



DIRECTIVE

Subject: ANTI-HARASSMENT PROGRAM

Number: D-113.1

Approved: 01/24/2020

Review: 01/24/2025

Certified:

Responsible Office: Office of the General Manager

1. **PURPOSE.** This Directive establishes the policy, requirements, and responsibilities for the Defense Nuclear Facilities Safety Board's (DNFSB or the Board) anti-harassment program, to prevent and eliminate harassing conduct in the workplace. The purpose of this Directive is to ensure that DNFSB takes immediate and appropriate corrective action, including appropriate disciplinary action, to eliminate harassing conduct regardless of whether the conduct rises to the level of a violation of law.
2. **CANCELLATION.** N/A
3. **APPLICABILITY.** This Directive applies to all DNFSB employees¹ and applicants for DNFSB employment.
4. **EXEMPTIONS.** None.
5. **POLICY.**
 - A. The Board is committed to maintaining a workplace free from harassment, where all employees are treated with dignity and respect. Harassment of any kind is contrary to the Agency's values, and undermines employee performance, and the efficiency of Government operations. Such behavior is also inconsistent with the merit system principles outlined in the Civil Service Reform Act, which makes it clear that all Federal employees should receive fair and equitable treatment, and maintain the highest standards of conduct to promote an efficient and effective workplace.

¹ Contractor employees may qualify as a DNFSB employee for purposes of anti-harassment statutes when an employer-employee relationship is considered to exist between DNFSB and the employee. The question of whether an employer-employee relationship exists depends on whether DNFSB is considered to control the means and manner of the employee's work performance. That determination is fact-specific depending on a number of factors. Should such a relationship be determined to exist, contractor employees would be considered employees of DNFSB for purposes of this Directive and the accompanying Operating Procedure. Contractor employees may also pursue resolution of a complaint through their employer's complaint process/procedures and/or the DNFSB Anti-Harassment Program.

- B. The Board prohibits workplace harassment, which includes: bullying, offensive comments or conduct, discrimination of any type based on race, color, religion, sex (including sexual harassment and pregnancy discrimination), sexual orientation, gender identity, national origin, age (40 years of age and over), genetic information, or disability (physical or mental), or retaliation for engaging in protected Equal Employment Opportunity (EEO) activity in the workplace, and will not be tolerated.
- C. The Board further prohibits harassing conduct, where unwelcome verbal or physical conduct 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.
- D. The Board recognizes that the most effective way to address harassing conduct is to treat it as misconduct that may be promptly corrected by disciplinary action, whether or not it rises to the level of harassment actionable under Title VII of the Civil Rights Act of 1964, as amended. Therefore, the DNFSB shall take all necessary steps to prevent incidents of harassing conduct that create a hostile work environment in the workplace, and to correct harassing conduct as soon as possible.
- E. The Board shall ensure that employees, supervisors, and managers are aware of their rights and responsibilities in maintaining a work environment that is free from harassing conduct, and the options available for reporting claims of harassing conduct.
- F. The Board shall provide an expedited impartial process for reviewing allegations of harassing conduct as defined in this Directive, and will administer appropriate corrective measures, which may include disciplinary action, to all employees who violate this Directive.

6. REQUIREMENTS.

- A. An Operating Procedure (OP) that implements this Directive, and the referenced laws, Executive Order (EO), and regulations outlining the procedures for reporting harassment claims.
- B. An employee who engages in discriminatory or harassing conduct or practices, will be subject to appropriate disciplinary action. Supervisors who either condone such conduct or fail to act promptly or correct inappropriate conduct brought to their attention will be subject to disciplinary action, up to and including removal from Federal service.

7. RESPONSIBILITIES.

- A. Chairman.

- 1) Retains the ultimate responsibility for establishing and directing the Anti-Harassment Program at the Board based on Board policy; and
- 2) Provides leadership and personal commitment to promote the Board's organizational values, and an open, collaborative, and harassment-free work environment.

B. Board Members.

- 1) Establish Board policy.
- 2) Provide leadership and personal commitment to maintain a work environment free of unlawful discrimination, promote the Board's organizational values and an open, collaborative, and harassment-free work environment.

