

VERMONT NATIONAL GUARD
JOINT FORCES HEADQUARTERS

J2021-03

JOINT POLICY MEMORANDUM

HARASSMENT REPORTING AND RESPONSE PLAN

01 FEBRUARY 2021



**OFFICE OF THE ADJUTANT GENERAL
789 Vermont National Guard Road
Colchester, Vermont 05446-3099**

NGVT-HRO (100)

28 January 2021

MEMORANDUM FOR SEE DISTRIBUTION

SUBJECT: J2021-03 Joint Policy Memorandum, Harassment Reporting and Response Plan

1. This policy defines and establishes the harassment reporting and response plan for the Vermont National Guard (VTNG).
2. This policy assigns responsibilities and prescribes procedures for reporting and responding to harassment in the Vermont National Guard (VTNG).
3. Any questions you may have concerning this plan, pertinent laws, regulations or processes may be referred to the Judge Advocate General, the Human Resources Office, or the State Equal Employment Manager.

GREGORY C. KNIGHT
Major General
The Adjutant General

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1. General Information

1.1. Purpose.

This policy:

- a) Assigns responsibilities and prescribes procedures for reporting and responding to harassment in the Vermont National Guard (VTNG).
- b) Provides guidance for processing, resolving, and tracking allegations of harassment.
- c) Distinguishes between discriminatory harassment and harassment that detracts from an efficient workplace.
- d) Replaces NGVT-JP-18 (Anti-Harassment Policy) and NGVT-JP-10 (Reporting of Sexually Offensive Incidents).

1.2. Applicability.

- a) This policy applies to those who have been the target of a sexual assault. However, those members should carefully consider filing a Restricted Report with the Sexual Assault Response Coordinator (SARC) to confidentially disclose the crime to specifically identified individuals without triggering an official investigation. Any member who files a Restricted Report can still receive medical care, counseling, and other SAPR support. The SARC can be reached 24-hours a day by calling 1-802-324-9925 (normal business day), or 1-800-489-7273 (after hours and non-business days).
- b) This policy applies to all personnel including Title 32 military technician (dual status) excepted service employees, Title 5 NG excepted or competitive service employees, Active Guard Reserve, and traditional guard members.

1.3. Policy.

The VTNG will:

- a) Maintain a model workplace free from harassment and retaliation, whether or not such misconduct violates federal law.
- b) Not tolerate or condone harassment of any kind, including harassment based on race, color, religion, sex (including pregnancy, gender identity, and sexual orientation), national origin, age (40 and older), disability, and genetic information. Harassment jeopardizes combat readiness and mission accomplishment, weakens trust, erodes organizational cohesion, and is fundamentally at odds with the obligations of all members of the VTNG to treat others with dignity and respect. It includes conduct that is not unlawful, but adversely affects the work environment.
- c) Not tolerate retaliation against anyone who opposes or reports harassment.

- d) Take allegations of harassment and retaliation seriously, address those allegations at once, and take proportionate corrective action if it is determined that harassment or retaliation has occurred.
- e) Prevent and respond quickly to harassment behavior.
 - 1) The processes established for addressing harassment and retaliation will provide a timely, thorough, and impartial inquiry or investigation into the allegations, as appropriate. The VTNG will protect the confidentiality of those reporting harassment, to the greatest extent possible.
 - 2) The VTNG will maintain separate processes for responding to harassment that detracts from an efficient workplace and complaints of discriminatory harassment.
 - 3) Leaders at all levels will be held accountable for fostering a climate of inclusion that supports diversity, is free from harassment, and prohibits retaliation and reprisal against those who allege harassment or assist in any inquiry about such allegations.
 - 4) The VTNG will identify and promote available resources, including the Alternative Dispute Resolution Program (ADR) to aid in resolving alleged harassment and retaliation.
 - 5) VTNG personnel who engage in harassing or retaliatory conduct will be subject to disciplinary action up to and including removal from service. As this policy is broader than federal law, the VTNG may take disciplinary action whether or not federal law prohibits the basis of the harassment or retaliation.

1.4. Releasability.

This policy is approved for public release; distribution is unlimited.

