.1 Determining Whether Fact-Finding Is Necessary

Where fact-finding is determined to be necessary, supervisors will act as or designate the Fact-Finder to conduct fact-findings into allegations of harassing conduct.[16] The primary goal of fact-finding is to ascertain the facts pertinent to the incident, what actually caused the incident, the outcome of the incident, and what actions need to be taken that will improve the probability that similar incidents will be prevented in the future.

Whether the supervisor acts as the Fact-Finder or one is appointed, the Fact-Finder should conduct this assigned inquiry as his or her official duty. Conflicts with pre-existing regular duties should be resolved within the management chain. Finally, ***the appointed Fact-Finder may not be subordinate to any official or employee involved or alleged to be involved in the matter.***

The supervisor shall also ensure that designated Fact-Finders have been provided a copy of the NPR and this Implementation Guide and have had an opportunity to familiarize themselves with the contents of these documents. Additionally, CAHCs shall coordinate with ODEO to ensure that designated Fact-Finders have been provided access to other available resource materials on the Agency's Anti-Harassment Procedures, such as online education and awareness information.

There may be some situations where fact-finding is not needed. For example, if the alleged harasser does not deny the accusation, there would be no need to interview witnesses, and the employer could immediately determine appropriate corrective action. However, there needs to be a document for the record, noting the incident and its resolution, with copy to the CAHC.

4.2 Authorizing the Fact-Finding

Upon a determination that a fact-finding is needed, the supervisor will either: 1) conduct the fact-finding, or 2) prepare an authorization letter designating a Fact-Finder and setting out the subject of the fact-finding. The essential elements of the authorization letter are set forth below (see ***Appendix D. Sample Fact-Finding Authorization Letter****):*

4.2.1 Assignment/Delegation*:* The vesting of authority

4.2.2 Scope/Allegation: Defining the incident/allegation to be investigated

4.2.3 Report: Establishing reasonable timelines for completion of the Fact-Finding Report

4.3 Conducting Interviews

The fact-finding shall include, at a minimum, interviews with key individuals such as the alleged harasee, the alleged harasser, and any witnesses to alleged harassing conduct.[17] For a detailed discussion on conducting interviews, see ***Appendix E. Interview Tips****.* For various examples of appropriate questions to ask alleged harassees, alleged harassers and other witnesses, see ***Appendix F. Questions to Ask Parties and Witnesses****,* which also appears in NPR 3713.3. Several other considerations impacting the interview process are addressed below.

16 NPR 3713.XX, Sec. 1.2.3.4.
17 NPR 3713.3, Sec. 2.2.1.

4.3.1 Credibility Assessments

Where the interview process results in conflicting versions of relevant events, as is often the case, the Fact-Finder or supervisor may ultimately have to weigh each individual's credibility. In such cases, credibility assessments can be critical in determining whether the alleged harassment in fact occurred.[18] If there are conflicting versions of relevant events, the supervisor or other appropriate deciding official will have to weigh each party's credibility. Credibility assessments can be critical in determining whether the alleged harassment in fact occurred. Factors to consider include:

- **Inherent plausibility:** Is the testimony believable on its face? Does it make sense?
- **Demeanor:** Did the person seem to be telling the truth or lying?
- **Motive to falsify:** Did the person have a reason to lie?
- **Opportunity to Observe:** Did the witness have enough information to make an informed observation?
- **Corroboration:** Is there **witness testimony** (such as testimony by eye-witnesses, people who saw the person soon after the alleged incidents, or people who discussed the incidents with him or her at around the time that they occurred) or **physical evidence** (such as written documentation) that corroborates the party's testimony?
- **Past record:** Did the alleged harasser have a history of similar behavior in the past?

EEOC cautions that "None of the above factors are determinative as to credibility. For example, the fact that there are no eye-witnesses to the alleged harassment by no means necessarily defeats the complainant's credibility, since harassment often occurs behind closed doors. Furthermore, the fact that the alleged harasser engaged in similar behavior in the past does not necessarily mean that he or she did so again."[19]

4.3.2 Statement of Facts

Fact-Finders may request witnesses interviewed during a fact-finding to sign a Statement of Facts. (See **Appendix G. Sample Statement of Facts.**) However, such statements will not be necessary in every case.

