

# Prevention of Workplace Harassment/NO FEAR

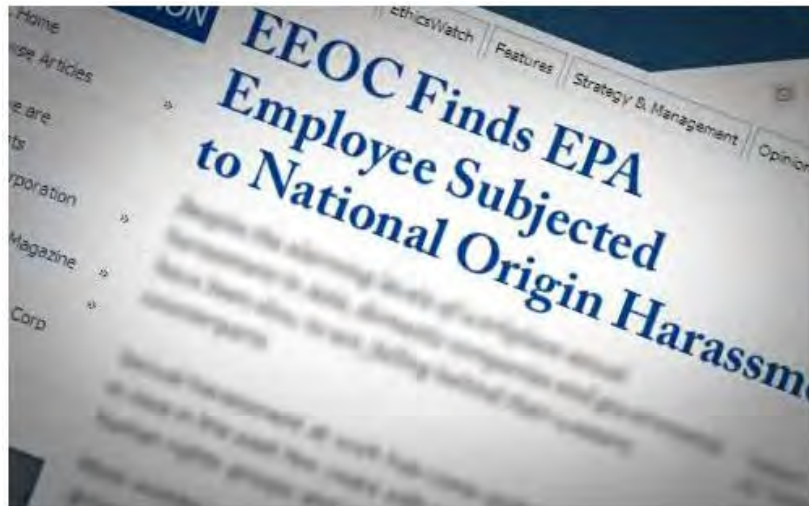


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## Introduction and Objectives



Welcome to the Prevention of Workplace Harassment/NO FEAR lesson.

Harassment is a real concern in any workplace. As you know, all Federal supervisors and employees must receive workplace harassment training as a condition of employment. In spite of this requirement, the persistence of harassment in the Federal workplace suggests that further efforts are necessary in order to eliminate the issues that persist.

Harassment, in all of its forms, is not limited to just one group. In fact, Federal employees of different races, and both sexes have reported experiencing discrimination, harassment, or retaliation.

After completing this lesson, you will be able to:

- Identify the type of conduct that constitutes employment discrimination/workplace harassment including sexual harassment.
- Identify your rights with regard to employment discrimination, whistleblower protection, and prohibition of retaliation.

Throughout this lesson, you will be shown several scenarios depicting workplace harassment. Be aware that these scenarios are fictional. Any similarity to real-life situations and/or people is completely coincidental, as all reports of workplace harassment are strictly confidential.

## The Break Room



*A man walks into a break room. There is a man and a woman sitting at one table and a lone woman sitting at another.*

**John:** *David! Hey, how's it going so far? David, this is Sarah.*

**David:** *Hi. Nice to meet you.*

**Sarah:** *Nice to meet you, David.*

**John:** *David just started this morning.*

**David:** *Yeah. I've been doing a lot of paperwork so far... onboarding and looking over our policies. Man, there sure are a lot of rules. I'm pretty sure we didn't have this many rules at my last job.*

**Sarah:** *Really? Which rules are you talking about?*

**David:** *Well, there's all kinds of stuff in my packet... a lot of it I've seen before, but some of it's new - like these rules about harassment.*

**John:** *Oh, I bet you had those before... you probably just didn't know about them.*

**Sarah:** *Yeah, those actually aren't just rules – they're laws.*

**David:** *Laws?*



**John:** Hey, actually... Karla here is our EEO Counselor.

**David:** EEO?

**Karla:** Equal Employment Opportunity. Hi there.... David, was it? Nice to meet you.

**David:** Nice to meet you too. So you're the one I get in trouble with if I tell a dirty joke or something like that?

**Karla:** No, that's not really why I'm here. I'm more of a problem solver and a mediator. It's my job to make sure we all have a safe and harassment-free workplace.

**David:** So, she said the harassment rules are based on laws?

**Karla:** That's right. There are several laws that ensure that employees can work without fear of being harassed because of their race, religion, gender or age, and other reasons. Let me tell you a little about these laws.

## Employee Rights, Federal EEO Laws, and Executive Orders

|  |   |
|--|---|
| <b>Civil Rights Act of 1964 as amended</b>   | Prohibits discrimination and harassment based on someone's race, sex (gender), religion, color, or national origin                        |
| <b>Age Discrimination in Employment Act</b>  | Prohibits discrimination and harassment based on age (over 40)  |
| <b>Rehabilitation Act of 1973 as amended</b> | Prohibits discrimination and harassment based on a physical or mental disability  |
| <b>Executive Order 13087</b>                 | Amended Executive Order 11478 to prohibit discrimination based on sexual orientation in the competitive service of the federal government |
| <b>Equal Pay Act of 1963</b>                 | Requires that women and men be given equal pay for equal work in the same establishment   |

There are the Federal Equal Employment Opportunity (EEO) laws and executive orders that prohibit discrimination, and are responsible for ensuring that the workplace is free from retaliation and reprisal, and does not discriminate against employees or applicants, with respect to the terms, conditions, or privileges of employment on:

- Race.
- Color.
- Religion.
- Sex (gender).
- Sexual orientation.
- National origin.
- Age (over 40).
- Disability.

## Defining Workplace Harassment



Harassment is a form of discrimination, and is a violation of law and policy.

