



## Memorandum

**From:** Executive Director, Advisory Council on Historic Preservation

**To:** Staff and Membership of the Advisory Council on Historic Preservation

**Date:** November 27, 2023

**Subject:** **Advisory Council on Historic Preservation Anti-Harassment Policy and Procedures**

1. Subject: Prevention and Elimination of Harassing Conduct in the Workplace

2. Purpose: This memorandum establishes policies and procedures to help the Advisory Council on Historic Preservation (ACHP) maintain a workplace free from unlawful harassment. It defines harassing conduct that violates this memorandum, outlines the rights and responsibilities of members and employees (hereinafter “ACHP personnel”), requires periodic training on harassment, and establishes a system of accountability for ensuring a workplace free from unlawful harassment. Unlike other forms of discrimination, harassment is typically cumulative in nature: one offensive remark will seldom be illegal, but can become illegal if similar incidents are allowed to recur. These procedures ensure that appropriate officials are notified of, and have the opportunity to promptly correct hostile or abusive conduct that is, or has the potential to become, so severe or pervasive as to constitute a legal claim of harassment.

3. Authority: Title VII of the Civil Rights Act of 1964, as amended, 42 USC § 2000e-16; the Age Discrimination in Employment Act, 29 USC § 633a; the Rehabilitation Act, 29 USC § 791(g); the Civil Service Reform Act, 5 USC § 2302(b)(10); Executive Order 11478, as amended May 28, 1998; EEOC Order No. 501.004, amended February 24, 1992.

4. ACHP Policy:

- A. Zero Tolerance for Harassment, Discrimination, and Retaliation. It is the policy of the ACHP to maintain a model workplace free from harassment and other forms of discrimination based on race, color, religion, sex, national origin, age, disability, sexual orientation, genetic information, and retaliation. Accordingly, the ACHP has zero tolerance for harassment or any other form of unlawful discrimination. The ACHP shall take immediate and appropriate corrective action to address harassment.
- B. The ACHP will not tolerate retaliation against any ACHP personnel for reporting matters under this policy or procedure, or for assisting in any inquiry about such a report.
- C. Definition of Unlawful Harassment. Unlawful harassment includes unwelcome conduct, verbal or physical, including intimidation, ridicule, insult, comments, or physical conduct based on race,

color, religion, sex (whether or not of a sexual nature), national origin, age, disability, sexual orientation, gender identity, pregnancy, genetic information, or retaliation where:

1. ACHP personnel's acceptance or rejection of such conduct explicitly or implicitly forms the basis for an employment decision affecting the person; or
2. the conduct is sufficiently severe or pervasive as to alter the terms, conditions, or privileges the person's position or employment, or otherwise create an abusive work environment. This type of harassment typically does not involve discrete personnel actions such as denial of promotion.

D. Conduct Covered by this Memorandum. The conduct covered by this memorandum is broader than the legal definition of unlawful harassment listed above. It includes hostile or abusive conduct based on race, color, religion, sex (whether or not of a sexual nature), national origin, age, disability, sexual orientation, genetic information, or retaliation, even if the conduct has not risen to the level of illegality. This is because the goal of this memorandum is to avoid- or, at least, limit- harm to any person subjected to unwelcome hostile or abusive conduct based on protected characteristic by ensuring that appropriate officials are notified of- and have the opportunity to promptly correct- such conduct before it becomes so severe or pervasive as to violate the law, or as soon as possible thereafter.