A good "rule-of-thumb" to use in making this decision is the complexity or severity of the case at hand. Some considerations in determining whether witnesses should sign statements are:

- Was the manager or supervisor present during the incident(s) that gave rise to the allegation?
- Does the allegation involve a single incident or a pattern of conduct?
- Are there witnesses (other than the parties themselves) to the incident(s) that gave rise to the allegation?
- Is there the potential for a factual dispute among the witnesses as to what happened?
- Did the alleged incident involve inappropriate physical contact?

18 Vicarious Liability Guidance, Sec. V.C.1.e.ii.
19 Id.

4.3.3 Retaliation Prohibition

In addition, ***Fact-Finders should be aware that the anti-harassment process prohibits retaliation against employees who report harassment or provide information related to such allegations.*** Therefore, when conducting interviews during a fact-finding, the official who interviews the parties and witnesses should remind these individuals about the prohibition against retaliation.[20]

4.3.4 Allegations Beyond the Scope of the Fact-Finding

If a Fact-Finder receives other allegations of harassment beyond the allegations into which the fact-finding is being conducted, the Fact-Finder should consult immediately with the supervisor or manager who appointed the Fact-Finder. The manager or supervisor should, in turn, consult with the CAHC and subject matter experts to determine whether the new incident(s) of alleged harassment is supporting evidence of the original allegations but does not raise a new allegation, whether the new incident(s) is like or related to the original allegations of harassing conduct, or whether the new incident is not an allegation of harassment.

If the Fact-Finder receives other allegations unrelated to harassment, he or she shall refer such allegations to the CAHC. Such allegations shall not be part of the written report.[21]

4.4 Concluding Fact-Finding

There is no set formula to dictate when enough information has been gathered to ensure that a Fact-Finder has fully completed an inquiry. There are, however, some general concepts that can be followed in determining when enough testimony and evidence have been collected. ***Here are some tips to assist in making this determination:***

- When all evidence has been collected and all witnesses have been interviewed.
- When the preponderance of testimonial and physical evidence clearly indicate that the facts of the case in question are or are not substantiated.
- When the testimony is redundant and it is unlikely that further testimony will not discover new information essential to the fact-finding.
- When it is determined that all disputed facts are resolved and continuing the fact-finding will disrupt the normal operation of the facility.

4.5 Preparing the Fact-Finding Report

4.5.1 Purpose of the Report

Once the fact-finding is completed, the Fact-Finder must prepare a Fact-Finding Report and provide it to the supervisor.[21] A copy should also be provided to the CAHC. The Fact-Finding Report is the means through which supervisors evaluate the facts and make decisions regarding what corrective action, if any, should be taken. The Fact-Finding Report is normally in memorandum format. ***Note also that it is essential for supervisors to consult with the CAHC and subject matter experts (e.g., Human Resources, EO, and Chief Counsel) on the Fact-Finding Report before implementing any corrective action.***

20 Vicarious Liability Guidance, Sec. V.C.1.b. Managers and supervisors should also look closely at employment decisions affecting the alleged harasee and witnesses, during and after the fact-finding, to ensure that such decisions are not based on retaliatory motives.
21 NPR 3713.3, Sec. 2.2.4.2.

4.5.2 Tips for Developing the Fact-Finding Report

- Remember the audience—it may include individuals unfamiliar with functions, terminology, and organizations.
- Explain references, terminology, and acronyms as needed.
- Identify the specific evidence relied upon for each finding of fact.
- Ensure that all evidence relied upon is contained and referenced as an exhibit in the report and file.
- Where appropriate, use official titles rather than personal names.
- Identify how you resolved significant inconsistencies or conflicts in evidence with an objective analysis.

For additional information on the Fact-Finding Report, please see ***Appendix H. Fact-Finding Report Template***.

NOTE: Where the Fact-Finder is not the supervisor, the Fact-Finder shall return to the supervisor all draft copies, tapes, notes, working papers, etc. relevant to the allegations of harassment and/or used to formulate the final Fact-Finding Report. Nothing relating to the case should be retained by the Fact-Finder. The original copy of the completed report, all exhibits, and the authority for conducting the fact-finding should be submitted to the supervisor in the manner specified in the letter authorizing the fact-finding. A copy of the report shall reside with the CAHC.