Harassment is defined as:

- Unwelcome verbal or physical conduct that an individual believes is based on race, color, religion, sex (gender), national origin, age (over 40), and/or disability.
- Conduct when the submission to, or rejection of, such conduct is used as the basis for employment related decisions or actions.
- Conduct that has the intent or effect of unreasonably interfering with one's work performance, or creating an intimidating, hostile, or offensive working environment (also known as a hostile work environment).

Harassment becomes unlawful when:

- The conduct is sufficiently severe or pervasive as to create a hostile work environment.
- Enduring the offensive conduct becomes a condition of continued employment, or results in a tangible employment action.

## The Break Room – Hostile Work Environment



**David:** *OK, so workplace harassment is when someone either touches you or says things to you in an inappropriate way. But what if it only happened once? What if it was just an accident? I'd hate to see someone get fired for that.*

**Sarah:** *I know what you're saying, but I think the thing to remember is that it depends on the severity of the action. What if what the person did, or said, was really bad? Maybe all it would take was one time.*

**John:** *They way I understand it, the behavior has to interfere with your work or create a hostile work environment. Speaking of hostile work environments... you guys remember Jose, right?*

## The Break Room – Hostile Work Environment, continued



**John:** We used to have a guy who worked here named Jose. He was a smart guy. Hard working – everybody liked him. Well, almost everybody.

**John:** Anyway, this other guy named Christopher started making ethnic jokes and little comments about Hispanics whenever Jose was around. Jose put up with it for a day or two.

**John:** Then he got fed up and asked Christopher to stop making the comments.

**John:** I thought for sure Christopher would knock it off... maybe even apologize. Boy was I wrong. He actually laughed in Jose's face, and then made a few particularly offensive comments. He even threw in an ethnic slur or two. You know, this was in front of a half dozen other coworkers too. I don't know what he was thinking.

**David:** So that kind of behavior's gotta be considered harassment, right? I mean, he did it more than once, and it had to have made Jose not enjoy coming to work. Is that what you mean by a hostile work environment?

**John:** I'd say definitely, but Karla's the expert on this. Karla, what else should we know about hostile work environments?

## Hostile Work Environment



A hostile work environment exists when unwelcome comments or conduct based on sex, race, or other legally protected characteristics unreasonably interfere with an employee's work performance or creates an intimidating, hostile, or offensive work environment.

Anyone in the workplace might commit this type of harassment, and anyone can be affected. To create a hostile environment, the conduct must rise to the level of being severe or pervasive.

The key issues are frequency and severity:

- The more severe the conduct, the less frequent it must be to rise to the level of a hostile environment.
- The less severe the conduct, the more frequently it must occur to constitute a hostile environment.

## Examples of Hostile Work Environment



Petty slights, annoyances, and isolated incidents, unless extremely serious, do not rise to the level of prohibited harassment. To constitute harassment, the conduct must create a work environment that would be hostile or offensive to a reasonable person.

Examples of behavior that may constitute harassment include:

- Racial or ethnic jokes or slurs.
- Pictures, objects, or graphic material containing offensive content.
- Threatening words or gestures directed at a person because of his or her membership in a protected class.
- Obscene, vulgar, or abusive language.
- Notes or emails containing slurs, jokes, or abusive language.
- Stalking (waiting for the employee in the parking lot; hanging out near an employee's home).
- Physical assault, such as twisting a co-worker's arm, or brushing a hand across their buttocks.

**NOTE:** If the conduct creates a hostile environment, an agency is liable unless it can establish that it exercised reasonable care to prevent and promptly correct any harassment (has anti-harassment policy and complaint avenues); and the employee unreasonably failed to take advantage of any preventative or corrective opportunities provided by the agency (failed to take advantage of complaint process).

## Hostile Work Environment Knowledge Checks

1. In the example you heard about, did Christopher create a hostile work environment for Jose?
  - A. Yes
  - B. No
  
2. In what ways did Christopher create a hostile work environment?
  - A. He made ethnic jokes about Hispanics.
  - B. He threatened Jose with physical violence.
  - C. He used ethnic slurs when referring to Jose.
  - D. He made his ethnic jokes and comments frequently.
  
3. What are the key issues when determining whether or not a hostile work environment exists?
  - A. Unwelcome conduct based on legally protected characteristics.
  - B. The severity and frequency of the conduct.
  - C. The employee's personality.
  
4. Which of the following are behaviors that could create a hostile work environment?
  - A. Viewing offensive content on your work computer.
  - B. Saying "Good morning" to your co-worker.
  - C. Rubbing a co-worker's back.
  - D. Sending your co-worker emails or instant messages containing abusive language.
  - E. Smiling at your co-workers.
  - F. Threatening to hurt your co-worker.