## 5. Responsibilities:

- A. The Director of the Office of Administration (OA), the Director of Equal Employment Opportunity (EEO), or in the absence of such a position, the person tasked with these functions by the Executive Director, is responsible for:
1. Disseminating this memorandum to all ACHP personnel on an annual basis and periodically reminding all personnel of their responsibilities under this memorandum.
  2. In coordination with the Bureau of Safety and Environmental Enforcement (BSEE) Employee and Labor Relation Branch (ELRB), providing periodic training for all ACHP personnel on this memorandum and its requirements.
  3. Developing a performance measure in compliance with this memorandum; ensuring that performance plans of all supervisors include a performance measure addressing compliance with this memorandum; and ensuring that supervisors are appropriately rated on the measure.
  4. Receiving reports alleging violations of this memorandum and, as described in section 6 of this memorandum, making or directing further inquiries into such reports, as appropriate and necessary.
  5. Providing oversight, technical assistance, and support to ACHP personnel to ensure compliance with this memorandum.
  6. Maintaining and providing BSEE ELRB with necessary information so that BSEE ELRB can maintain a written record of reports made and actions taken pursuant to this memorandum. These records will be maintained in a secure location.
  7. Coordinating with BSEE ELRB to respond to inquiries from ACHP personnel about workplace harassment via phone. Callers shall be provided with information about the requirements of this memorandum, as well as the existence of, and filing requirements for, other processes

that may be available for employees to seek resolution of their disputes. All inquiries shall be treated confidentially.

8. BSEE ELRB shall maintain email access to respond to inquiries from ACHP personnel by computer.
9. BSEE ELRB shall provide relevant information for all required reporting.

B. All ACHP personnel are expected to:

1. Understand their rights and responsibilities under this memorandum.
2. Participate in the periodic training required under this memorandum.
3. Refrain from engaging in hostile or abusive conduct.
4. Report hostile or abusive conduct by ACHP personnel or others in the workplace.
5. Inform the supervisor of the offending employee, an office director, or BSEE ELRB, if subjected to unwelcome hostile or abusive conduct.
6. Fully cooperate in any inquiry or investigation.

C. Supervisors also must:

1. Ensure a workplace free of harassment.
2. Ensure that their subordinates are aware of this memorandum and its requirements.
3. Act promptly and effectively to stop hostile or abusive conduct of which they are aware.
4. Notify appropriate officials of reported or observed harassing conduct and of their efforts to correct the conduct.
5. Appropriately evaluate subordinate supervisors of their performance under this memorandum.
6. Protect employees who report misconduct from retaliation.

6. Procedures:

A. Reporting hostile or abusive conduct.

1. Any ACHP personnel who has been subjected to unwelcome hostile or abusive conduct is encouraged to inform the person(s) responsible for the conduct that it is unwelcome and offensive, and request that it cease. If the conduct continues, or if the person is uncomfortable confronting the responsible person(s) about the conduct, he/she should report the matter to:
  - a. the supervisor of the person engaging in the hostile or abusive conduct;
  - b. another supervisor or other office director; or
  - c. BSEE ELRB.
2. ACHP personnel who know of hostile or abusive conduct directed at others are encouraged to report the matter to the supervisor of the offending employee, another supervisor or office director, or BSEE ELRB.
3. Initial contacts to the telephone line or email address may be confidential.

NOTE: Reports made pursuant to this memorandum do not replace, substitute, or otherwise satisfy the separate obligations of an EEO complaint, negotiated grievance, Merit Systems Protection Board appeal, or other statutory process. Unlike this memorandum, those procedures typically provide for remedial relief to the victims of a violation.

#### B. Management Response to Harassment Reports.

1. Conducting preliminary inquiries. A supervisor or Office Director who receives a report of, or otherwise becomes aware of, hostile or abusive conduct involving subordinates within her/his chain-of-command must notify the Office of General Counsel (OGC) and BSEE ELRB and determine:
  - a. what conduct is at issue and whether it arguably could be considered hostile or abusive;
  - b. who may be involved;
  - c. whether any immediate corrective action is required to protect the alleged victim from further hostile or abusive conduct; and
  - d. what action is necessary and appropriate to otherwise address the report.
2. Notifying appropriate officials of report.
  - a. A supervisor or office director who becomes aware of allegedly hostile or abusive conduct involving personnel outside of his/her chain of command must, within one business day, notify the following appropriate officials:
    - i. The harassing employee's supervisor and Office Director; or if the conduct implicates the supervisor, Office Director, or an ACHP member, notify BSEE ELRB, the Executive Director (if appropriate), and the OGC; and,
    - ii. The victim's supervisor and Office Director; or if the conduct implicates the supervisor, Office Director, or an ACHP member, notify BSEE ELRB, the Executive Director (if appropriate), and OGC.
3. Supervisors who become aware of hostile or abusive conduct within their chain of command must, no later than one business day following receipt of the report, notify BSEE ELRB, the Executive Director, and OGC. This notification must include a description of any initial steps taken in response to the conduct and a plan of necessary and appropriate action to address the report.

