



*NOTE: Pursuant to Section 101 of the Aviation and Transportation Security Act (49 U.S.C. 114(n)), this directive modifies and supersedes the FAA personnel management system regarding prevention and elimination of sexual harassment in the workplace with respect to TSA employees.*

1. **PURPOSE:** This directive provides guidance to promote prompt reporting of sexual harassment allegations and to ensure that appropriate corrective action is taken regarding allegations of sexual harassment that are brought to the attention of management. This directive supersedes TSA Management Directive 1100.73-3, dated February 25, 2004.
2. **SCOPE:** This directive applies to all TSA organizational components.
3. **AUTHORITIES:** Sections 101 and 111(d) of the Aviation and Transportation Security Act; Sections 403(2) and 423 of the Homeland Security Act of 2002; applicable TSA and U.S. Department of Homeland Security delegations of authority.
4. **DEFINITIONS:**
  - A. **Definition of Sexual Harassment:** Sexual harassment is unwanted or unwelcome conduct that can be verbal or nonverbal and may consist of sexual advances, requests for sexual favors, or physical conduct of a sexual nature.
    - (1) **Quid Pro Quo:** Submission to or rejection of unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature is made either explicitly or implicitly a term or condition of one's employment or is used as the basis for employment decisions affecting such individual. Terms and conditions of employment include, but are not limited to: hiring, promotion, demotion, and increases in salary.
    - (2) **Hostile Environment:** Unwelcome sexual advances, requests for sexual favors, or any verbal, physical or other conduct that creates an intimidating, offensive or hostile environment that unreasonably interferes with an employee's performance or the terms and conditions of his or her employment.
  - B. **General Principles:**
    - (1) The affected person, as well as the harasser, may be a woman or a man. Same sex harassment is prohibited conduct, also.
    - (2) The affected person can be anyone who is subject to offensive conduct, including contractors and TSA customers.
    - (3) The harasser can be a TSA employee, contractor, or customer.
    - (4) The conduct can occur outside the workplace but may still be prohibited if work-related.

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- (5) Unlawful sexual harassment may occur without economic injury to or discharge of the affected person.
- (6) If the conduct is unwelcome or unwanted it may be harassment even if it is acquiesced to or if the affected person submits or participates against his or her will.
- (7) The intent of the harasser is irrelevant. It is the effect of the offending conduct that matters.
- (8) The determination as to whether sexual harassment has occurred includes considering the frequency and severity of the inappropriate conduct. Generally, sexual harassment is not found based on a single, non-egregious incident. However, certain behavior is so severe that a single incident may constitute sexual harassment.
- (9) Conduct that is inappropriate, even if not of a severity or frequency to constitute sexual harassment, may result in disciplinary action against those engaging in the conduct.
- (10) Once aware of a matter, management must take immediate, appropriate, effective corrective action. Management cannot promise the affected person that his or her identity and/or the substance of the allegation(s) will be kept confidential. However, managers and supervisors should discuss the matter only with those with a need to know and in a confidential manner.
- (11) Although management cannot promise confidentiality, an affected person may request confidentiality when raising a matter with the following offices: the Office of Civil Rights, the Ombudsman, and Federal Occupational Health (FOH) (the TSA Employee Assistance Program services provider).

C. Examples of Inappropriate Conduct:

- (1) Verbal Conduct
  - (a) Sexual jokes or suggestive verbal communication.
  - (b) Unwelcome telephone calls of a sexual nature.
  - (c) Degrading or demeaning remarks of a sexual nature.
  - (d) Using threats of punishment to attempt to force sexual activity or other sexual conduct.
  - (e) Sexual propositions, either overtly or by implication, promising rewards.
  - (f) Whistling or calling out to someone in a sexual way.
  - (g) Applying repeated pressure in asking for dates.

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(2) Nonverbal Conduct

- (a) Distribution or display of materials of a sexual nature.
- (b) Suggestive body language such as ogling, staring, leering, lewd licking of lips, suggestive touching of oneself.
- (c) Unwelcome letters, notes, or e-mails of a sexual nature.
- (d) Unwelcome and deliberate touching such as patting, stroking, rubbing, pinching, grabbing, bumping, back/neck rubs, unsolicited clothing adjustments, and blocking a passageway.