4.6 Actions to be Taken upon Completion of the Fact-Finding

4.6.1 Determining the Appropriate Remedy

Based on the Fact-Finding Report, the supervisor will determine in consultation with the CAHC and subject matter experts (EEO, Human Resources, Chief Counsel, etc.) what action, if any, is recommended in the case and take action, as necessary. ***Remedial measures should be designed to stop the harassment, correct its effects on the employee, and ensure that the harassment does not recur.*** These remedial measures need not be those that the employee requests or prefers, as long as they are effective. In determining disciplinary measures, management should keep in mind that the Agency could be found liable if the harassment does not stop. At the same time, management may have concerns that overly punitive measures may subject the Agency to claims such as wrongful discharge, and may simply be inappropriate. Nonetheless, at the very least, when faced with an allegation of harassment that cannot be immediately addressed, the Agency has an obligation to take preventative measures, such as training or monitoring.

Remedial measures should not adversely affect the harassee. Thus, for example, if it is necessary to separate the parties, then the harasser should be transferred (unless the harassee prefers otherwise). Remedial responses that penalize the harassee could constitute unlawful retaliation and are not effective in correcting the harassment.[22]

22 Id. at V.C.1.f.

4.6.2 Notifying the Alleged Harassee

The supervisor shall notify the alleged harassee of the completion and outcome of the process to the extent permitted under the Privacy Act. A harassee does not need to know and may not be provided the outcome of any disciplinary action against a harasser. A harassee is not to be provided with a copy of the Fact-Finding Report. The supervisor should consult with the CAHC and subject matter experts as to this notification.

5. Records Management

5.1 Tracking of Harassment Allegations

Each Center shall be responsible for ensuring the maintenance and tracking of information pertaining to allegations of harassment.[23] Tracking data about allegations of harassing conduct is necessary for record-keeping purposes. It also serves as a reference source for inquiries and responses on a need-to-know basis only.

To facilitate tracking of allegations of harassing conduct, please see ***Appendix I. Harassment Activity Reporting Tracking Form*****,** to be used by CAHCs to periodically gather data, to report on the number and bases of allegations over time, to conduct trends analysis, and to ensure that the fact-finding and other actions taken in response to allegations are in accordance with the requirements of NASA's Anti-Harassment Procedural Requirements.

5.2 Maintenance of Records

The CAHC will ensure the Center maintains case files pertaining to the anti-harassment process at their respective Centers.[24] The maintenance of records and any disclosure of information from these records must be in compliance with the Privacy Act, Title 5 United States Code (USC) 552a, NPR 1441.1, NASA Records Retention Schedules, and NPR 1382.1, NASA Privacy Procedural Requirements. Such information, however, may have to be disclosed to those officers and employees who have a need for the record in order to carry out the purpose and intent of the Anti-Harassment Procedures. (See also Sec. 3.4.)

23 NPR 3713.XX, P.5, Verification/Measurement.
24 NPR 3713.XX, Sec. 1.6.1.5.

National Aeronautics and Space Administration

STOP Workplace Harassment

Causes Tension

Causes Emotional Distress

Undermines Productivity

Lowers Morale

Increases Employee Turnover Rates

Increases Absenteeism

Inhibits Growth and Creativity

Undermines Professionalism

Undermines Inclusion

Insults Dignity of Employees

Harassing conduct is any unwelcome conduct, verbal or physical, based on individual's race, color, gender, national origin, religion, age, disability, genetic information, sexual orientation, status as a parent, gender identity, or retaliation when:

(1) The behavior can reasonably be considered to adversely affect the work environment; or

(2) An employment decision affecting the employee is based upon the employee's acceptance or rejection of such conduct.

Examples of harassment that may adversely affect the work environment include but are not limited to making jokes or remarks or displaying images, pictures, other materials that may unreasonably interfere with work performance and/or create an intimidating, hostile, or offensive work environment **based on an individual's race, color, gender, national origin, religion, age, disability, sexual orientation, status as a parent or gender identity**. Examples of harassment based upon an employee's acceptance or rejection of harassing conduct include, but are not limited to, a supervisor coercing an employee into an unwelcome sexual relationship and then rewarding the employee with a promotion, or a supervisor taking disciplinary action or denying a promotion to an employee because he or she rejected sexual advances from the supervisor.

Retaliation against an employee for alleging harassment or participating in a harassment fact-finding is also impermissible.

NASA employees who believe they have been subject of an incident of harassing conduct in violation of NASA Policy must not wait – tell the person that his or her behavior is a problem, report the matter immediately to his or her immediate supervisor, the Center Anti-Harassment Coordinator, or other official as designated by the Center Director.