***Answers found in Appendix III.***

## The Break Room – Tangible Employment Action



**David:** *Alright, I think I've got it. A person's negative conduct can create a hostile work environment, depending on the severity and frequency of the conduct.*

**Sarah:** *That's right.*

**Karla:** *Exactly*

**David:** *So, with Jose and Christopher... I mean, they were co-workers. What if somebody's boss is harassing them? That puts the subordinate employee in a tough spot.*

**Karla:** *You're right! That does put the employee in a tough spot... specifically because it can affect conditions of employment like pay, promotions, or work assignments. There's a term for that. It's called tangible employment action.*

## The Break Room – Tangible Employment Action, continued



**Sarah:** *I think I know exactly what you're talking about. I've seen something like that happen before. It wasn't too long ago.*

**Sarah:** *The manager of the janitor staff, Natalie... she was kind of interested in one of the janitors, this guy named Steven.*

**Sarah:** *When he first started working here, she took the responsibility of training him personally.*

**Sarah:** *One evening, as they were finishing up their shift, she invited Steven to go out with her for dinner and some dancing.*

**Sarah:** *Steven politely declined her offer.*

**Sarah:** *Natalie wasn't used to being told "no", especially by one of her employees. So the next day, she called Steven in and told him that she didn't have time to keep mentoring him if he wasn't willing to spend any time with her outside of work.*

**Sarah:** *After that, every time a nasty job came up, Steven was assigned to handle it. Natalie gave the other janitors the easy jobs and he got all the bad ones. And from what I hear, they get some pretty bad ones sometimes.*

**Sarah:** *So, Karla, what Natalie did to Steven...that'd be considered a tangible employment action, right?*

**Karla:** *Absolutely. She used her position to harass him because he wouldn't go out with her. That's pretty much a textbook case of a tangible employment action.*

## Tangible Employment Action



A tangible employment action is harassment by a management official that results in a significant change in the employment status or job of an employee (usually a subordinate).

Examples of tangible employment actions include, but are not limited to the following:

- Hiring and firing
- Failure to promote
- Demotion
- Undesirable reassignment
- Undesirable work assignments

Even an isolated incident of such misconduct may be unlawful.

**NOTE:** An agency is automatically liable for harassment by a management official that results in a tangible employment action, regardless of whether upper management had knowledge of it.

## Tangible Employment Action Knowledge Checks

1. Which of the following are examples of tangible employment actions?
  - A. A manager occasionally does not say good morning to an employee.
  - B. An informal conversation with an employee about alleged misconduct.
  - C. Harassment of a subordinate employee that results in his or her demotion.
  - D. Harassment of a subordinate employee that results in him or her receiving undesirable work assignments.
  
2. Which of Natalie's actions toward Steven constitutes a tangible employment action?
  - A. Just asking Steven out constitutes a tangible employment action.
  - B. Natalie giving Steven the nasty jobs in retaliation for his refusal to go out with her constitutes a tangible employment action.
  - C. Natalie did not do anything that would constitute a tangible employment action.

***Answers found in Appendix III.***

## The Break Room – Prevention of Harassment



**David:** *Wow! Too bad for poor Steven.*

**Sarah:** *Yeah. But things are getting better. Natalie left a few months later and the new supervisor spreads the nasty jobs around, so Steven's not always stuck with them.*

**John:** *That's good.*

**David:** *So people working here really need to be careful of what they say and do around each other, huh?*

**John:** *Well, it seems more to me like they just need to use common sense when they interact with each other. Karla, do you have any tips on how people can prevent harassment?*

**Karla:** *I sure do.*

## Prevention of Harassment

You can do your part to prevent workplace harassment. Avoid initiating or participating in any behavior that can be misconstrued as possible harassment, including the following types of behavior:

- Verbal - Unwelcome comments, yelling, or offensive jokes or stories
- Visual - Offensive pictures, photos, cartoons, posters, calendars, magazines, or objects
- Physical - Unwelcome touching, hugging, kissing, stroking, ogling, or suggestive gestures
- Written - Unwelcome letters, notes, or e-mails of a personal nature

Avoid jokes, epithets, offensive comments, and/or unwelcome behaviors related to:

- Sex
- Gender
- Race
- Ethnicity
- Culture
- Age
- Disability
- Religion

Respect a person's wishes when he or she indicates that your conduct or attention is not welcome. Clearly inform those engaging in offensive behavior that you find it objectionable, and report any behavior that you believe qualifies as harassment.

**NOTE:** Don't assume that if someone laughs at a joke or other behavior, that it is not offensive and unwelcome.

## Prevention of Harassment Knowledge Check

1. Along with verbal, which other types of behavior might be interpreted as possible harassment?
  - A. Visual
  - B. Physical
  - C. Written
  - D. None of the above

*Answers found in Appendix III.*

## The Break Room – Break's Over



**David:** *Those are some good suggestions.*

**Sarah:** *Yes, they are.*

**John:** *Alright guys... my break's over. I'd better get back to work.*

**Sarah:** *Yeah, me too.*

**David:** *Hey, thanks for the talk, guys. That really helped.*

**Karla:** *David, if you have any other questions, I'm just down the hall.*

**David:** *Okay thanks. I might stop by later if that's alright.*

**Karla:** *Anytime.*

## Karla's Office – Sexual Harassment



**David:** Hi, Karla?

**Karla:** David! Hi. What can I do for you?

**David:** Well, I guess I have another question if that's alright.

**Karla:** Sure.

**David:** I wanted to bring it up earlier, but I kind of chickened out.

**Karla:** That's alright. What did you want to know about?

**David:** Well... I hear a lot about sexual harassment but I've never really understood exactly what it is. I mean, I think I know the basics, but – it just makes me nervous because I don't want to do or say the wrong thing and end up getting in trouble or making someone else feel uncomfortable.

