

## **FHWA's Anti-Harassment Process – FAQs (for Management)**

### **1. What is the Anti-Harassment Process?**

The Anti-Harassment Process (Process) provides individuals with a neutral forum where they can report harassment and be confident that their allegations will be seriously considered by management.

### **2. What is the purpose of the Process?**

The purpose of the Process is to ensure prompt inquiry of harassment allegations, to take prompt and effective action to stop any ongoing harassment and, if appropriate, discipline the responsible party.

### **3. Who is implementing this Process?**

The Process is being implemented by the Anti-Harassment Coordinator (Coordinator) who is authorized to coordinate allegations of any type of harassment relating to the FHWA workplace. The Coordinator reports to the Associate Administrator for Civil Rights. Through this Associate Administrator, the Process reports to Executive Management, which may intervene if the Coordinator reports that management's actions regarding an allegation are not sufficiently prompt or thorough; thus, there will be institutional support for taking prompt and effective action when harassment exists.

### **4. Who can utilize this Process?**

This Process may be utilized by FHWA employees, contractors, employees of FHWA partners (such as State DOT employees) or applicants for employment.

### **5. How does the Process work start to finish?**

If an Aggrieved Person (AP) believes he or she has been harassed in the workplace, the AP may contact the Coordinator who will subsequently set up an intake meeting with the AP. The AP should do his or her best to be available for this meeting as quickly as possible to initiate the process in a timely manner. At the intake meeting, the AP and the Coordinator will discuss the timing and details of the potential harassment, identify the claimed perpetrator of the harassment (Respondent), and identify the pertinent supervisors of the Respondent. After the meeting, the Coordinator will provide notice of the allegations to the Respondent's supervisor and will begin to obtain and consider information relating to the allegations.

Within about a week, the Coordinator will then respond to the AP by email, either accepting the AP's allegation(s) for inquiry or dismissing the allegations if they are not within the scope of the Process. Among other requirements, the alleged harassment must be recent or ongoing to be accepted for inquiry. If an allegation is accepted, the Coordinator will prompt the first line supervisor of the Respondent to coordinate with HR to investigate the allegations, make a decision as to

whether the allegations are substantiated, and report the results back to the Coordinator within 15 business days. If the allegations are substantiated, the first line supervisor of the Respondent is required to provide a report to the Coordinator that includes a plan of proposed relief and discipline. While the inquiry is ongoing, the supervisor, in coordination with HR, may implement interim measures to prevent further harassment. The Coordinator will review the supervisor's report and determine whether the inquiry and accompanying relief are in compliance with the Process.

### **Sequence of Events for Harassment Allegation**

Allegation → Intake Meeting → Coordinator's Preliminary Inquiry → Allegation Accepted or Rejected → If Accepted: Inquiry and Possible Interim Relief → Allegation Substantiated or Unsubstantiated → If Substantiated: Relief and/or Discipline

#### **6. What is the difference between “accepting” a harassment allegation and “substantiating” a harassment allegation?**

A harassment allegation is “accepted” when the Coordinator determines, based on preliminary information obtained from management, HR and HCC, that the allegation is either recent or ongoing and otherwise fits within the scope of the Anti-Harassment Process. This initial determination confirms that the timing and subject matter that the AP has raised are allegations the Process can address, and that the AP therefore may be able to obtain relief from harassment through the Process. Once an allegation is accepted, the first line supervisor then coordinates with HR to investigate the allegations. If the inquiry reveals that harassment has indeed occurred, one or more of the allegations is then “substantiated,” and the first line supervisor drafts a plan of proposed relief and discipline. In sum, the allegation is “accepted” by the Coordinator based on preliminary information, some of which involves timing or process issues, whereas the allegation is “substantiated” by the first line supervisor based on information obtained from an actual inquiry, and involves the merits of the allegations.

#### **7. What does a manager do when contacted by the Coordinator about an incident of harassment?**

Upon receiving the allegations from the Coordinator, the manager may share them with his or her chain of command as well as the AP's chain of command (excluding the Respondent). A manager should begin to consider whether interim relief may be appropriate and may implement interim relief quickly if circumstances warrant, but should await the Coordinator's decision as to whether the allegations are accepted prior to taking further action.

#### **8. What does a manager do if the Coordinator accepts the AP's allegations?**

Once an allegation is accepted, the Coordinator will send the Respondent's first level and second level supervisor a notice requiring the first line supervisor to coordinate with HR to (1)

investigate the allegations; (2) decide whether interim relief is appropriate, and if so, implement such relief; (3) make a decision within 15 business days whether some or all of the allegations are substantiated; (4) if any allegations are substantiated, draft a plan of proposed relief and discipline; and (5) notify the Coordinator of the results of the inquiry and any proposed relief and discipline by submitting a resolution document to the Coordinator within 15 business days. The second line supervisor will be aware that this process is occurring but will not participate in this process, except to approve and help implement interim or final relief (if necessary based on the structure of the office). The second line supervisor also may be the deciding official for more serious disciplinary actions.

