



TSA Office of
**Human
Capital**

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Handbook



TSA MD 1100.73-3 Handbook

Prevention and Elimination of Sexual Harassment in the Workplace

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Transportation
Security
Administration



TSA Office of
**Human
Capital**

TSA HANDBOOK TO
MD 1100.73-3, PREVENTION AND ELIMINATION OF
SEXUAL HARASSMENT IN THE WORKPLACE

This Handbook and all related Attachments and/ or Appendices contain stipulations to implement the provisions of TSA MD 1100.73-3, Prevention and Elimination of Sexual Harassment in the Workplace. Until such time as TSA MD 1100.73-3 is rescinded, the Management Directive, Handbook, and any Attachments or Appendices are considered TSA policy, and must be applied accordingly.

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A. Definitions:

1. Affected Person: Any individual who has allegedly been subjected to sexual harassment. The affected person may or may not be the same person to whom the conduct was directed. An affected person is anyone who is impacted by the offensive behavior, including TSA employees, contractors, vendors, and TSA customers.
2. Alleged Harasser: Any individual who has allegedly engaged in inappropriate conduct or behavior. This may include contractors or other non-TSA employees.
3. Appointing Authority: The management official or designee authorized to appoint fact-finders. The appointing authority defines the scope of the inquiry and assures that inquiries are thorough and impartial, but may not direct the outcome of any inquiry.
4. Fact-Finder: A trained, impartial individual appointed to conduct inquiries into allegations of sexual harassment or misconduct of a sexual nature. The Fact-Finder shall report findings and conclusions to the appointing authority.
5. Fact-Finding Inquiry: Any review conducted by the Fact-Finder or TSA office/organization into allegations of sexual harassment or misconduct of a sexual nature that documents what occurred and the identity and role of any harasser(s).
6. Federal Occupational Health (FOH): A non-TSA entity that provides Employee Assistance Program services to TSA employees.
7. Management Official: Any TSA employee who is a higher-level official in the employee's chain of supervision such as a supervisor or manager (e.g., Office Director, (OD), Assistant Administrator (AA), Federal Security Director (FSD), Special Agent In-Charge (SAC), etc).
8. Sexual Harassment: 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 that explicitly or implicitly affects an individual's employment, unreasonably interferes with an individual's work performance or creates an intimidating, hostile, or offensive work environment.
9. Sexual Harassment Prevention Coordinator (SHPC): An individual assigned by the Office of Human Capital to manage the Prevention of Sexual Harassment program.

B. General principles:

- (1) The affected person, as well as the alleged harasser, may be the same gender or of a different gender as the alleged harasser.

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- (2) The affected person can be anyone who is subject to offensive conduct, including contractors, vendors, and TSA customers. Further, the affected individual need not be the person at whom the harassment was directed, but may be anyone who is affected by the offensive conduct.
- (3) The alleged harasser may be a TSA employee, contractor, or customer.
- (4) The intent of the alleged harasser is irrelevant; the reasonable effect of the conduct determines whether sexual harassment has occurred.
- (5) While the conduct may occur outside the workplace, it may have a negative impact on the work environment.
- (6) Sexual harassment may occur without a negative material impact, such as financial injury or the loss of employment, to the affected person.
- (7) If the conduct is unwelcome or unwanted, it may be sexual harassment even if the affected person submits or participates against his or her will.
- (8) The determination as to whether sexual harassment has occurred includes a consideration of the frequency and/or severity of the inappropriate conduct. Generally, a single, non-egregious incident is not in itself sufficient grounds for a finding of sexual harassment. Certain behavior, however, 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.
- (10) Once aware of an allegation of sexual harassment or misconduct of a sexual nature, management has the obligation to take immediate, appropriate, effective, corrective action, regardless of the affected person's unwillingness to pursue the matter. A fact-finding inquiry shall be initiated in accordance with [TSA MD 700.2, *Informal Management Inquiries*](#).

NOTE: Minor incidents of a sexual nature may not warrant an inquiry. In these instances, management officials shall take prompt action to correct the conduct.

- (11) Management shall not promise the affected person that his or her identity and/or the substance of the allegation(s) will be kept confidential. Managers and supervisors, however, should only discuss the matter with those with a need to know. Such discussions should be of a confidential nature.
- (12) Although management officials cannot promise confidentiality, an affected person may request that the matter be handled in a confidential manner, as provided for in their respective processes, when raising it with OCRL, the Ombudsman, or Federal Occupational Health (FOH).

C. Examples of Misconduct of a Sexual Nature:

The following are examples of misconduct of a sexual nature. Depending on the particular circumstance surrounding the actions, the conduct may rise to the level of sexual harassment. Misconduct of a sexual nature and sexual harassment may be verbal or non-verbal in nature.