1.5. Effective Date.

This policy is effective on 1 October 2020, and applicable until superseded.

2. Responsibilities

2.1. The Adjutant General.

The Adjutant General (TAG) will:

- a) Establish procedures to ensure all personnel within VTNG workspaces are treated with dignity and respect.
- b) Treat information pertaining to allegations of harassment in a private and confidential manner.

- c) Hold leaders accountable for fostering a climate of inclusion within their organizations that supports diversity, is free from harassment, supports those who report harassment, and prohibits retaliation and reprisal against anyone because they have reported harassment, assisted in any inquiry about such allegations, or expressed opposition to harassment.
- d) Establish venues to receive and respond to allegations of discriminatory harassment and harassment that detracts from an efficient workplace.
- e) Provide adequate resources to ensure timely processing of harassment complaints.

2.2. Human Resource Officer.

Under the authority, direction, and control of TAG, the Human Resource Officer (HRO) will:

- a) Establish, and oversee the implementation of policies and procedures to prevent and respond to harassment and retaliation.
- b) Assist supervisors and managers with the procedural aspects of an allegation of harassment or retaliation.
- c) Provide necessary training to managers and supervisors on the Harassment Prevention and Response Plan.
- d) Ensure that a response to harassment allegations be conducted in an impartial and timely manner and, where harassing behavior exists, it is promptly stopped.
- e) Maintain separate processes for responding to allegations of discriminatory harassment and harassment that detracts from an efficient workplace.
- f) Provide the Adjutant General an annual assessment of policy effectiveness and compliance with strategies and plans, along with recommendations for improvements.

2.3. State Equal Employment Manager.

Under the authority, direction, and control of the HRO, the State Equal Employment Manager (SEEM) will:

- a) Implement and prepare guidance focusing on harassment based on a protected status adversely affecting the work environment.
- b) With the assistance of the Human Resource Equal Opportunity Officer (HREO), provide advice, assistance, and training to Equal Opportunity Advisors, Leaders, and counselors, as well as commanders, managers, and supervisors on the effective use of and participation in the provisions contained herein.

- c) Propose new regulations, policies, and local directives that enhance this policy.

2.4. Labor Relations Specialist.

Under the authority, direction, and control of the HRO, the Labor Relations Specialist will:

- a) Implement and prepare guidance focusing on harassment adversely affecting the work environment.
- b) Provide advice, assistance, and training to commanders, managers, and supervisors on the effective use of and participation in the provisions contained herein.
- c) Propose new regulations, policies, and local directives that enhances this policy.

2.5. Managers, Supervisors, and Commanders.

- a) Will not tolerate or condone harassment, to include harassment that is not unlawful but adversely affects the work environment.
- b) Have an obligation to promptly report allegations of harassment in accordance with the procedures contained herein.
- c) Must take corrective action against any VTNG member under their supervision who violates this policy.

2.6. All VTNG Personnel.

All personnel who believe they have witnessed harassment or retaliatory conduct are required to report such behavior. Any personnel experiencing harassment or retaliatory conduct are encouraged to report such behavior.

3. Prohibited Harassment and Retaliation.

3.1. Harassment Adversely Affecting the Work Environment.

The conduct prohibited by this policy includes behavior that is unwelcome or offensive and that interferes with work performance; or creates an intimidating, hostile, or offensive work environment. All allegations of harassment must be evaluated under the totality of the circumstances, to include an assessment of the nature of the conduct and the context in which the conduct occurred. In some circumstances, a single incident of harassing behavior is prohibited harassment whereas, in other circumstances, repeated or recurring harassing behavior may be required to constitute prohibited harassment.

3.2. Misuse of Power.

Misuse of power is aggressive, menacing, malicious, or insulting behavior that makes a reasonable person feel vulnerable, upset, humiliated, undermined, or threatened.

"Power" does not always mean being in a position of authority, but can include both personal strength and the power to coerce through fear or intimidation, and can take the form of physical, verbal and non-verbal conduct. Misuse of power is a form of harassment that can adversely affect the work environment and is prohibited.

