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PREVENTION OF WORKPLACE HARASSMENT

1. PURPOSE: This Veterans Health Administration (VHA) Directive defines policy for implementing the Prevention of Workplace Harassment Program and reporting allegations of harassment in VHA. *NOTE: This policy applies to all employees and covers employees outside of the workplace while conducting government business, and non-employees while conducting business in the Department of Veterans Affairs (VA) workplace.*

2. BACKGROUND: Workplace harassment is a form of discrimination that is explicitly prohibited by VA policy and the law. VA does not tolerate verbal or physical conduct that harasses, disrupts, interferes with performance, or creates an environment that is intimidating, offensive or hostile. Additionally, VA does not tolerate or condone any form of harassment or retaliation towards employees who report incidents of harassing behavior or assist in any inquiry about such a report.

a. Harassment is any unwelcome verbal or physical conduct based on race, color, religion, sex (regardless of whether it is of a sexual nature), sexual orientation, national origin, age, disability, or retaliation that is sufficiently offensive to alter the conditions of the victim's employment. This standard is met when the conduct culminates in a tangible employment action, or the conduct is sufficiently severe or pervasive as to create a hostile work environment.

b. **Sexual Harassment**

(1) Sexual harassment, a violation of the Civil Rights Act of 1964, Title VII, Section 703, is a form of employee misconduct that seriously undermines the integrity of the employment relationship. Specifically, sexual harassment is unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature not only when the submission to advances is an expressed or implied condition for receiving job benefits and the refusal of advances results in tangible employment action, but also when the conduct creates an intimidating, hostile or offensive working environment.

(2) Sexual harassment is not limited to explicit demands for sexual favors. It also may include such actions as:

- (a) Sexually-oriented verbal kidding, teasing, or jokes;
- (b) Repeated sexual flirtations, advances or propositions;
- (c) Continued or repeated verbal abuse of a sexual nature;
- (d) Graphic or degrading comments about an individual or the individual's appearance;

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- (e) The display of sexually suggestive objects or pictures;
- (f) Subtle pressure for sexual activity; and
- (g) Physical contact such as hugging, pinching, brushing against another's body, or unwelcomed patting.

c. **Hostile Work Environment Sexual Harassment**

(1) Hostile work environment sexual harassment occurs when sexual comments or conduct unreasonably interfere with an individual's work performance or create an intimidating, hostile, or offensive work environment. A supervisor or co-worker may be responsible for this type of conduct or a non-employee in certain circumstances. Jokes, remarks, teasing, rude or obnoxious behavior, pranks, non-sexual conduct or questions that contain sexual overtures can be a form of sexual harassment, and are not acceptable in the VA professional work environment, and are not condoned. Managers and supervisors who tolerate such behavior by failing to take immediate appropriate action, or who retaliate against an employee who reports incidents of sexual harassment, are subject to disciplinary action.

(2) Hostile work environment harassment can be established even if others do not find the conduct offensive. Hostile environment third-party sexual harassment occurs when employees, who are not themselves harassed, must work in an atmosphere where such harassment is pervasive. If preferential treatment is given to employees who grant sexual favors, the motivation and work performance of other employees may be negatively affected. VHA is liable for preventing a hostile work environment. In order to avoid liability, supervisors and managers must show:

(a) They exercised reasonable care to prevent and correct promptly any sexually harassing behavior, and

(b) The victim of the harassment unreasonably failed to take advantage of any preventive or corrective opportunities that VHA provides.

3. POLICY: It is VHA policy that VHA officials at the field and Central Office levels must maintain a work environment free from all forms of harassment and intimidation, and be in full compliance with VHA and VA policies and applicable Federal regulations; to include the requirement that employees must receive training on the Program for the Prevention of Workplace Harassment within 90 days of employment, and thereafter, refresher training every 2 years. *NOTE: Additional information regarding this training requirement is available at: <http://vaww.ees.lrn.va.gov/mandatorytraining>. This is an internal Web site and is not available to the public.*

4. ACTION

a. **Chief Workforce Management and Consulting Officer (10A2).** The Chief Workforce Management and Consulting Officer is responsible for ensuring that:

(1) There is a written policy designed to prevent workplace harassment; and that this policy is included in employee and supervisory orientations, manuals, newsletters, and regular personnel communications.