(1) Verbal Conduct:

- (a) Sexual jokes, suggestive verbal communication, or innuendos;
- (b) Unwelcome telephone calls or voice messages of a sexual nature;
- (c) Degrading or demeaning remarks of a sexual nature;
- (d) Using threats of punishment or reward in an attempt to force sexual activity or other conduct of a sexual nature;
- (e) Sexual propositions, either overtly or by implication;
- (f) Whistling or calling out to someone in a sexual manner; or
- (g) Repeated requests for participation in situations, such as dates, suggestive of romantic or sexual liaisons.

(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, e-mails, text messages, or any other written communications of a sexual nature;
- (d) Unwelcome and deliberate touching such as patting, stroking, rubbing, biting, pinching, grabbing, bumping, back/neck rubs, and unsolicited clothing adjustments; or
- (e) Conduct to encourage, invite or suggest physical contact, such as blocking a passageway.

D. Relationships in the Workplace: A voluntary, consensual romantic or intimate sexual relationship between individuals who have a direct or indirect supervisory-subordinate relationship is generally not considered sexual harassment or misconduct of a sexual nature. Romantic or sexual relationships by individuals in a supervisory-subordinate workplace situation, however, are inappropriate and may violate the [*Standards of Ethical Conduct for*](#)

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Employees in the Executive Branch. Although TSA has no desire to interfere with the private lives of its workforce, such conduct may affect workplace effectiveness and the interests of TSA must come first. Therefore, if such a romantic or sexual relationship develops, the employee in the supervisory position (the more senior-level position if both employees are supervisors) must inform his/her manager to enable TSA to take appropriate measures to eliminate any potential or actual adverse effects. The individuals in such a relationship may not continue in a supervisory-subordinate workplace situation.

E. 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 alleged sexual harassment to his or her first line supervisor or to another supervisor or manager. Alternatively, an affected person may report the matter to OCRL, the Local Sexual Harassment POC or the SHPC, field or HQ counsel, or the Office of the Ombudsman. Refer to section K below for the contact information.
- (2) While an affected person is encouraged to report the matter so that appropriate action can be taken, he or she is not required to do so. The affected person may file a complaint of discrimination as an alternative to, or in addition to, reporting the matter as detailed above. If the affected person elects to file a complaint of discrimination, he or she must do so by contacting OCRL within forty-five (45) days of the alleged harassment. Reporting the matter to TSA management does not satisfy the requirement to contact an EEO counselor within 45 days of the alleged harassment.
- (3) Within **three business days** of becoming aware of any occurrences or allegation(s) of sexual harassment, a manager or supervisor must inform the SHPC of the allegation's details. Such a notification must take place, regardless of whether any other notification has been made and even if the affected person does not wish to have the matter reported.

F. Addressing Sexual Harassment: All employees (including contractors) have specific responsibilities for creating and maintaining an environment free of sexual harassment.

- (1) Management Officials shall:
 - (a) Complete an incident report once becoming aware of an allegation and forward a copy to the SHPC within three business days. The incident report should contain the facts of the allegation, the name of the individuals involved, their position titles, statements of the affected person and the alleged harasser, and any other relevant information.
 - (b) Separate the alleged harasser from the affected person. Generally, the alleged harasser is relocated to a different work site/location pending the outcome of the inquiry. This should be performed in consultation with the local or HQ Employee Relations Specialist and/or field counsel;

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- (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 must immediately cease the alleged offending conduct;
 - (f) 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;
 - (g) Take other action, if necessary, to ensure that any individual who informs management of alleged harassment or files a complaint with OCRL is not retaliated against, coerced or intimidated in any way;
 - (h) Assist the fact-finder or other TSA management official, as may be necessary, in obtaining information, making necessary inquiries, and working to resolve complaints regarding sexual harassment;
 - (i) Inform the SHPC as soon as the fact-finding investigation is complete;
 - (j) Upon completion of the inquiry, inform the affected person (in writing) of the findings and that the appropriate action shall be taken, if any;
 - (k) Periodically inform employees that sexual harassment is prohibited conduct that is not tolerated and that disciplinary action, up to and including removal, will be taken against any person found to have engaged in sexual harassment. If disciplinary action is warranted, refer to [*TSA MD 1100.75-3, Addressing Unacceptable Performance and Conduct*](#);
 - (l) Take the appropriate action to correct inappropriate conduct, which may include corrective or disciplinary action; and
 - (m) Provide employees with a copy of this directive, and notify them of the appropriate office to contact if they ever believe that they have been subjected to sexual harassment.
- (2) 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 must cease immediately. In many cases, this is enough to stop the offending conduct. While informing the alleged harasser that the conduct is unwelcome is recommended, it is not required;

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- (b) Report the alleged harassment as provided in Section E of this handbook; and
 - (c) Document the circumstances related to the alleged sexual harassment, including the substance of any conversations with the alleged harasser and/or anyone else regarding the matter;
- (3) **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) Discontinue the offensive conduct immediately and ensure 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 fully with any fact-finding inquiry into the alleged misconduct.