C. Executive Director of Operations or General Manager. Serves as the Anti-Harassment Program Officer, and as such:

- 1) Disseminates this policy and procedure to all employees on an annual basis, and periodically reminds employees of their responsibilities under this policy, particularly the procedures to follow to timely report harassing conduct;
- 2) Receives allegations of harassing conduct, and advises supervisors and managers on the provision of interim relief to the alleged victims of harassing conduct pending the outcome of the inquiry or investigation to ensure further misconduct does not occur;
- 3) Determines if an investigation is necessary, and if necessary, assigns an internal or external person to conduct a prompt, thorough, impartial, and appropriate investigation;
- 4) Ensures that information gathered as part of any investigation is kept confidential, to the extent possible, for a thorough and impartial investigation;
- 5) In consultation with the Office of the General Counsel (OGC), and first line supervisor (unless the supervisor is involved in the allegation) determines the appropriate action to take upon the completion of an investigation;
- 6) In cases of complex or alleged egregious harassing conduct, seeks the counsel of the OGC for alleged egregious harassing conduct. (If an OGC

employee is involved in the allegation, the General Counsel or Deputy General Counsel will seek external legal advice, as required);

- 7) Prepares a written summary promptly after completion of the investigation to submit to the appropriate supervisor of the alleged harasser;
- 8) Increases awareness and understanding of the Board's Anti-Harassment Program by providing anti-harassment training for all the Board's employees;
- 9) Reports to the Chairman on anti-harassment plans, policy changes, recommendations for needed improvements, and other matters; and
- 10) Fulfills the Office Director responsibilities listed below.

D. General Counsel.

- 1) Provides legal and policy advice to DNFSB officials during the processing of complaints of harassment;
- 2) Ensures that the final disposition of harassment complaints comply with law, regulations, and Board policies;
- 3) Seeks external advice, as required, for allegations that involve an Office of the General Counsel employee; and
- 4) Fulfills the Office Director responsibilities listed below.

E. Office Directors and Supervisors. Each Office Director and Supervisor is responsible for creating and maintaining a work environment that is free from harassing conduct by:

- 1) Attaining and maintaining the requisite knowledge and training to ensure both their compliance with this policy and their staff's familiarity with this policy and its requirements;
- 2) Treating allegations of harassing conduct seriously by promptly and appropriately notifying the EEO Program Officer of the situation and the resolution thereof. Supervisors are encouraged to consult their chain of command, the Director of Human Resources (DHR), and/or the Deputy General Manager concerning appropriate actions to take;
- 3) Providing interim measures, in consultation with the DHR to alleged victims of harassment pending the outcome of an investigation to ensure that further misconduct does not occur;

- 4) Administering appropriate corrective action in consultation with DHR, including disciplinary action, to employees who engage in harassing conduct or who do not carry out their responsibilities under this Directive; and
- 5) Taking action to prevent retaliation against individuals who make good faith reports of an allegation of harassment or participate in any investigation into an allegation of harassment.

F. Employees.

- 1) Act professionally and treat fellow employees with respect and dignity;
- 2) Neither practice nor condone harassing behavior in employment;
- 3) Report instances of, or concerns about, harassment to their Supervisor, another supervisor or management official, the General Manager, or the EEO Director;
- 4) Cooperate with any investigation or inquiry of alleged harassment;
- 5) Participate in periodic training required by the Board;
- 6) Maintain familiarity and compliance with the provisions of this policy, which includes abiding by the underlying principle that the Board cannot correct harassing conduct about which it lacks knowledge. When an employee unreasonably fails to promptly report any incident of harassing conduct as set forth herein, the Board cannot properly address such conduct in accordance with this policy; and
- 7) Cooperate fully with any inquiry or investigation.

8. **CONTROLS MEASURES.** Controls and measures shall be specified in the OP implementing this Directive.