(2) Each VHA Chief Officer ensures that each program employee receives training on the Prevention of Workplace Harassment Program within 90 days of employment, and thereafter, refresher training every 2 years. **NOTE:** *Additional information regarding this training requirement is available at: <http://vaww.ees.lrn.va.gov/mandatorytraining>. This is an internal Web site and is not available to the public.*

(3) All VHA employees are notified that:

(a) They are expected to refrain from all forms of workplace harassment,

(b) Employees engaging in harassing activities are subject to appropriate disciplinary action, and

(c) Persons who believe they are victims of workplace harassment should contact an Equal Employment Opportunity (EEO) Counselor in the Office of Resolution Management (ORM), a union representative if the employee is a member of a bargaining unit, the Office of Inspector General, or the local EEO Program Specialist. Under certain circumstances, victims of workplace harassment may seek assistance from the Merit Systems Protection Board, the Office of Special Counsel, the Negotiated Grievance Procedure, or VHA's Grievance Procedure. Persons who believe they are victims of workplace harassment on the basis of sexual orientation may not seek relief from the Equal Employment Opportunity Commission (EEOC) or file a discrimination complaint under the Civil Rights Act of 1964, Title VII, Section 703, as amended, because the Civil Rights Act of 1964, does not prohibit discrimination based upon sexual orientation.

b. **Veterans Integrated Service Network Director.** The VISN Director is responsible for ensuring:

(1) The VISN office has a written policy designed to prevent workplace harassment; and that this policy is included in employee and supervisory orientations, manuals, newsletters, and regular personnel communications.

(2) Employee education and training efforts designed to prevent workplace harassment are provided in accordance with Department and Administration policies. **NOTE:** *Prevention is the best tool for eliminating workplace harassment.*

(3) All allegations of workplace harassment against a member of the senior leadership, General Schedule (GS)-14 and above, are reported to the Chief Officer, Workforce and Consulting Office, Director, EEO and Affirmative Employment, within 24 hours of notification of the allegation.

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(4) All VISN employees receive training in the Program for the Prevention of Workplace Harassment within 90 days of employment, and thereafter, refresher training every 2 years.

NOTE: Additional information regarding this training requirement is available at:

<http://vaww.ees.lrn.va.gov/mandatorytraining>. This is an internal Web site and is not available to the public.

c. **Facility Director.** The Facility Director is responsible for ensuring:

(1) Workplace harassment is unacceptable conduct and is not tolerated.

(2) There is a written facility policy designed to prevent workplace harassment; and that this policy is included in employee and supervisory orientations, manuals, newsletters, and regular personnel communications.

(3) All allegations of workplace harassment against a member of the senior leadership, GS-14 and above, are reported to the VISN Director within 24 hours of notification of the allegation.

(4) All facility employees receive training on the Prevention of Workplace Harassment Program within 90 days of employment, and thereafter, refresher training every 2 years. *NOTE: Additional information regarding this training requirement is available at:*

<http://vaww.ees.lrn.va.gov/mandatorytraining>. This is an internal Web site and is not available to the public.

(5) All facility employees are notified that:

(a) They are expected to refrain from all forms of workplace harassment.

(b) Employees engaging in harassing activities are subject to appropriate disciplinary action.

(c) Persons who believe they are victims of workplace harassment should contact an EEO Counselor in ORM, a union representative if the employee is a member of a bargaining unit, the Office of Inspector General, or the local EEO Specialist. Under certain circumstances, victims of workplace harassment may seek assistance from the Merit Systems Protection Board, the Office of Special Counsel, the Negotiated Grievance Procedure, or VHA's Grievance Procedure. Persons who believe they are victims of workplace harassment on the basis of sexual orientation may not seek relief from the EEOC or file a discrimination complaint under the Civil Rights Act of 1964, Title VII, Section 703, as amended, because the Civil Rights Act of 1964, does not prohibit discrimination based upon sexual orientation.

5. REFERENCE

a. The Civil Rights Act of 1964, Title VII, Section 703.

b. Executive Order 12106 (Title 44 Code of Federal Regulations 1053, January 3, 1979).

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c. Title 29 United States Code Part 1604, Equal Employment Opportunity Commission Regulations and Guidelines on Discrimination Because of Sex at:
http://www.eeoc.gov/laws/types/sexual_harassment.cfm

6. FOLLOW-UP RESPONSIBILITY: The Chief Workforce Management and Consulting Officer and the EEO/Affirmative Action Team (10A2E), is responsible for the contents of this Directive. Questions may be addressed to (202) 461-7287.

7. RESCISSION: VHA Directive 2008-018 is rescinded. This VHA Directive expires on December 31, 2014

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