**Karla:** Well, in a nutshell, sexual harassment is when someone makes unwanted sexual remarks or innuendos, or asks for sexual favors.

**David:** Yeah, I can see the part about remarks or innuendos, but... do people really ask for sexual favors?

## Karla's Office – Sexual Harassment, continued



**Karla:** Unfortunately, yes. It does happen. Actually, it happened to a good friend of mine at her job...I'll call her "Lisa". Lisa was a hard working, enthusiastic employee and was eager to take on additional responsibility. Her boss, Michael, was always friendly, but nothing inappropriate.

**Karla:** Anyway, one day Michael called her into his office. He asked her how she liked her job and told her about a potential promotion that he thought she might be a candidate for. Lisa had been working especially hard, hoping for an opportunity like that, so she was really excited to hear that it might actually happen.

**Karla:** After a few minutes, Michael told her that the situation was kind of complicated. "To be honest," he said, "I was thinking maybe you could scratch my back and I could scratch yours to make this happen." She didn't get it at first, but then she realized that he was talking about sex.

**Karla:** As soon as she understood what he was saying, Lisa just got up and walked out.

**David:** That's terrible! I can't believe someone would say something like that. That's got to be a pretty clear case of sexual harassment, right?

**Karla:** Yes, there's not any gray area in a situation like that

## Sexual Harassment

Any unwelcome sexual advances, requests for sexual favors, or other verbal or physical conduct of a sexual nature constitutes sexual harassment under the following circumstances:

- Submission to such conduct is made, either explicitly or implicitly, a condition of employment.
- Submission to or rejection of such conduct by an employee is used as the basis for employment related decisions.
- Such conduct has the purpose or effect of unreasonably interfering with the employee's work performance or creating an intimidating, hostile, or offensive working environment.

**NOTE:** The harasser can be a man or a woman. The victim does not have to be of the opposite sex.

Behavior constituting sexual harassment falls into three categories. These are verbal, non-verbal, and physical.

|  |   |
|--|---|
| <p><b>Verbal sexual harassment may consist of:</b></p>     | <ul style="list-style-type: none"> <li>• Sexual innuendoes.</li> <li>• Suggestive remarks or whistling.</li> <li>• Pressure for dates.</li> <li>• Sexist remarks.</li> <li>• Sexual propositions.</li> </ul>                    |
| <p><b>Non-verbal sexual harassment may consist of:</b></p> | <ul style="list-style-type: none"> <li>• Suggestive or insulting sounds.</li> <li>• Leering, staring, or ogling.</li> <li>• Obscene gestures.</li> <li>• Obscene/graphic materials.</li> <li>• Written sexual jokes.</li> </ul> |
| <p><b>Physical sexual harassment may consist of:</b></p>   | <ul style="list-style-type: none"> <li>• Touching.</li> <li>• Pinching.</li> <li>• Brushing up against someone intentionally.</li> <li>• Cornering.</li> <li>• Hugging.</li> <li>• Sexual assault.</li> </ul>                   |

## Sexual Harassment Knowledge Checks

1. Which of the following behaviors constitute sexual harassment?
  - A. Pinching/Grabbing/Touching of sexual nature
  - B. Shaking hands
  - C. Staring/leering/ogling
  - D. Sexist remarks
  - E. Brushing up against someone accidentally
  
2. True or false? Sexual harassment in the workplace is only frowned upon if the harasser is the victim's supervisor.
  - A. True
  - B. False

***Answers found in Appendix III.***

## Karla's Office – Addressing Harassment in the Workplace



**David:** *So what did Lisa end up doing?*

**Karla:** *Well, she actually quit her job because of that. I don't think she knew that she had other options.*

**David:** *That's got to be especially tough, to have your supervisor harass you like that. So, besides quitting, what else could Lisa have done?*

**Karla:** *That's a great question. There are several ways that a victim of harassment can address the problem*

## Addressing Harassment in the Workplace



Harassment victims are not required to have a witness to the offensive conduct before they can report it to a supervisor or management official.

If you are a victim of workplace or sexual harassment, you are strongly encouraged to:

- Tell the harasser that the behavior is unwelcome and must stop.
- Keep a record of any instances of harassment and follow-up actions.
- Ask co-workers if they observed the behavior.
- Tell your supervisor, someone else in your chain of command, or another manager about the incident. (If the harasser is your supervisor, you may inform a higher-level supervisor.)

You have the right to contact an EEO counselor at the Agency's Office of Resolution Management (ORM) to file a complaint.

You must initiate contact with an ORM EEO Counselor within **45 days** from the date of the incident. You can contact a counselor:

- In person.
- By calling 1-888-737-3361.
- Via TTY/TDD 1-888-626-9008.