3.3. Discriminatory Harassment.

Discriminatory harassment is any kind of harassment that adversely affects the work environment and is based on a protected status (i.e. race; color; religion; sex, including pregnancy, gender identity, and sexual orientation; national origin, age (40 and older); disability; and genetic information).

3.4. Examples of Prohibited Harassment.

- a) Harassing behavior may include, but is not limited to:
 - 1) Unwanted physical contact.
 - 2) Offensive jokes.
 - 3) Epithets or name-calling.
 - 4) Ridicule or mockery.
 - 5) Insults or put-downs.
 - 6) Displays of offensive objects or imagery.
 - 7) Offensive non-verbal gestures.
 - 8) Stereotyping.
 - 9) Intimidating acts.
 - 10) Veiled threats of violence.
 - 11) Threatening or provoking remarks.
 - 12) Racial or other slurs.
 - 13) Teasing, mimicking or commenting on a person's disability, accent, or appearance.
 - 14) Comments on a person's body or sexual characteristics.
 - 15) Displays of racially offensive symbols.
 - 16) Hazing.
 - 17) Bullying.
- b) Discriminatory harassment may include, but is not limited to:
 - 1) Unlawful discriminatory conduct.
 - 2) Sexual harassment.
 - 3) Any of the above examples when based on a protected status.

3.5. Means of Harassment.

Harassment can be verbal, visual, written, or physical. Harassment can occur through electronic communications, including social media, other forms of communication, and in person.

3.6. Behavior that is Not Harassment.

Activities or actions undertaken for a proper military or governmental purpose, such as combat survival training, assignment of work related to the duties and responsibilities of the employee, and performance counseling, are not harassing behaviors. Moreover, this policy prohibiting harassment is not a “general civility code.” Behavior that is rude, ignorant, abrasive, or unkind, but does not adversely affect the work environment as described in [Paragraph 3.1](#), is not harassment.

3.7. Retaliation.

Retaliation is taking an adverse action against a person for opposing discriminatory or harassing behavior, or engaging in a legally protected activity, such as making an allegation of harassment or participating in an inquiry or investigation. Retaliatory treatment towards anyone for reporting allegations of inappropriate conduct or harassment, or for participating as a witness in an administrative inquire or EEO complaint process, is prohibited.

4. Harassment Prevention and Response Policies and Procedures.

4.1. Purpose.

The following separately addresses the response procedures for allegations of harassment. These policies and procedures:

- a) Distinguish between response procedures for allegations of discriminatory harassment and harassment that detracts from an efficient workplace.
- b) Encourage VTNG personnel to report allegations of harassment or retaliation.
- c) Require VTNG components to respond to allegations of harassment or retaliation.
- d) Identify venues where harassment of any kind can be reported and provides for referral of harassment allegations to an appropriate venue for response.
- e) Outline the process the VTNG will use to resolve an allegation of harassment, to include an opportunity for alternative dispute resolution (ADR) where appropriate.
- f) Require a timely response.
- g) Identify methods to correct harassing behavior.

- h) Provide appropriate notification to individuals who allege they have been harassed on the status of the response to the harassment allegation, including, but not limited to, when the component determines its response to be completed.
- i) Identify available resources and support services to restore workplace efficiency.
- j) Permit a third-party, such as a bystander or witness, to report harassment.

4.2. Witness to Harassment or Inappropriate Conduct.

Any person who believes they witnessed harassment or retaliation should report the behavior in accordance with the procedures contained herein as soon as possible so an administrative inquiry can be conducted, and appropriate corrective action implemented. Every member of the VTNG community has an obligation to assist in eliminating harassment.

4.3. Management Responsibilities.

VTNG managers, supervisors, and commanders (management) have an obligation to file a report within 24 hours of becoming aware of any allegations of harassment or retaliation. Management's reporting obligation is required even if the individual coming forward wishes to remain anonymous, requests confidentiality, or does not wish the complaint to be addressed with the alleged harasser. The obligation exists even if the reporting party is not under the supervision of the person who received the allegation. Management is expected to take corrective action against any member of the VTNG who violates this policy. Management must not discourage, or reprimand staff for reporting allegations.

4.4. Incident.

These procedures apply to anyone who experiences, witnesses or becomes aware of an incident of harassment involving any member of the VTNG.