#### C. Performing Further Investigation.

1. Deciding whether further investigation is necessary. Within three business days of the receipt of the allegation, the supervisor/manager of the allegedly harassing employee, or other designated management official, will consult with BSEE ELRB, the Executive Director, OGC, and the relevant Office Director(s) or supervisor(s), to determine whether further investigation is required, or if the preliminary inquiry is sufficient to determine whether corrective action is necessary. These decisions are fact specific, and must be made on a case-by-case basis.
2. Deciding how investigations will be carried out. When it is determined

that further investigation is necessary:

- a. The Office Director, in consultation with BSEE ELRB shall, by agreement, determine who will direct further investigations. This determination may engage office directors from outside the involved office, or an outside investigative service if he/she deems it necessary and appropriate.
- b. The investigation must be conducted swiftly, impartially, and in a manner appropriate to the allegation.

D. Resolving Conflicts of Interest in Inquiries or Investigations.

1. If an Office Director, the Executive Director, or ACHP member is implicated in the potentially harassing conduct, BSEE ELRB shall be responsible for conducting the preliminary inquiry and coordinating any further investigation that is warranted.
2. Any dispute between the affected Office Director (other than the Executive Director) and BSEE ELRB regarding further investigation will be resolved by the ACHP's Executive Director. Any dispute involving the Executive Director shall be resolved solely by the Chairman of the ACHP.

E. Taking Corrective Action. If it is determined that unwelcome hostile or abusive conduct occurred, corrective action will be necessary. To determine the appropriate corrective action, the Office Director(s) implicated in the report will consult with the Executive Director, OGC, and BSEE ELRB. The action necessary will depend on the severity and/or pervasiveness of the offense, the response required in order to end such conduct, the offender's disciplinary/conduct history, and other surrounding circumstances.

1. If it is determined that misconduct occurred, the supervisor/manager must propose disciplinary or corrective actions. If there is a disagreement between the supervisor/manager and consulting offices on whether corrective action is appropriate, the next higher level of management will make the decision. Appropriate corrective action, disciplinary or otherwise, up to and including removal will be taken against any supervisor or other office director who fails to perform his/her obligations as set forth in this memorandum, including any unreasonable failure to report known violations of this policy. If the decision is made that the allegations should be closed with no findings of misconduct, the supervisor/manager must write a memorandum detailing why no corrective action was warranted. This memorandum must be included in the case file.
2. All corrective action will be taken within a reasonable amount of time or as soon as possible upon receiving notice of the harassment complaint.

F. Maintaining Confidentiality, Keeping Records, and Monitoring Compliance.

1. Maintaining confidentiality. All reports of hostile or abusive conduct and related information will be maintained on a confidential basis to the greatest extent possible. The identity of the person alleging violations of this memorandum will be kept confidential, except as necessary to conduct an appropriate investigation into the alleged violations or when otherwise required by law.
2. Upon inquiry from the alleged victim, the supervisor/manager must

notify the alleged victim of the harassing conduct about the completion of the process to the extent permitted under the Privacy Act. The alleged victim may not be provided the outcome of any disciplinary action against the allegedly harassing employee and may not be provided a copy of the final report. The supervisor/manager must consult with BSEE ELRB about this notification.