Should you wish to receive additional information on NASA's Anti-Harassment Procedures, please contact:

Or visit:

www.nasa.gov

Appendix B. Notice of Rights and Responsibilities of NASA Employees Alleging Harassing Conduct

Employees who believe they have been subjected to harassing conduct have the right to:

1. Report the matter immediately to their first-line supervisor, the CAHC, or any other official designated by the Center Director/OIC. In the event that the employee's first-line supervisor is the alleged harasser, the employee shall contact the second-line supervisor, the CAHC, or any other official as designated.

2. Report the alleged incident of harassing conduct to the CAHC, or other official as designated by the Center Director/OIC, when the person to whom the alleged harassment was reported failed to take prompt action.

3. Pursue the matter under the Agency's Anti-Harassment Procedures, the EEO complaint procedures, or both processes simultaneously. The process established under the Anti-Harassment Procedural Requirements is entirely separate and apart from the EEO complaints process. An employee who reports harassment in accordance with the Anti-Harassment Procedures has not filed an EEO complaint under 29 CFR 1614 and NPD 3713.6P. A consultation with a CAHC is not EEO counseling for purposes of filing an EEO complaint. An employee who wishes to file a complaint of discrimination shall contact his/her Center EEO Office within 45 days of the alleged harassment.

4. Present and pursue the allegation of harassing conduct free from restraint, interference, coercion, harassment, and reprisal.

5. Prompt notification upon completion of the fact-finding. However, to the extent that disciplinary action is taken, the employee shall not be apprised of the disciplinary action taken against an alleged harasee.

Employees alleging harassment have the responsibility to:

1. Fully cooperate with the presentation of information, to include scheduling of interviews or meeting, responding to correspondence, and providing requested material or information, in the processing of their allegations of harassing conduct.

2. Keep the Agency informed of your contact information.

3. Notify the CAHC or the NASA Anti-Harassment Coordinator of any questions or concerns about the Anti-Harassment Process.

This is to acknowledge that a copy of this form was provided to me.

_____ _____

Employee Alleging Harassment Date

_____ _____

Supervisor or CAHC Date

Appendix C. Checklist of Basic Information to Alleged Harassers

1. The Agency must inform the alleged harasser that an allegation of harassing conduct has been brought against him or her. This must include the name of the alleged harassee, the allegations brought to the Agency's attention, and when the allegation was reported.

2. As a person identified or alleged to be responsible for harassing conduct, the employee will be asked to provide information relating to the allegations. The alleged harasser is responsible for fully cooperating with the fact-finding process.

3. If there are individuals who can provide information concerning the allegations of harassment, the alleged harasser should be prepared to furnish the supervisor, the CAHC, or the Fact-Finder, with their full name, position, and contact information. The Fact-Finder will determine what interviews and documentation are necessary.

4. The information in the Fact-Finding Report is protected by the Privacy Act, and the information contained therein may only be shared with those who have a need to know in the performance of their duties.

5. An alleged harasser may be an employee covered under a collective bargaining agreement and may be entitled to certain rights. It is recommended that the supervisor or CAHC consult with the Chief Counsel's Office or your Center Labor Relations Officer regarding these rights.

6. An alleged harasser is required to keep the Agency informed of his or her contact information.

7. An alleged harasser must notify the CAHC or the NASA Anti-Harassment Coordinator of any questions or concerns he or she may have about the Anti-Harassment Process.

Appendix D. Sample Fact-Finding Authorization Letter

[DATE]

To:

From:

Sub: Authorization of Fact-Finding

_____, an employee at [NAME OF CENTER] has raised an allegation(s) of harassment. In accordance with NPR 3713.3, I hereby authorize [NAME OF FACT-FINDER] to conduct a fact-finding into this allegation(s).

NAME	TITLE
_____	Fact-Finder

Upon identification, Mr/s. _____ will expect your complete cooperation in this matter.

[Appointing AUTHORITY'S SIGNATURE BLOCK with name and official NASA Title]

cc:

Appendix E. Interview Tips

I. Purpose of the Interview Questions

It is essential that Fact-Finders understand the purpose of interviews is to obtain relevant facts. Relevant facts are those that are important to deciding the previously identified ultimate issues. They are outcome determinative. Therefore, fact-finding questions must be designed to obtain the relevant facts. Also, remember that for every piece of disputed evidence, there should be a factual finding.

II. Interviewing Techniques

Interviewing techniques vary, depending upon the facts, circumstances, and witnesses. The following suggestions should be considered as techniques to elicit the best, most reliable information:

A. All questions asked during the interview must be directed toward discovering the answers to "who, what, when, where, why, and how."