**5. RESPONSIBILITIES:**

- A. Office of Civil Rights (OCR): Responsible for administering TSA's Civil Rights Program, including processing Equal Employment Opportunity (EEO) complaints of discrimination by TSA employees, applicants for employment or former employees, when those individuals believe that they have been discriminated against, harassed, or retaliated against in violation of EEO laws, regulations and Executive Orders. OCR provides guidance and assistance to employees on the identification, prevention, and elimination of sexual harassment in the workplace.
- B. Office of Human Resources (HR): Responsible for developing and managing human resources policies, programs, and systems, and providing advice and guidance to employees and managers on human resources issues. Also responsible for designating a Sexual Harassment Prevention Coordinator who will coordinate all management sexual harassment fact-finding inquiries and will serve as the point of contact for management officials once management becomes aware of an allegation of sexual harassment. The Sexual Harassment Prevention Coordinator may also be a management point of contact for employees who do not feel comfortable informing their supervisor or manager of allegations of sexual harassment.

**NOTE: Inquiries conducted by management under this policy do not constitute initiation of the EEO complaint procedure pursuant to Title 29 Code of Federal Regulations Part 1614.**

- C. Federal Occupational Health (FOH): Responsible for and serves as the TSA Employee Assistance Program services provider, providing confidential counseling, information and other assistance to help employees with difficult personal situations, including crisis management, stress, and workplace issues.
- D. Office of the Ombudsman: Responsible for providing a confidential, independent, and neutral venue for all customers, employees, and contractors of TSA. The Office of the Ombudsman is responsible for providing a forum in which to raise and seek resolution of workplace issues

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without fear of retaliation. The Office of the Ombudsman recommends and facilitates solutions to ensure fair and equitable processes and procedures in the workplace.

- E. Office of Internal Affairs and Program Review (IAPR): Responsible for conducting investigations based on allegations of employee misconduct, including certain cases of sexual harassment, that are reported to IAPR.
- F. Office of the Chief Counsel (OCC): Responsible for providing legal advice and services to all TSA components in a broad range of legal practice areas, including prevention of sexual harassment.

**6. POLICIES & PROCEDURES:**

- A. Relationships in the Workplace: A voluntary, consensual intimate sexual or romantic relationship between individuals who have a direct or indirect supervisory relationship is generally not considered to be sexual harassment. However, such relationships are inappropriate and may violate the Standards of Ethical Conduct for Employees in the Executive Branch. See HRM Letter No. 735-2, Interim Policy on Uniformed Employees Appearance and Responsibilities, section 4(b). If such a personal relationship begins to develop, the parties involved should take action to end their supervisory-subordinate relationship. Where appropriate, management may take action to ensure individuals in such personal relationships do not continue in a supervisory-subordinate relationship.
- B. Reporting Sexual Harassment: The responsibilities and procedures for reporting allegations of sexual harassment are as follows:
  - (1) An affected person is encouraged to report any instance of sexual harassment to his or her first line supervisor or another supervisor or manager. If an affected person feels uncomfortable going to one of the supervisors or managers, the individual also has the option of reporting the matter to OCR, the Sexual Harassment Prevention Coordinator, field or HQ counsel, or the Office of the Ombudsman.
  - (2) While an affected person is encouraged to report the matter under section B.(1) so that appropriate action can be taken, he or she is not required to report the matter. The individual may file a complaint of discrimination as an alternative to, or in addition to, reporting the matter under B.(1). If the individual elects to file a complaint of discrimination, he or she must do so by contacting OCR within forty-five (45) days of the alleged harassment.
  - (3) Within three (3) working days of becoming aware of any occurrences or allegation(s) of sexual harassment, a manager or supervisor must inform the Sexual Harassment Prevention Coordinator, regardless of whether any other notification has been made and even if the affected person communicates his or her desire to not have the matter reported.

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**C. Conducting Fact-Finding Inquiries into Allegations of Sexual Harassment:**

- (1) **Allegations against Federal Security Directors (FSDs) or other Executive Management Officials:** The Sexual Harassment Prevention Coordinator will immediately inform IAPR of any allegation(s) of sexual harassment involving FSDs or other executive management officials in the K band or above. IAPR may conduct an investigation where the circumstances warrant or may refer the matter for appropriate management action.
- (2) **Allegations against Other Persons:** The Sexual Harassment Prevention Coordinator will arrange for a fact-finding inquiry or take other appropriate action regarding allegations against persons other than those specified in C.(1).
- (3) The fact-finding described herein does not, and is not intended to, supplant the inquiry that will occur if the individual initiates the EEO discrimination complaint process with OCR.

**D. Responsibilities and Obligations:** All employees (including contractor employees) have specific responsibilities for creating and maintaining an environment free of sexual harassment.