## Sexual Harassment Behaviors Knowledge Check

1. Fill in the blank for each sentence with the correct word from the list.

- |  |                     |
|--|---------------------|
| A. Tell the harasser that the behavior is _____ and must stop. | 1. friends          |
| B. Ask co-workers if they _____ the behavior.                  | 2. unwanted         |
| C. Tell your _____.  | 3. the media        |
| D. Contact _____ within 45 days of the incident.               | 4. an EEO counselor |
|  | 5. observed         |
|  | 6. supervisor       |
|  | 7. enjoyed          |

*Answers found in Appendix III.*

## Karla's Office – Retaliation for Engaging in Protected Activity



**David:** *It's good to know that there's somewhere that victims of workplace harassment can go for help.*

**John:** *Hey David! Hope I'm not interrupting... I just wanted to see how things were going.*

**David:** *They're going great... I'm really learning a lot about harassment. We were just talking about a situation where a supervisor at another company sexually harassed an employee and what employees can do in situations like that.*

**Karla:** *That's right.*

**David:** *Well here's another question. What if a harassment victim files a complaint and the supervisor somehow finds out? I know those things are supposed to be confidential, but it's possible a supervisor could figure it out. Seems like that would just make things worse for the victim.*

**John:** *That's a good point. In fact, I worked at the V.A. hospital a few years ago and while I was there, I saw something just like that happen.*

## Karla's Office – Retaliation for Engaging in Protected Activity, continued



**John:** *Dr. Ortiz was a bright, young doctor. She'd graduated at the top of her class, and she absolutely loved the work she did.*

**John:** *All of her patients said that she was one of the best doctors they'd had ever had.*

**John:** *Her supervisor was this guy named Dr. Gilman, and he had a little problem with women doctors. I guess in his mind, being a doctor was a man's job.*

**John:** *On more than one occasion, he told Dr. Ortiz that she wasn't as qualified as the other male doctors on his staff. And one time, I actually heard him tell her that she should have stuck to doing women's work somewhere else.*

**John:** *She filed an informal EEO complaint against Dr. Gilman. The verbal harassment stopped and Dr. Gilman never said a word about her filing a complaint. She thought everything was finally going to be alright. Until it was time for her performance appraisal.*

## Karla's Office – Retaliation for Engaging in Protected Activity, continued



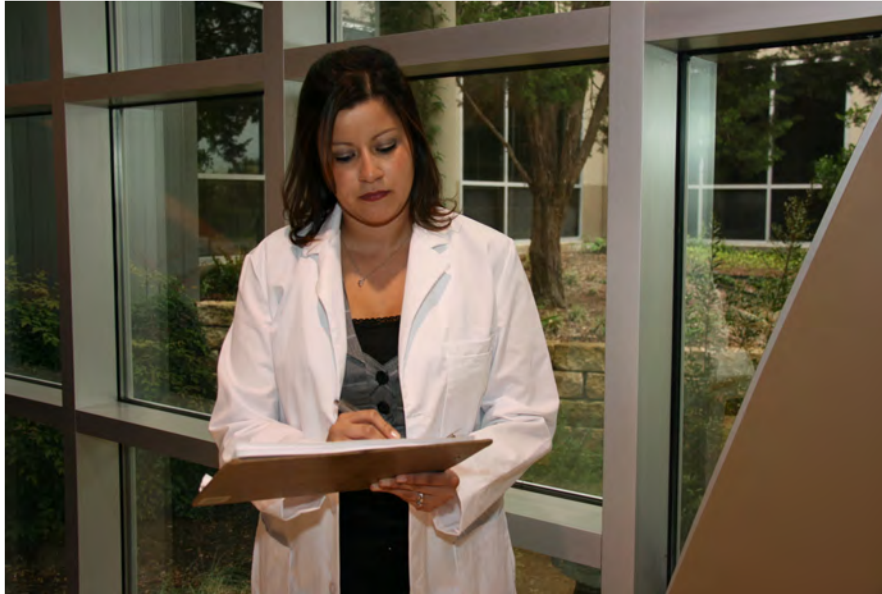
**John:** *Dr. Gilman rated her performance low in every category, taking her out of the running for a possible promotion and potentially derailing her career at the hospital.*

**John:** *She confronted him about it, but he just shrugged and said he'd rated her performance objectively. "I call it the way I see it," he'd said. But Dr. Ortiz knew for a fact that the harsh ratings were retaliation for the complaint she'd filed.*

**David:** *Yeah, it sure sounds that way to me. Karla, is that kind of thing covered by law?*

**Karla:** *It could be... If she can show that her rating was lowered because she filed an EEO complaint and if Dr. Gilman can't show that it was based on her poor performance, then yes, the retaliation would be prohibited by federal law.*

## The NO FEAR Act



The Notification and Federal Employee Antidiscrimination and Retaliation, or NO FEAR, Act, Public Law 107-174, was enacted by Congress on May 15, 2002, requiring Federal agencies to be accountable for violations of:

- Anti-discrimination laws.
- Whistleblower protection laws.

These agencies are also to provide training to employees on:

- Federal anti-discrimination laws.
- Whistleblower protection laws.
- Retaliation laws.

## The NO FEAR Act



The NO FEAR Act requires Federal Agencies to:

- Provide written notice to all employees, former employees, and applicants for employment of the rights and protections available under Federal antidiscrimination and whistleblower protection laws.
- Ensure managers have adequate training in the management of a diverse workforce and in dispute resolution and other essential communication skills.
- Provide training to all employees regarding their rights and remedies under the existing antidiscrimination and whistleblower protection laws within 90 days of employment and every two years thereafter.
- Report annually to Congress data regarding the numbers and outcomes of cases where discrimination was alleged to have occurred.
- Post on its public web-site summary statistical data relating to equal employment opportunity complaints.
- Reimburse the Judgment Fund of the Department of Treasury for monies paid through court judgments, awards and/or settlements relating to discrimination and whistleblower violations. In doing so, the VA cannot reduce employee compensation, benefits, or the size of the workforce or use reductions-in-force or furloughs to pay for the required reimbursements.