G. Appointing Fact-Finders: The primary functions of fact-finders are to collect statements and evidence, and provide such information to the appointing authority. The fact-finder's duty is to thoroughly and impartially ascertain and consider the evidence on all sides of each issue under inquiry pursuant to the instructions of the appointing authority.

- (1) **Authority for Fact-Finder Appointment:** Authority to appoint fact-finders rests with the appropriate officials within the organization in which the alleged harassment occurred, as follows:
 - (a) In Office of Security Operations: FSDs, their designees or by the SHPC;
 - (b) In Headquarters: Management officials at or above the Assistant Administrator level, or their designee, or by the SHPC; or
 - (c) In the Federal Air Marshal Service (FAMS): Special Agents in Charge, their designee, or by SHPC.
- (2) **Method of Appointment:** The appointment of a fact-finder must be in writing and clearly specifies the purpose and scope of the inquiry. The appointment must include a reasonable timeframe for completing the fact-finding.
- (3) **Who May be Appointed:** The fact-finder must be impartial and must not have been involved, in any manner, in the situation under inquiry. He/she should either have attended the TSA Informal Administrative Inquiry & Workplace Harassment Training or other equivalent training, or have demonstrated fact-finding capabilities.
- (4) Generally, upon appointment, the duties of a fact-finder will take priority over the

individual's regular daily duties.

NOTE: The Local Sexual Harassment POC or the SHPC shall not serve as the Fact-Finding Officer.

H. Conducting Fact-Finding Inquiries:

- (1) The SHPC will immediately inform OI of any allegation(s) of sexual harassment involving employees at the K band or above, and allegations involving any employee in the position of FSD, DFSD or AFSD, regardless of pay band. OI may conduct an investigation or refer the matter for appropriate management action.
- (2) For employees not covered by Section H(1) the SHPC shall either coordinate a fact-finding inquiry, ensure that local management initiates a fact-finding inquiry, or refer the allegation to the appropriate office for review.
- (3) Allegations involving TSA contractors: In addition to notifying the SHPC, management officials shall contact the Contracting Officer's Technical Representative (COTR) who is responsible for appropriate notifications based on the type of allegation, as outlined below:
 - (a) Allegations against a TSA employee by a contractor: The COTR shall inform the contractor that immediate, corrective actions shall be taken.
 - (b) Allegations against a contractor by a TSA employee: The COTR shall inform the contractor's immediate supervisor of the allegations. The contractor should be separated from the employee, in coordination with OCC.
 - (c) Allegations against a contractor by another contractor: The COTR shall inform the supervisors of the respective contractors.
- (4) Inquiries conducted under this policy do not constitute initiation of the EEO complaint procedure pursuant to Title 29 Code of Federal Regulations Part 1614. The employee must file a timely complaint with OCRL to initiate the EEO complaint process.

NOTE: The fact-finding described herein does not, and is not intended to supplant the inquiry that will occur if the affected person initiates the EEO discrimination complaint process with OCRL.

- (5) Scope of fact-finding: Fact-finders are appointed to gather information on all matters of suspected sexual harassment. Fact-finders may not be appointed to inquire into allegations of sexual harassment, if it is known by management officials that a formal complaint related to the matter has been filed with OCRL without prior consultation and approval from that office. Refer to [TSA MD 700.2, Informal Administrative Inquiries](#) for additional details.

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I. Fact-Finding Report: After the completion of the fact-finding, a report must be prepared in accordance with [TSA MD 700.2](#).

- (1) Format: The report must be in writing and should include findings and, if requested, conclusions.
- (2) Exhibits: Every item of evidence offered to or received by the fact-finder should be marked as a separate exhibit.
- (3) If further information is required, the appointing authority or his/her designee will notify the fact-finder if further action, such as obtaining additional statements, is required. Such additional proceedings will be conducted under the provisions of the original appointing memorandum, including any modifications of the scope of the inquiry.
- (4) Fact-finding reports must be reviewed by the appointing authority and by the SHPC.
- (5) The complete fact-finding report shall be forwarded to the SHPC within **five working days** after the completion of the report. An extension may be requested from the SHPC.
- (6) Should the SHPC find the report and/or the inquiry to be incomplete, he or she will contact the appointing authority and recommend that the inquiry or the report be completed accordingly.

J. Contact Information:

- (1) Sexual Harassment Prevention Coordinator: (571) 227-1340;
- (2) Office of Civil Rights and Liberties: (877) EEO-4TSA (336-4872); people with hearing impairments, please call OCRL's TTY number at (866) 536-9679;
- (3) Office of the Ombudsman: (571) 227-2383;
- (4) Office of Inspection: (571) 227-1800;
- (5) Federal Occupational Health (Employee Assistance Program): (800) 222-0364 or TTY: (800) 887-5506; or www.FOH4you.com; and
- (6) Office of Inspector General: 1-800-323-8603.