3. Writing reports and maintaining records. A brief written report must be made to the Executive Director regarding the final resolution of each allegation of hostile or abusive conduct under this memorandum.
  - a. These reports must identify the individuals implicated, the conduct involved, and the corrective action taken, if any. These records must be sufficient to aid the Executive Director, in consultation with BSEE ELRB, in determining how to address any future incidents.
  - b. If requested, written reports also may include a detailed description of the inquiry or investigation, an explanation of any conclusions, the reasoning for any corrective action issued, and/or any documents or other tangible evidence obtained during or created as a result of the inquiry or investigation.
  - c. The Executive Director and BSEE ELRB shall maintain the written reports in a secure location. These written reports are protected by the Privacy Act and will be maintained in accordance with its requirements and exemptions.
4. Monitoring the procedures. BSEE ELRB shall ensure that these procedures are properly executed by:
  - a. Monitoring inquiries and investigations under this memorandum of reported or otherwise discovered hostile or abusive conduct;
  - b. Providing guidance concerning the information to be gathered and methods to be used during inquiries and investigations; and
  - c. Ensuring that investigations begin within 10 days of receiving the harassment complaint, and are swift, thorough, impartial, and appropriate to the allegation.
5. Monitoring the work environment. Office Directors will be responsible for ensuring that their offices are in full compliance with the requirements of this memorandum. In addition, these officials are responsible for monitoring the work environment following a report alleging a violation of this memorandum to ensure that there are no further violations or incidents of retaliation against any individual who has reported harassment or participated in the inquiry or investigation.

7. Procedures under this memorandum are separate from statutory claims.

- A. Filing statutory or administrative complaints. The purpose of this memorandum is to stop harassment that has occurred and deter its occurrence in the future. Once the Office Director, or the Executive Director as appropriate, is satisfied that the corrective action has stopped harassment and deterred its recurrence, no further action is necessary. Therefore, corrective action under this memorandum does not provide the remedies available in the EEO or other processes, such as compensatory damages. Filing a report under this memorandum does not satisfy the requirements for filing an EEO complaint or other procedure and obtaining

remedies pursuant to them, nor does it delay the time limits for initiating those procedures. Thus, a person who chooses to pursue statutory or administrative remedies for unlawful harassment must select one of the available forums as follows:

1. For an EEO complaint pursuant to 29 CFR § 1614, contact an EEO counselor in the United States Postal Service (USPS), within 45 days of incident.
2. For an appeal to the Merit Systems Protection Board (MSPB) pursuant to 5 CFR § 1201.22, file a written appeal with the Board within 30 days of the effective date of an appealable adverse action as defined in 5 CFR § 1201.3, or within 30 days of the date of receipt of the agency's decision, whichever is later.

B. Reporting hostile or abusive conduct raised in the statutory or administrative process. This memorandum is designed to address hostile or abusive conduct before it rises to the level of illegal discrimination for which a person can exercise the statutory right to file an EEO complaint or MSPB appeal. Its purpose is to ensure that management is notified of and has the opportunity to correct any hostile or abusive conduct, and applies whether or not the person has filed an EEO complaint or MSPB appeal. The ACHP's liability for an EEO complaint or other action may depend upon whether it was aware of and promptly corrected the hostile or abusive conduct.

1. If a person pursues a claim of harassment through the EEO process or an MSPB appeal, the ACHP official who receives notice of such claim shall promptly notify the appropriate responsible management official. The management official must treat the notice as a report under section 6 of these procedures, unless inconsistent with applicable regulatory or statutory requirements.
2. BSEE ELRB shall provide the record of actions taken under this memorandum to the office handling a parallel statutory claim.

8. Further information. Any ACHP personnel or her/his representative seeking further information concerning this memorandum may contact the EEO Officer at [bsemmer@achp.gov](mailto:bsemmer@achp.gov).

9. Distribution. This memorandum shall be distributed to all ACHP personnel upon issuance, and annually thereafter. It shall also be distributed to all new personnel as part of their orientation during their first week of work. This memorandum also will be made available to personnel on the ACHP's website.