4.5. Reporting.

- a) While members of the VTNG who have witnessed or experienced harassment or retaliation can report those allegations to their immediate supervisor, they can also report such behavior to any manager, supervisor, Commander, Equal Opportunity Advisor, Equal Opportunity Leader, Equal Opportunity Counselor, or the HRO. There is no requirement to first report allegations to the immediate supervisor.
- b) The reporting party may remain anonymous. However, to remain anonymous, key details will need to be omitted which will limit the ability to conduct a thorough inquiry and take corrective administrative action.
- c) Supervisors, managers and commanders are required to file a report within 24 hours of becoming aware of any allegations.

- d) Raising an allegation under this provision is not equivalent to or in lieu of filing a grievance under the administrative or negotiated procedures included in the applicable Collective Bargaining Agreement. For information as to these and other rights contact the LRS.
- e) Anyone who wishes to pursue an EEO complaint must contact the EEO Counselor or the SEEM within 45 days of the discriminatory incident in order to file a complaint.
- f) Any person who submits a report (either of harassment experienced or observed) or a witness who provides information regarding a report will be protected from retaliation from co-workers and supervisor.

4.6. Triage.

- a) Once a report is submitted, intake specialists will direct the report to the appropriate office for review and action. Depending on the type of misconduct reported, the report will be routed to the office of the: Inspector General, Provost Marshal, Labor Relations Specialist, Sexual Assault Response Coordinator, State Equal Employment Manager, or Human Resource Equal Opportunity Officer for further action.
- b) The reporting party will be notified when the report has been referred to the appropriate management officials. However, because of privacy rights and procedures, additional information may not be provided.

4.7. Inquiry or Investigation.

- a) The responsible office will review the report and promptly conduct management inquiries or investigations as appropriate. This may involve requesting documentation, gathering evidence, and speaking to the involved individuals.
- b) The VTNG responsibility to conduct an administrative inquiry is a stand-alone requirement to ensure that the allegation is examined expeditiously and any inappropriate behavior is curtailed quickly.
- c) The reporting party will be notified of the status of the inquiry or investigation. However, because of privacy rights and procedures, no further information will be provided.
- d) The VTNG will protect the confidentiality of all parties involved and any information gathered, to the extent possible, throughout this process consistent with a thorough and impartial inquiry or investigation.
- e) The VTNG will offer the parties an opportunity to informally resolve the issue through alternative dispute resolution (ADR).

4.8. Response

Once an inquiry or investigation is completed, the responsible office will review the findings and take immediate proportional corrective action to resolve them, which can range from closing the report without action to removal of an offending party from VTNG employment.