#### **9. What does an inquiry of a harassment allegation look like?**

The format of the inquiry will depend on the facts of the specific scenario. Typically, the inquiry will involve separate interviews with the AP and the Respondent and any other employees who may have knowledge of the incidents involved. After these initial interviews, the first line supervisor (or his/her designee conducting the inquiry) should look to corroborate the information obtained in the interviews with documentary evidence. After interviews and the collection of documents are complete, the first line supervisor or designee will evaluate the information obtained to decide whether one or more allegations is substantiated.

#### **10. What happens once an allegation is substantiated?**

If an allegation is substantiated, the first line supervisor shall promptly proceed with the relief and discipline. Under the timeline of the Process, it is anticipated that relief will be initiated within 3 days of the acceptance of the resolution document and implemented within 15 days. It is further anticipated that discipline will be initiated within 3 days of the acceptance of the resolution document. The first line supervisor shall coordinate with HR as in any other disciplinary process, with the second line supervisor acting as the deciding official for more serious disciplinary actions. Once a decision has been made whether to proceed with discipline and the discipline, if any, has been finalized, the first line supervisor will submit a close-out form to the Coordinator, indicating the disciplinary outcome. It is anticipated that discipline will be implemented within 60 days of the acceptance of the resolution document.

#### **11. How will a manager know whether his or her proposed response to the harassment allegations is sufficient?**

The Coordinator will review the written resolution document within two business days of receipt and determine whether the inquiry, the proposed relief, and the anticipated proposed discipline meet Process requirements. If Process requirements are not met, the Coordinator will follow up with the first line supervisor seeking compliance with the Process, or if necessary, elevate this issue to and through her Associate Administrator. If Process requirements have been met, the Coordinator will confirm by email to the first line supervisor that the resolution document has been accepted by the Coordinator.

#### **12. How will the AP find out the result of the inquiry?**

Upon acceptance of the final resolution document, the Coordinator will inform the AP by email of the results of the inquiry and the relief to be provided. The manager who conducted the inquiry will thereafter contact the AP regarding implementation of relief.

**13. Can an AP appeal a decision in this process?**

There is no appeal process to challenge the decision or relief. The AP may pursue other options to address the original allegations (for instance, EEO, ADR, Ombudsman, etc.).

**14. Is the process confidential?**

This process is somewhat confidential but the AP will not be anonymous; by participating in the process, the AP is agreeing that he or she wants the Agency to investigate the allegations, which will require notification of Human Resources, the Office of Chief Counsel, and Respondent's chain of command. Inquiry nearly always requires an interview between a member of the Respondent's management team and the Respondent and may involve the AP's coworkers who may be questioned about their knowledge of what occurred. Dissemination of information by the Coordinator and management about the allegations, however, will be limited to those individuals who have a need to know and all information obtained from the harassment allegations must be maintained on a confidential basis to the greatest extent possible.

**15. Is the Anti-Harassment Coordinator a neutral party?**

Yes, the Coordinator is a neutral party and is not an advocate for the AP, the manager(s) or the Respondent.

**16. When is the AP required to report the alleged harassment to use this process?**

There is no specific number of days within which an allegation must be brought.

**17. How long does this process take?**

In the Process, the initial goal is that interim relief will begin to be considered within a few days and a decision will be made within 10 days whether the allegations are substantiated. If allegations are substantiated, the initial goal is that the AP will be notified of the relief within 2 days of substantiation. These timeframes may change as the Agency gains experience with the Process. Any discipline that is proposed or administered resulting from the substantiated allegations will occur after the inquiry has concluded. Because of privacy concerns for the Respondent, the Agency cannot discuss the Respondent's discipline with the AP. The AP is encouraged to return to the Coordinator if, following a substantiated allegation, there are further incidents of harassment. The Coordinator may then assist the AP in expediting a response to address the new incidents.

**18. What if the Respondent is not an FHWA employee?**

If the Respondent is not an FHWA employee, the Coordinator will refer the allegation(s) to the attention of the AP's first line and second line supervisors. These supervisors should implement interim relief, if appropriate, and should seek assistance in investigating and resolving the allegation from the management chain of the Respondent and/or the person responsible for coordination with that individual's management (such as the contracting officer representative on a contract, or, in instances involving a State partner, the Division Administrator responsible for the relationship with that partner). Within 15 business days of this referral, the management official shall report the

outcome of this referral to the Coordinator by providing a resolution document that outlines the steps that were taken to address the allegations.

**19. How is this Process different from the Equal Employment Opportunity Process?**

The EEO Process is based on Title VII of the Civil Rights Act, which prohibits discrimination (including harassment) based on sex (including sexual orientation, gender identity, and pregnancy), race, color, religion, national origin, disability, reprisal, or age. It is designed to make people whole if they have suffered discrimination and thus it may result in monetary or equitable relief (for instance, a retroactive promotion), but the EEO process can be lengthy (up to several years) and may require litigation. The Anti-Harassment Process, on the other hand, can resolve incidents of harassment relatively quickly and is available to employees regardless of whether the harassment allegation is based on a specific EEO category. The Process also enables disciplinary action against the Respondent, although it does not offer the payment of monetary relief. Lastly, it should be noted that reporting harassment under this Process does not replace or satisfy the requirements for filing EEO complaints or complaints in other forums, nor does it delay or waive the time limits for initiating claims in these forums.