**NOTE:** The Secretary is committed to ensuring that the VA is in compliance with the above requirements.

## Whistleblower Protection Laws



Federal employees must also follow the guidelines of the Whistleblower Protection - 5 U.S.C § 2302(b)(8).

The whistleblower protection laws protect employees from reprisal for disclosing information that they reasonably believe shows:

- Evidence of the violation of a law, rule, or regulation.
- Gross mismanagement and waste of funds.
- Abuse of authority.
- Substantial danger to public health or safety.

Whistleblower reprisal is the actual, or threatened, taking or withholding of a personnel decision in retaliation for a protected disclosure against employees and applicants. An employee or applicant is also protected if an employer **mistakenly** believes he or she is a whistleblower.

## Whistleblower Protection Laws



Under the whistleblower protection laws, a VA manager or supervisor is prohibited from using his or her authority to:

- Take a personnel action.
- Threaten to take an action.
- Take no action.

Exceptions include:

- If the disclosure of such information is specifically prohibited by law.
- If such information is specifically required by Executive Order to be kept secret in the interest of national defense or the conduct of foreign affairs

Not all disclosures rise to the level covered under the law. Minor waste of funds, or trivial wrong doing, or negligence is not considered to be “gross” waste or mismanagement.

## Actions for Engaging in Protected Activity



The VA cannot retaliate against an employee or applicant because that individual exercises his or her rights under any of the Federal anti-discrimination or whistleblower protection laws discussed here.

When an employee exercises rights under these laws, he or she is engaging in a protected activity.

Under existing laws, the VA retains the right, where appropriate, to discipline a manager or supervisor who has engaged in discriminatory or retaliatory conduct, up to and including removal.

The NO FEAR Act does not:

- Alter existing laws.
- Permit the VA to take unfounded disciplinary action against a Federal employee.
- Permit the VA to violate the procedural rights of a Federal employee who has been accused of discrimination.

## Whistleblower Protection Laws and Retaliation for Engaging in Protected Knowledge Checks

1. Fill in the blank for each sentence with the correct word from the list.
  - A. Whistleblower protection laws protect employees from \_\_\_\_\_ for disclosing information.
  - B. An employee or applicant is also protected if an employer \_\_\_\_\_ believes he or she is a whistleblower.
  - C. One exception to the whistleblower protection laws is if the disclosure of information was specifically \_\_\_\_\_.
  1. mistakenly
  2. guilt
  3. prohibited by law
  4. genuinely
  5. reprisal
  6. damaging to the supervisor
  
2. When Dr. Ortiz filed her complaint against Dr. Gilman, it was a protected disclosure. Under whistleblower protection laws, why was Dr. Ortiz within her rights to file her complaint?
  - A. She reasonably believed that Dr. Gilman was grossly mismanaging his staff.
  - B. She reasonably believed that Dr. Gilman was grossly wasting funds.
  - C. She reasonably believed that Dr. Gilman was abusing his authority.
  - D. She reasonably believed that Dr. Gilman was creating a substantial danger to public health.
  
3. True or false? If Dr. Ortiz were to file an additional complaint regarding Dr. Gilman's supposed retaliation, Dr. Gilman will most likely be removed from his position.
  - A. True
  - B. False

***Answers found in Appendix III.***

## Whistleblower Protections under the NO FEAR Act



Protected disclosures fall into one of two categories:

1. Disclosures made as part of normal duties outside of normal channels
2. Disclosures made outside of assigned duties

Disclosures made as part of normal duties through normal channels are not protected by the Whistleblower Protection Act.

Disclosures must be specific and detailed, and may be made to:

- The U.S. Office of Special Counsel (OSC).
- The Office of Inspector General (OIG).
- A comparable official.
- The media.
- Another person in position to take or facilitate corrective action.

If an employee or applicant believes he or she has been the victim of whistleblower retaliation, he or she may report it to the VA OIG or file a written complaint with the OSC or online through the OSC web site.

Additional information regarding whistleblower protection can be found at the Equal Employment Opportunity Commission (EEOC) web site.

See the Resources appendix for more information.

## How to Address Discrimination – NO FEAR Act



If you believe you have been discriminated against based on the NO FEAR Act, you may:

- File a written complaint with the U.S. OSC.

**OR**

- File a grievance under negotiated grievance procedures for bargaining unit employees.

In some circumstances, you may also seek remedies through the EEO complaint process.

Information regarding the VA administrative grievance procedures can be found:

- In the VA Handbook 5021, Part IV.
- By contacting your local human resources office.

If you are a bargaining unit employee, you may find information regarding the negotiated grievance procedures in your union contract or by contacting a union representative or your local human resources office.