5. Appendices

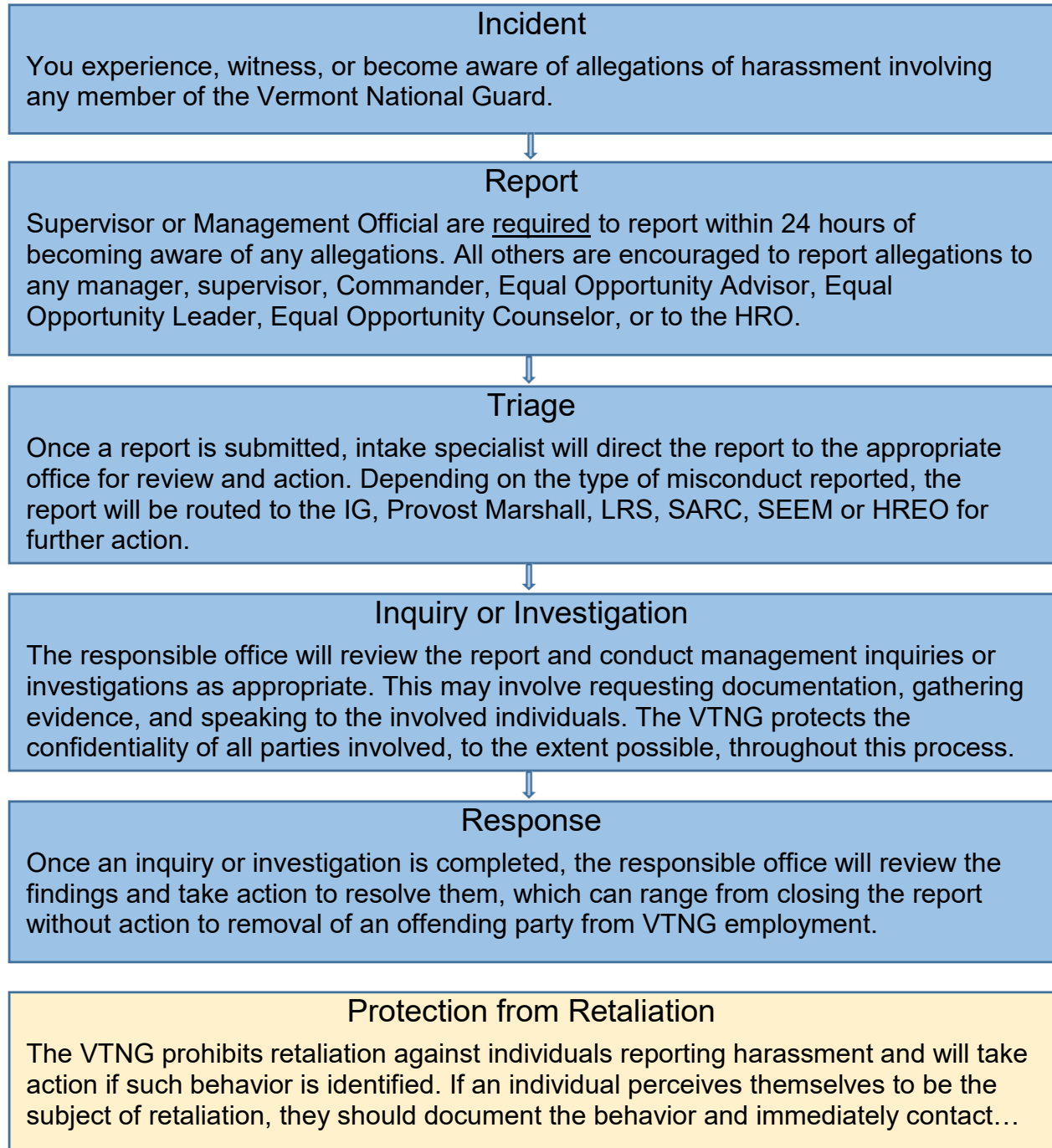
5.1. Statutory and Regulatory Authorities.

DoDI 1020.04, Harassment Prevention and Responses for DoD Civilian Employees
CNGBM 0402.01, Alternative Dispute Resolution Procedures

5.2. Acronyms

ADR	Alternative Dispute Resolution
EEO	Equal Employment Opportunity
HREO	Human Resource Equal Opportunity Officer
HRO	Human Resource Officer Human Resource Office
LRS	Labor Relations Specialist
SARC	Sexual Assault Response Coordinator
SEEM	State Equal Employment Manager
TAG	The Adjutant General
VTNG	Vermont National Guard

5.3. Reporting Harassment Flowchart



5.4. Definitions.

Term	Definition
Bullying	<p>A form of harassment that involves aggressive acts intended to harm, either physically or psychologically, another person without a proper governmental purpose but with a nexus to employment. Bullying includes singling out an individual from his or her coworkers for ridicule because he or she is considered different or weak. It often involves an imbalance of power between the aggressor and the individual. Bullying does not include a properly directed command or organizational activities that serve a proper military or other governmental purpose. Bullying can be conducted through the use of electronic devices or communications, and by other means including social media, as well as in person. Bullying is evaluated by a reasonable person standard and includes, but is not limited to, the following conduct when performed without a proper governmental purpose:</p> <p>Physically striking another person in any manner, or threatening to do the same.</p> <p>Intimidating, teasing, or taunting another person.</p> <p>Oral or written berating (including electronic medium) of another person with the purpose of belittling or humiliating.</p> <p>Encouraging another person to engage in illegal, harmful, demeaning, or dangerous acts.</p> <p>Playing abusive or malicious tricks.</p> <p>Piercing, branding, handcuffing, duct taping, tattooing, shaving, greasing, or painting another person.</p> <p>Subjecting another person to excessive or abusive use of water.</p> <p>Forcing another person to consume food, alcohol, drugs, or any other substance.</p> <p>Degrading or damaging another’s property or reputation.</p> <p>Soliciting, coercing, or knowingly permitting another person to solicit or coerce acts of bullying.</p>
Federal Employee	Individuals appointed in the civil service by the VTNG.