9. **REFERENCES.**

- A. Civil Rights Act of 1964, Title VII, Pub. L. No. 88-352, 78 Stat. 241 (codified as amended in 42 U.S.C. § 2000e), as amended by the Equal Employment Opportunity Act of 1972, Pub. L. No. 92-261, 86 Stat. 103- 113 (codified as amended in 42 U.S.C. §§ 2000e-1 - 2000e-6, 2000e-8, 2000e-9, 2000e-13 - 2000e-17), which brings Federal agencies and employees under the coverage of the Civil Rights Act of 1964, making it illegal to discriminate based on race, color, religion, sex, or national origin.

- B. Exec. Order No. 11478, 3 C.F.R. 1966-1970 Comp., p. 803, as amended by Exec. Order No. 11590, 3 C.F.R. 1971-1975 Comp., p. 558, Exec. Order No. 12106, 3 C.F.R. 1978 Comp., p. 263, Exec. Order No. 13087, 3 C.F.R. 1998 Comp., p. 191, and Exec. Order No. 13152, 65 Fed. Reg. 26, 115), which made equal employment opportunity an integral part of every aspect of personnel policy and practice in the employment, advancement, and treatment of civilian employees of the Federal Government, and added sexual orientation and status as a parent to the list of categories for which discrimination is prohibited for Executive Branch civilian employment.
- C. Age Discrimination in Employment Act of 1967, Pub. L. No. 93-259, 81 Stat. 602, as amended (codified as amended in 5 U.S.C. §§ 8335, 8339, 29 U.S.C. §§ 621-634) (ADEA), which prohibits employment discrimination against qualified persons 40 years of age or older.
- D. Rehabilitation Act of 1973, Pub. L. No. 93-112, 87 Stat. 355, § 501, as amended (codified as amended in various sections of 29 U.S.C.), which make it illegal to discriminate against qualified Federal employees and applicants based on disability.
- E. Americans with Disabilities Act of 1990, Pub. L. No. 101-336, 104 Stat. 327, as amended (codified as amended in various sections of 42 U.S.C.) (ADA), which prohibits employment discrimination against qualified individuals with disabilities.
- F. Administrative Dispute Resolution Act of 1996, Pub. L. No. 104-320, 110 Stat. 3870 (codified as amended in 5 U.S.C. §§ 561 note, 563 note, 569, 570a, 571, 571 notes, 573 - 575, 580 - 584, 10 U.S.C. § 2304, 28 U.S.C. § 1491, 1491 notes, 29 U.S.C. § 173, 31 U.S.C. § 3556, 3556 note, 41 U.S.C. §§ 253, 605), which requires each Federal agency to develop a policy for implementing alternative means of dispute resolution (ADR) in its administrative programs.
- G. Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002 (No Fear Act), Pub. L. No 107-104, which sets forth requirements of Federal agencies to post certain information on their public web sites.
- H. Genetic Information Nondiscrimination Act of 2008 (GINA), Title II, Pub. L. No 110-233, codified at 42 U.S.C. § 2000ff et seq.), which prohibits discrimination on the basis of genetic information.
- I. 29 C.F.R. Part 1614, *Federal Sector Equal Employment Opportunity*, which provides requirements for Federal agencies in the enforcement of the equal employment opportunity statutes that prohibit workplace discrimination in the Federal government.

- J. U.S. Equal Employment Opportunity Commission, EEO-MD-110, *Equal Employment Opportunity Management Directive for 29 C.F.R. Part 1614* (2015).