## Whistleblower Protections under the NO FEAR Act and How to Address Discrimination Knowledge Checks

1. Mark each of the following statements as either true or false.

- |   |          |
|---|----------|
| A. Disclosures made outside of assigned duties are still protected.   | 1. True  |
| B. Disclosures must always be submitted to the media.   | 2. False |
| C. Once a disclosure is made, the employee or applicant can no longer be protected from whistleblower retaliation.  |          |
| D. If an individual believes that he or she has been discriminated against, he or she should file a written complaint with the U.S. OSC, or file a grievance under the VA grievance procedures. |          |
| E. Disclosures do not need to be specific or detailed.  |          |

***Answers found in Appendix III.***

## How to Address Retaliation – Whistleblower



If you believe that you have been the victim of whistleblower retaliation, you may:

- Report it to the VA OIG hotline number at 1 800 488-8244.
- File a written complaint with the U.S. OSC.

If you believe you are the victim of retaliation for engaging in protected activity, you must follow the procedures for filing a complaint under the Antidiscrimination Laws and Whistleblower Protection Laws; or, under some circumstances, file a grievance under the agency or negotiated grievance procedures.

## Karla's Office – Summary



**David:** *That's great that there are so many laws in place to protect employees from harassment in the workplace. I've really learned a lot today. Thanks for clearing things up for me.*

**John:** *I learned some new things today too. Thanks for taking time to answer our questions, Karla.*

**Karla:** *No problem. That's what I do. If we all take workplace harassment seriously and do our best to understand and obey the laws, everyone will have a safer, more enjoyable working environment.*

## Summary



That's it for the Federal EEO Workplace Harassment NO FEAR Act training. In this lesson, you learned about:

- Discrimination, harassment, and retaliation on the basis of race, color, religion, sex (gender), sexual orientation, national origin, age (over 40), and disability.
- Applicable laws and your protection.
- Procedures for filing a complaint.
- Prohibited forms of discrimination.
- NO FEAR and Whistleblower Protection Laws.

# ***Appendices***

## Appendix I – Glossary

| Term                                 | Definition  |
|--------------------------------------|---|
| Age Discrimination in Employment Act | Prohibits discrimination and harassment based on age (over 40)  |
| Civil Rights Act of 1964 as amended. | Prohibits discrimination and harassment based on someone's race, sex (gender), religion, color, or national origin  |
| Discrimination                       | Any employee, former employee, or applicant for employment, who believes discrimination occurred on the basis of race, color, religion, sex (gender), national origin, age (over 40), disability, sexual orientation, or reprisal for prior EEO activities may initiate a discrimination complaint. |
| Equal Pay Act of 1963                | Requires that women and men be given equal pay for equal work in the same establishment   |
| Executive Order 13087                | Amended Executive Order 11478 to prohibit discrimination based on sexual orientation in the competitive service of the federal government   |
| Harassment by Co-workers             | If harassment by a co-worker creates a hostile environment, the agency may be liable if it knew or should have known of the conduct and failed to take immediate and appropriate corrective action.   |
| Hostile Work Environment             | A hostile work environment exists when unwelcome comments or conduct based on sex, race, or other legally protected characteristics unreasonably interfere with an employee's work performance or creates an intimidating, hostile, or offensive work environment.                                  |
| Non-verbal Sexual Harassment         | <p>Non-verbal sexual harassment consists of:</p> <ul style="list-style-type: none"> <li>• Suggestive or insulting sounds.</li> <li>• Leering, staring, or ogling.</li> <li>• Obscene gestures.</li> <li>• Obscene/graphic materials.</li> <li>• Written sexual jokes.</li> </ul>                    |

| Term                       | Definition   |
|----------------------------|--|
| Physical Sexual Harassment | <p>Physical sexual harassment consists of:</p> <ul style="list-style-type: none"> <li>• Touching.</li> <li>• Pinching.</li> <li>• Brushing up against someone intentionally.</li> <li>• Cornering.</li> <li>• Hugging.</li> <li>• Sexual assault</li> </ul>  |
| Protected Disclosure       | <p>Protected disclosure is information that an employee reasonably believed to be:</p> <ul style="list-style-type: none"> <li>• Evidence of violation of law, rule or regulation.</li> <li>• Gross mismanagement.</li> <li>• Gross waste of funds.</li> <li>• An abuse of authority.</li> <li>• A substantial and specific danger to public health or safety.</li> </ul>   |
| Reasonable Person Standard | <p>A “reasonable person” standard is used in evaluating whether unwelcome conduct is sufficiently severe or pervasive to create a hostile environment.</p> <p>Under the “reasonable person” standard the harassing conduct must be viewed as objectionable not only from the standpoint of the victim/target but also from the standpoint of a “reasonable person.”</p> <p>A “reasonable person” standard guards against claims by hypersensitive individuals.</p> |
| Rehabilitation Act of 1973 | <p>Prohibits discrimination and harassment based on physical or mental disability as amended</p>   |