- (1) **Managers and Supervisors:** In addition to being responsible for ensuring that the workplace is free from sexual harassment, managers and supervisors must:
  - (a) Take immediate, appropriate steps to mitigate the alleged harassment. This may include separating the alleged harasser from the affected person or other actions as appropriate. This should be done in consultation with local HR and/or field counsel;
  - (b) Within three (3) working days of becoming aware of the allegation(s), notify the Sexual Harassment Prevention Coordinator;
  - (c) Inform the alleged harasser that an allegation has been made regarding his or her conduct and the nature of the conduct;
  - (d) Inform the alleged harasser that he or she shall immediately cease the alleged offending conduct;
  - (e) Ensure that with respect to the alleged harasser who is a decision-maker or has a supervisory relationship with the affected person, any future interactions with the affected person must not constitute either retaliation or any other act of unlawful discrimination;
  - (f) Take other action, if necessary, to ensure that any individual who informs management of alleged harassment or files a complaint with OCR is not retaliated against, coerced or intimidated in any way;

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- (g) Assist TSA management and other appropriate authorities, as may be necessary, in obtaining information, making necessary inquiries, and making efforts to resolve informal complaints regarding sexual harassment;
  - (h) Periodically inform their employees that sexual harassment is prohibited conduct that will not be tolerated and that disciplinary action, up to and including removal, will be taken against any person found to have engaged in sexual harassment; and
  - (i) Provide their employees with a copy of this directive and inform them whom to contact, as stated in sections 6.B. and 6.E. of this directive, if they believe that they have been subjected to sexual harassment.
- (2) Employees: Each employee must:
- (a) Ensure that his or her conduct is not sexually offensive to other employees, contractors, job applicants, or the public;
  - (b) Cooperate with inquiries into complaints of alleged harassment by providing information in the employee's possession. See HRM Letter No. 735-1 Interim Policy on Employee Responsibilities and Conduct; and
  - (c) Notify his or her immediate supervisor or higher-level management upon becoming aware of any conduct or actions that appear to constitute sexual harassment.
  - (d) Not engage in any intimidating or demeaning conduct against an affected person.
- (3) Affected Person: Any individual who believes he or she is affected by sexual harassment should do the following:
- (a) Inform the alleged harasser that the conduct is unwelcome and that it should cease immediately. In many cases, this is enough to stop the offending conduct.
- NOTE: An affected person may report alleged harassment with or without either (1) requesting the alleged harasser to cease the conduct or (2) notifying the alleged harasser that a report will be made.**
- (b) Document the circumstances surrounding the alleged sexual harassment, including the substance of any conversations with the alleged harasser and/or anyone else regarding the matter.
  - (c) If the offending conduct continues after informing the alleged harasser as in section 6. D.(3)(a), or if the affected person chooses not to engage the alleged harasser, the affected person should immediately report the matter to a supervisor or manager.

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(d) If the affected person does not feel comfortable informing a supervisor or manager, the person should notify one of the other offices or individuals as indicated under the “Responsibilities” section of this directive.

(4) Alleged Harasser - After the alleged harasser is advised that his or her conduct or actions are perceived as being hostile, offensive, or unwanted, the individual has an obligation and responsibility to:

(a) Ensure that the complained of conduct ceases immediately and that his or her future conduct or actions do not constitute and would not reasonably be perceived as sexual harassment;

(b) Refrain from engaging in any retaliatory conduct; and

(c) Cooperate with any fact-finding inquiry into the alleged misconduct.

E. Contact Information:

(1) Sexual Harassment Prevention Coordinator - (571) 227-2882 (Karen Finck)

(2) Office of Civil Rights - (1)(877) EEO-4TSA (336-4872); people with hearing impairments, please call OCR’s TTY number at (866) 536-9679

(3) Office of the Ombudsman - (571) 227-2383

(4) Office of Internal Affairs and Program Review - (571) 227-1800

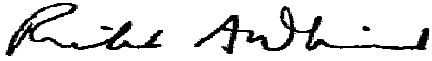
(5) Federal Occupational Health – (1)(800) 222-0364 or TTY: (1)(888) 262-7848; hyperlink: [FOH4you](http://FOH4you.com); or URL: [www.FOH4you.com](http://www.FOH4you.com).

F. Additional Information or Questions: Please contact the Sexual Harassment Prevention Coordinator if you have any questions or would like additional information.

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**7. EFFECTIVE DATE & IMPLEMENTATION:**

This policy is effective immediately upon signature.



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Richard A. Whitford  
Assistant Administrator  
for Human Resources

March 1, 2005  
Date

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