B. Avoid beginning an interview with specific questions, as they may inhibit the witness. The witness may feel that only those items mentioned are pertinent.

C. The first set of questions should establish the witness' title, experience, education (where appropriate) and job-related duties for the record.

D. The second set of questions should establish the witness' knowledge of the event(s) under fact-finding. Elicit a description of the scene first; then the related action. Asking an open-ended question allows the witness to tell his or her rendition of events. Once the person has completely related his or her narrative, specific questions may be asked to clarify specific points and gather additional information.

E. Compound questions are confusing and should be avoided.

F. Leading questions are questions that suggest an answer. Examples: "This isn't the first time you've had performance issues, is it?" "You confronted your subordinate, didn't you?" The disadvantages inherent in leading questions are that they can lead to distortions of the statements made and can potentially lead to witness intimidation. Leading questions should be avoided.

G. Problems can also arise when asking questions that are answered by a simple yes or no. This limits the witness to answering only specific questions, and in many instances the witness has a tendency to answer affirmatively just to be agreeable. They are appropriate in limited situations, where a direct response is important.

H. Keep the format simple and carefully choose the language as word choice can affect an answer.

I. Actual interview—If fact-finding addresses specific events, inquire about all events during the relevant time frame in chronological blocks of time. For each block ask, who, what, when, where, why and how:

1. What was the alleged conduct?
2. Who was present?
3. What was said?
4. What exactly occurred?
5. When did it occur?

6. Where did it occur?
7. How did this affect you?
8. How did it occur?
9. Where did it happen?
10. Who else has information?

J. The Fact-Finder should also determine the following:

1. What was said?
2. Who said it?
3. When was it said?

K. The Fact-Finder should keep in mind the following:

1. Always ask if there is any other information they have about the situation that he or she believes could be significant.
2. Don't tell one witness what another specific witness said.
3. Always maintain control.
4. Don't discuss personal opinions or conclusions.
5. Don't make accusatory statements.
6. Have the witness explain terms and phrases.
7. Resolve contradictions.

III. Interview Closing Phase

At the end of every interview, bolster the witness, whether he or she is friendly or hostile. This can be accomplished by employing the following statements:

A. "Is there anything else I should ask you that I haven't?"

B. "Anything else I need to know?"

C. "If you have any doubts, is there anything else you think you should tell me?"

D. Remind the witness "it's for the record."

E. "Certainly you appreciate that this matter may go to a higher level. Is there anything you'd like to amend or supplement?"

F. Always give the witness the privilege of contacting the Fact-Finder if additional information is later recalled or comes to their attention. Not everyone can think of every detail on the spot, and the questioning may well trigger further search of memory and records.

Appendix F. Questions to Ask Parties and Witnesses

The following are ***examples of questions that may be appropriate*** to ask the parties and potential witnesses. Any actual fact-finding should be tailored to the particular facts.

I. Questions to Ask the Alleged Harassee:

A. Who, what, when, where, and how: *Who* engaged in the alleged conduct? *What* exactly occurred or was said? *When* did it occur and is it still ongoing? *Where* did it occur? *How often* did it occur? *How* did it affect you?

B. How did you react? What response did you make when the incident(s) occurred or afterwards?

C. Are there any persons who have relevant information? Was anyone present when the alleged conduct occurred? Did you tell anyone about it? Did anyone see you immediately after the alleged conduct?

D. Did the person who you believe harassed you engage in what you consider inappropriate conduct toward anyone else at that time? Do you know whether anyone complained about inappropriate conduct by that person?

E. Are there any notes, physical evidence, or other documentation regarding the incident(s)?

F. How would you like to see the situation resolved?

G. Do you know of any other relevant information?

II. Questions to Ask the Alleged Harasser:

A. What is your response to the allegations? Give us your recollection of the who, what, when, where, and how concerning the alleged event(s).

B. Are there any persons who have relevant information?

C. Are there any notes, physical evidence, or other documentation regarding the incident(s)?

D. Do you know of any other relevant information?

III. Questions to Ask Third Parties:

A. What did you see or hear? When did this occur? Describe the alleged harasser's behavior toward the harassee and toward others in the workplace.