| Term                       | Definition   |
|----------------------------|--|
| Sexual Harassment          | <p>Sexual harassment is a form of sex discrimination. It can occur in a variety of circumstances, including the following situations:</p> <ul style="list-style-type: none"> <li>• The harasser can be a man or a woman. The victim does not have to be of the opposite sex.</li> <li>• The harasser can be the victim’s supervisor, an agent of the employer, a supervisor in another area, a co-worker, or a non-employee.</li> <li>• The victim does not have to be the person harassed but could be anyone offended by the offensive conduct.</li> <li>• Unlawful sexual harassment may occur without economic injury to or discharge of the victim.</li> <li>• The harasser’s conduct must be unwelcome and/or unwanted.</li> <li>• The harassment does not necessarily result in economic injury to or discharge of the victim.</li> </ul> |
| Sexual Orientation         | <p>Discrimination based on sexual orientation is not covered by Title VII of the Civil Rights Act and cannot be used as a basis for filing a complaint of discrimination before the Equal Employment Opportunity Commission (EEOC). However, discrimination on the basis of sexual orientation is prohibited under Executive Order 13087, and such complaints may be brought through an internal agency grievance process or to the Office of Special Counsel (OSC). Individuals may also contact an EEO Counselor in the Office of Resolution Management (ORM) for assistance.</p>  |
| Tangible Employment Action | <p>Harassment by a management official that results in a significant change in an employee’s (usually a subordinate’s) employment or job status</p>  |

| Term                     | Definition  |
|--------------------------|---|
| Verbal Sexual Harassment | Verbal sexual harassment consists of: <ul data-bbox="623 289 1127 478" style="list-style-type: none"><li>• Sexual innuendoes.</li><li>• Suggestive remarks or whistling.</li><li>• Pressure for dates.</li><li>• Sexist remarks.</li><li>• Sexual propositions.</li></ul> |

## ***Appendix II – Resources***

You can find more information about workplace harassment by using the following resources:

- The VA Directive 5975
- The VA Directive 5977
- The VA Handbook: 5021, Part IV
- The VA Office of Human Resource Management and Labor Relations: Code of Federal Regulations 5 CFR 724
- The VA Office of Inspector General (OIG) Hotline: 1-800-488-8244
- The VA Office of Resolution Management: 1-888-737-3361
- The Equal Employment Opportunity Commission (EEOC) Website:  
<http://www.eeoc.gov>
- The U.S. Merit System Protection Board (MSPB) Website:  
<http://www.mspb.gov>
- The U.S. Office of Special Counsel (OSC) Website:  
<http://www.osc.gov>
- The VA Office of Human Resource Management and Labor Relations Website:  
<http://vaww1.va.gov/ohrm/EmployeeRelations/Grievance.htm>
- The VA Office of Resolution Management Website:  
<http://www.va.gov/orm/index.asp>
- The VA Office of Diversity and Inclusion Website:  
<http://www.diversity.hr.va.gov/index.asp>

## **Appendix III – Knowledge Check Answers**

### **Page 14 – Hostile Work Environment Knowledge Checks:**

1. Yes. Christopher is definitely creating a hostile work environment.
2. A, C, and D are correct. Christopher's frequent use of ethnic slurs and jokes has created a hostile work environment.
3. A and B are correct. The key issues are: connection to protected characteristics, and frequency and severity of conduct.
4. A, C, D, and F are correct. Viewing offensive content on your work computer, rubbing a co-worker's back, sending your co-worker emails or instant messages containing abusive language, and threatening to hurt your co-worker are all behaviors that could create a hostile work environment.

### **Page 21 – Tangible Employment Action Knowledge Checks**

1. C and D are correct. The harassment of a subordinate employee that results in him, or her, either being demoted or given undesirable work assignments are both examples of tangible employment action.
2. B is correct. Natalie giving Steven the nasty jobs in retaliation for his refusal to go out with her constitutes a tangible employment action.

### **Page 24 – Prevention of Harassment Knowledge Check**

1. A, B, and C are correct.

### **Page 29 – Sexual Harassment Knowledge Checks**

1. A, C, and D are behaviors that constitute sexual harassment.
2. False. Sexual harassment doesn't have to come from a supervisor. Any unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment. Select Next to continue.

### **Page 32 – Sexual Harassment Behaviors Knowledge Check**

1. A-2, B-5, C-6, D-4

### ***Appendix III – Knowledge Check Answers, continued***

#### **Page 40 – Whistleblower Protection Laws and Retaliation for Engaging in Protected Activity Knowledge Checks**

1. A-5, B-1, C-3
2. C is correct. Dr. Ortiz reasonably believed that Dr. Gilman was abusing his authority by mistreating her based on her gender.
3. False. Whether or not Dr. Gilman is removed from his position is dependent on whether or not the VA could show that Dr Gilman's actions were truly retaliation for Dr. Ortiz's initial complaint. As you know, the NO FEAR Act does not allow the VA to take unfounded disciplinary action against a Federal employee who has been accused of discrimination.

#### **Page 43 – Whistleblower Protections under the NO FEAR Act and How to Address Discrimination Knowledge Checks**

1. A-1, B-2, C-2, D-1, E-2

**VA SAN DIEGO**  
HEALTHCARE SYSTEM



*A Division of VA Desert Pacific  
Healthcare Network*

# Certificate of Completion

*This certifies that*

---

(Print Name)

*Has successfully completed the following course by reading the required training,*

## **Prevention of Workplace Harassment/No Fear**

*On* \_\_\_\_\_

(Fill in the date)

*Signed certification by participant:* \_\_\_\_\_

Signature

To receive credit, please give this completed certificate to the Research Administrative Office.