

EQUAL EMPLOYMENT OPPORTUNITY AND SEXUAL HARRASSMENT

1. Purpose

This directive establishes Department of Homeland Security (DHS) policy regarding equal employment opportunity and sexual harassment.

2. Scope

- A. This directive applies to all DHS Headquarters elements.
- B. This directive applies to DHS Headquarters employees and, as appropriate, individuals seeking employment with DHS Headquarters. The sexual harassment policy also applies to DHS Headquarters employees outside the workplace while conducting Government business and to non-employees while conducting business in DHS Headquarters.

3. Authorities

This directive is governed by numerous Public Laws, such as:

- A. Title VII of the Civil Rights Act, P.L. 88-352
- B. The Rehabilitation Act, P.L. 93-112
- C. The Age Discrimination in Employment Act, P.L. 90-202
- D. The Equal Pay Act, P.L. 88-38

4. Definitions

Employee: (defined in 5 USC Section 2105) - An individual who has been appointed in the Federal civil service, is engaged in the performance of a Federal function under authority of law or regulation, and is not otherwise exempt from 5 USC, Sections 2301 and 2302.

5. Responsibilities

A. **The Secretary of DHS** (or his/her designee) is responsible for ensuring that DHS Headquarters complies with applicable equal employment opportunity and anti-discrimination laws. In addition, every manager within the Headquarters is responsible for ensuring a workplace free of discrimination.

B. **The Under Secretary for Management** shall be responsible for all aspects of this directive.

6. Policy & Procedures

A. It is the policy of DHS to provide equal employment opportunity for all persons. DHS seeks to eliminate discrimination in any aspect (terms, conditions, and privileges) of employment because of race, color, religion, sex (including sexual harassment), national origin, disability, or age. DHS will promote affirmative action in accordance with law to achieve a diverse workforce.

Harassment is also against the law if it involves discriminatory treatment based on race, color, sex, religion, national origin, age, or disability. Federal law does not prohibit simple teasing or isolated incidents. Harassment occurs when conduct is sufficiently frequent or severe to create a hostile work environment or to result in an employment action such as demotion or firing.

Moreover, retaliation against an individual who files a charge of discrimination, participates in an investigation of discrimination, or opposes discriminatory practices is a prohibited practice.

B. Sexual harassment is a form of prohibited discrimination. It includes unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when:

1. Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment; or
2. Submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual; or
3. Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment. Acts of reprisal against employees who allege sexual harassment are likewise prohibited.

Acts of sexual harassment in DHS Headquarters or in any work-related situation at any other location during or outside of normal duty hours may result in a range of disciplinary actions, including dismissal. The same is true for acts of reprisal against those who allege sexual harassment.

C. Any individual who believes that he or she has been the victim of any form of unlawful employment discrimination, including harassment or an act of reprisal for alleging discrimination, should talk to an Equal Employment Opportunity (EEO) Counselor as soon as possible, but no later than 45 calendar days after the incident. Those with questions or concerns regarding any form of unlawful employment discrimination should talk to an EEO counselor. [Beginning on 24 January 2003, the Office of the Under Secretary for Management will include an EEO counselor available to all Headquarters employees. The Under Secretary for Management will designate additional EEO counselors as soon as practicable.]

After seeking help from the EEO counselor, the individual has the right to file a formal complaint. The law permits pursuit of the EEO discrimination complaint process or the filing of a grievance through administrative or negotiated grievance procedures, as appropriate. This agency will give all discrimination complaints prompt, fair, and impartial review and adjudication. Individuals may also seek the assistance of the Employee Assistance Program (see IMD # 3060).

DHS also may discipline employees for improper conduct even if it is not serious enough to be discrimination under the law. Therefore, DHS employees are encouraged to report any improper conduct to a supervisor, or to the Office of the Chief Human Capital Officer, as soon as possible. They can use this information to decide if corrective action or discipline is appropriate, even if the conduct does not constitute discrimination or harassment.

D. **Any questions or concerns** regarding this directive should be addressed to the Office of the Under Secretary for Management.