10. **DEFINITIONS.**

- A. Equal Employment Opportunity (EEO). The fair and equitable treatment of employees or applicants for employment in all personnel management matters without regard to race, color, religion, sex (including gender identify, sexual orientation and pregnancy), national origin, age, disability, or genetic information.
- B. Gender Identity. One's inner sense of one's own gender, which may or may not match the sex assigned at birth.²
- C. Harassment/Harassing Conduct. Any unwelcome verbal or physical conduct based on any characteristic protected by law when: (1) the behavior can reasonably be considered to adversely affect the work environment; or (2) an employment decision affecting the employee is based upon the employee's acceptance or such conduct. Conduct that adversely affects the work environment even though it may not be "severe or pervasive" or may not rise to the level of harassment actionable under federal law is prohibited and constitutes harassing conduct.
- D. Sexual Harassment. A form of employment discrimination that violates Title VII of the Civil Rights Act of 1964.). It is unwelcome and offensive treatment or conduct (e.g., verbal, physical, psychological, or visual) that can reasonably be considered to adversely affect the work environment or an employment decision affecting the employee based upon the employee's acceptance or rejection of such conduct. Harassment becomes unlawful, i.e., discriminatory, when 1) enduring the offensive conduct becomes a condition of continued employment, or 2) the conduct is severe or pervasive enough to create a work environment that a reasonable person would consider intimidating, hostile, or abusive.³ Sexual harassment is a form of sex discrimination that violates Title VII of the Civil Rights Act of 1964.
- E. Sexual Orientation. One's emotional or physical attraction to the same and/or opposite sex.

² Different people choose to express their gender identity differently. For some, gender may be expressed through, for example, dress, grooming, mannerisms, speech patterns, and social interactions. Gender expression usually ranges between masculine and feminine, and some transgender people express their gender consistent with how they identify internally, rather than in accordance with the sex they were assigned at birth.

³ Petty slights, annoyances, and isolated incidents (unless extremely serious) will not rise to the level of illegality. To be unlawful, the conduct must create a work environment that would be intimidating, hostile, or offensive to reasonable people. Offensive conduct may include, but is not limited to, offensive jokes, slurs, epithets or name calling, physical assaults or threats, intimidation, ridicule or mockery, insults or put-downs, offensive objects or pictures, and interference with work performance

11. **CONTACT.** Address questions concerning this Directive to the Office of the General Manager.

Bruce Hamilton
Chairman

AFFIRMATION OF BOARD VOTING RECORD

SUBJECT: D 113.1-1 Anti-Harassment Program

Doc Control#: 2020-300-0007

The Board acted on the above document on 01/14/2020. The document was Approved.

The votes were recorded as:

	APRVD	DISAPRVD	ABSTAIN	NOT PARTICIPATING	COMMENT	DATE
Bruce Hamilton	✓	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	01/13/2020
Jessie H. Roberson	✓	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	01/14/2020
Joyce L. Connery	✓	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	01/14/2020

This Record contains a summary of voting on this matter together with the individual vote sheets, views and comments of the Board Members.

Nicholas Moore

Executive Secretary to the Board

Attachments:

1. Voting Summary
2. Board Member Vote Sheets

DEFENSE NUCLEAR FACILITIES SAFETY BOARD
NOTATIONAL VOTE RESPONSE SHEET

FROM: Bruce Hamilton

SUBJECT: D 113.1-1 Anti-Harassment Program

Doc Control#: 2020-300-0007

DATE: 01/13/2020

VOTE: Approved

COMMENTS:

None

Bruce Hamilton

DEFENSE NUCLEAR FACILITIES SAFETY BOARD
NOTATIONAL VOTE RESPONSE SHEET

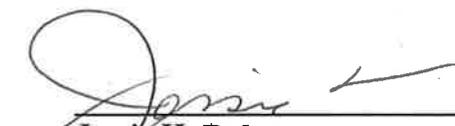
FROM: **Jessie H. Roberson**

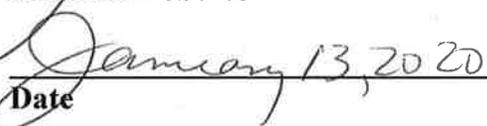
SUBJECT: **D 113.1-1 Anti-Harassment Program**

Doc Control#2020-300-007

Approved **Disapproved** _____ **Abstain** _____
Recusal – Not Participating _____

COMMENTS: **Below** _____ **Attached** _____ **None**



Jessie H. Roberson


Date

DEFENSE NUCLEAR FACILITIES SAFETY BOARD

NOTATIONAL VOTE RESPONSE SHEET

FROM: Joyce L. Connery

SUBJECT: D 113.1-1 Anti-Harassment Program

Doc Control#: 2020-300-0007

DATE: 01/14/2020

VOTE: Approved

COMMENTS:

None

Joyce L. Connery