B. What did the harassee tell you? When did she/he tell you this?

C. Do you know of any other relevant information?

D. Are there other persons who have relevant information?

Appendix G. Sample Statement of Facts

STATEMENT OF FACTS

I, _____, (position title, grade, and series), (location), NASA, make the following statement freely and voluntarily to _____, who has identified himself/herself to me as a Fact-Finder for the Agency, obtaining information and fact-finding in relation to an allegation(s) of harassment in violation of NASA policy. I have been informed that this statement may be used in evidence. I understand that this statement may be shown to the interested and relevant parties and those with a legal right to know.

[STATEMENT]

I have read the above statement, consisting of __ pages, and it is true and complete to the best of my knowledge.

_____

Witness Name and Date

Appendix H. Fact-Finding Report Template

The Fact-Finding Report will vary from case to case. In simple cases, for example, an incident that occurs with the supervisor present, the "report" may consist of a supervisor's brief memorandum to the file describing the inappropriate conduct and what was done to address it. In more complex cases, the Fact-Finder will need to prepare a more in-depth document. However, the document should be as concise as possible, laying out only the needed information to make a decision as to whether prompt action should be taken to address the matter, and if so, what action is needed. The template below provides an outline of the information to be provided when it is determined that an in-depth report is appropriate.

I. Preliminary Statement

A. Identify the authority for conducting fact-finding.

The paragraph should generally read as follows: "This fact-finding was authorized by _____ (place) on (date) per Memorandum dated_____."

B. Identify the purpose and scope of the fact-finding.

The initial purpose of the fact-finding should be concisely stated. As an example: "to conduct a fact-finding into whether harassment in violation of NASA policy occurred when . . ."

The fact-finding should always be limited in scope to just the allegation for which the fact-finding has been authorized. However, if during the course of the fact-finding, information was provided to the Fact-Finder that goes beyond the scope of the current fact-finding, a note to the reader should be provided:

Example: "Fact-finding was limited to the alleged incident. Two employees and one contractor found to have knowledge pertinent to the incident were interviewed."

Example: "During the course of the fact-finding, two other employees made two additional allegations of harassment by Mr. Oxford."

C. List or summarize the witnesses interviewed.

II. Findings of Fact

A. Findings go to the ***when, who, what, why, where, and how.*** Findings are the resolutions of the details.

B. The findings should be ***set forth in a narrative addressing all the pertinent evidence***. In a good narrative, the issues are set out and resolved in an orderly way. The simplest way to organize the narrative is to ***describe the allegation and then describe what each witness had to say about it.***

C. Keep in mind that there must be a reference to exhibits in support of every factual assertion. Therefore, after every factual statement, the exhibits supporting that statement should be identified in parentheses ( ). The exhibits are not repeated in the narrative; they are described. This must be done correctly and fairly. It is not fair, for example, to describe a witness as "admitting" a fact when he merely stated it and the fact doesn't bear on his culpability. In other words, watch the use of emotionally-charged language. Such language will impair credibility.

III. Signature

A. The ***Fact-Finder shall sign the Fact-Finding Report.***

B. Signatures reflect the accuracy of the Fact-Finding Report and view of the Fact-Finder.

IV. Exhibits

A. This section of the Fact-Finding Report includes ***an index of all exhibits supporting the findings and a descriptive heading of each.*** The exhibits should be included in their entirety. The Fact-Finding Report is incomplete, if the exhibits are not part of the package.

B. This section includes ***any material referred to or considered in the findings of fact, e.g., e-mails and photographic images.***

C. Exhibits ***may also include signed statements from the parties and witnesses***, depending on the complexity and severity of the allegations (see Section 4.3.2, above).

Appendix I. Harassment Activity Reporting/Tracking Form

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

CENTER:_____

HARASSMENT ACTIVITY REPORTING/TRACKING

Case Number	Date Allegation Reported	Time in Inventory	Basis(es)	Issue(s)	Relationship of Alleged Harasser and Alleged Harasee (e.g., supervisor-employee)	Fact-Finder	Status

*** To be prepared and maintained by the CAHC.**

STOP Workplace Harassment

Causes Tension

Causes Emotional Distress

Undermines Productivity

Lowers Morale

Increases Employee Turnover Rates

Increases Absenteeism

Inhibits Growth and Creativity

Undermines Professionalism

Undermines Inclusion

Insults Dignity of Employees

Harassing conduct is any unwelcome conduct, verbal or physical, based on individual's race, color, gender, national origin, religion, age, disability, genetic information, sexual orientation, status as a parent, gender identity, or retaliation when:

(1) The behavior can reasonably be considered to adversely affect the work environment; or

(2) An employment decision affecting the employee is based upon the employee's acceptance or rejection of such conduct.