Term	Definition
Harassment	Behavior that is unwelcome or offensive to a reasonable person and that creates conditions that interfere with work performance or creates an intimidating, hostile, or offensive work environment.
Hazing	<p>A form of harassment that involves conduct, without a proper governmental purpose but with a nexus to employment, intended to physically or psychologically injure or create a risk of physical or psychological injury to a person for the purpose of: initiation into, admission into, affiliation with, change in status or position within, or a condition for continued membership in any VTNG organization. Hazing does not include a properly directed command or organizational activities that serve a proper military or other governmental purpose. Hazing can be conducted through the use of electronic devices or communications, and by other means including social media, as well as in person. Hazing is evaluated by a reasonable person standard and includes, but is not limited to, the following when performed without a proper military or other governmental purpose:</p> <p>Any form of initiation or congratulatory act that involves physically striking another person in any manner, or threatening to do the same.</p> <p>Oral or written berating (including electronic medium) of another person with the purpose of belittling or humiliating.</p> <p>Encouraging or coercing another person to engage in demeaning, illegal, harmful, or dangerous acts.</p> <p>Playing abusive or malicious tricks.</p> <p>Piercing, branding, handcuffing, duct taping, tattooing, shaving, greasing, or painting another person.</p> <p>Subjecting another person to excessive or abusive use of water.</p> <p>Forcing another person to consume food, alcohol, drugs, or any other substance.</p> <p>Soliciting, coercing, or knowingly permitting another person to solicit or coerce acts of hazing.</p>
Manager	A Service member or a VTNG employee who falls within the chain of command directly between any supervisor and the agency head.

Term	Definition
Offender	An individual who engages in harassment prohibited by this issuance. The individual may be a VTNG federal employee, military service member, other federal employee, a contractor, or a vendor who does business with the VTNG.
Pending Report of Harassment	A harassment report that has not been resolved by the VTNG Component's process to respond to allegations of harassment by the close of the fiscal year of the data reporting period.
Reprisal	A form of retaliation that involves taking, threatening, or recommending taking an unfavorable personnel action (demote, separate, treat unfairly, etc.); or withholding, threatening, or recommending withholding a favorable personnel action, for making, preparing to make, or being perceived as engaged in the anti-harassment process.
Referred Report of Harassment	A harassment report that was received via one response process but was referred to another response process (e.g., EEO, SARC) during the data reporting period.
Retaliation	<p>Conduct that punishes a person for asserting the right to be free from harassment in the workplace. Retaliatory behaviors include, but are not limited to, reprisal, ostracism, maltreatment, and criminal acts for a retaliatory purpose. Retaliation includes illegal, impermissible, or hostile actions taken with the knowledge of management against VTNG civilian employees for:</p> <ul style="list-style-type: none"> • Filing or being a witness in a charge, report, inquiry, or lawsuit; • Communicating with a supervisor or manager about discrimination, including harassment; • Answering questions during an inquiry of alleged harassment; • Refusing to follow orders that would result in harassment; or • Resisting sexual advances or intervening to protect others.
Sexual Harassment	Unlawful discriminatory harassment that is based on conduct of a sexual nature. It involves unwelcome sexual advances, requests for sexual favors, or other verbal or physical conduct of a sexual nature when:

Term	Definition
	<ul style="list-style-type: none">• It explicitly or implicitly becomes a term or condition of a person's job, pay, or career. For example:<ul style="list-style-type: none">○ Submission to or rejection of such conduct by a person is used as a basis for career or employment decisions affecting that person; or○ Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance; or○ It is so severe or pervasive that a reasonable person would perceive, and the employee does perceive, the environment as hostile or offensive.