Examples of harassment that may adversely affect the work environment include but are not limited to making jokes or remarks or displaying images, pictures, other materials that may unreasonably interfere with work performance and/or create an intimidating, hostile, or offensive work environment **based on an individual's race, color, gender, national origin, religion, age, disability, sexual orientation, status as a parent or gender identity**. Examples of harassment based upon an employee's acceptance or rejection of harassing conduct include, but are not limited to, a supervisor coercing an employee into an unwelcome sexual relationship and then rewarding the employee with a promotion, or a supervisor taking disciplinary action or denying a promotion to an employee because he or she rejected sexual advances from the supervisor.

Retaliation against an employee for alleging harassment or participating in a harassment fact-finding is also impermissible.

NASA employees who believe they have been subject of an incident of harassing conduct in violation of NASA Policy must not wait – tell the person that his or her behavior is a problem, report the matter immediately to his or her immediate supervisor, the Center Anti-Harassment Coordinator, or other official as designated by the Center Director.

Should you wish to receive additional information on NASA's Anti-Harassment Procedures, please contact:

Or visit:

Employees who believe they have been subjected to harassing conduct have the right to:

1. Report the matter immediately to their first-line supervisor, the CAHC, or any other official designated by the Center Director/OIC. In the event that the employee's first-line supervisor is the alleged harasser, the employee shall contact the second-line supervisor, the CAHC, or any other official as designated.

2. Report the alleged incident of harassing conduct to the CAHC, or other official as designated by the Center Director/OIC, when the person to whom the alleged harassment was reported failed to take prompt action.

3. Pursue the matter under the Agency's Anti-Harassment Procedures, the EEO complaint procedures, or both processes simultaneously. The process established under the Anti-Harassment Procedural Requirements is entirely separate and apart from the EEO complaints process. An employee who reports harassment in accordance with the Anti-Harassment Procedures has not filed an EEO complaint under 29 CFR 1614 and NPD 3713.6P. A consultation with a CAHC is not EEO counseling for purposes of filing an EEO complaint. An employee who wishes to file a complaint of discrimination shall contact his/her Center EEO Office within 45 days of the alleged harassment.

4. Present and pursue the allegation of harassing conduct free from restraint, interference, coercion, harassment, and reprisal.

5. Prompt notification upon completion of the fact-finding. However, to the extent that disciplinary action is taken, the employee shall not be apprised of the disciplinary action taken against an alleged harasee.

Employees alleging harassment have the responsibility to:

1. Fully cooperate with the presentation of information, to include scheduling of interviews or meeting, responding to correspondence, and providing requested material or information, in the processing of their allegations of harassing conduct.

2. Keep the Agency informed of your contact information.

3. Notify the CAHC or the NASA Anti-Harassment Coordinator of any questions or concerns about the Anti-Harassment Process.

This is to acknowledge that a copy of this form was provided to me.

_____ _____

Employee Alleging Harassment Date

_____ _____

Supervisor or CAHC Date

_____

DATE

To:

From:

Sub: Authorization of Fact-Finding

_____, an employee at _____ has raised an allegation(s) of harassment. In accordance with NPR 3713.3, I hereby authorize _____ to conduct a fact-finding into this allegation(s).

NAME	TITLE
_____	Fact-Finder

Upon identification, Mr/s. _____ will expect your complete cooperation in this matter.

_____

Signature

_____ _____

Name Title

cc:

STATEMENT OF FACTS

I, _____, (position title, grade, and series), (location), NASA, make the following statement freely and voluntarily to _____, who has identified himself/herself to me as a Fact-Finder for the Agency, obtaining information and fact-finding in relation to an allegation(s) of harassment in violation of NASA policy. I have been informed that this statement may be used in evidence. I understand that this statement may be shown to the interested and relevant parties and those with a legal right to know.

[STATEMENT]

I have read the above statement, consisting of __ pages, and it is true and complete to the best of my knowledge.

_____

Witness Name and Date

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

CENTER:_____

HARASSMENT ACTIVITY REPORTING/TRACKING

Case Number	Date Allegation Reported	Time in Inventory	Basis(es)	Issue(s)	Relationship of Alleged Harasser and Alleged Harasee (e.g., supervisor-employee)	Fact-Finder	Status

*** To be prepared and maintained by the CAHC.**