

UNITED STATES PATENT AND TRADEMARK OFFICE
ANTI-HARASSMENT POLICY AND COMPLAINT PROCEDURE
Agency Administrative Order 202-955

Date of Issuance: July 12, 2022

Effective Date: July 12, 2022

TABLE OF CONTENTS

Section

- I. Purpose
- II. Authorities
- III. Policy
- IV. Scope
- V. Procedures
- VI. Effect on Other AAOs

I. PURPOSE

This Agency Administrative Order (AAO) implements the U.S. Patent and Trademark Office's (USPTO or Agency) policy and procedures ensuring compliance with the civil rights laws listed in section II of this AAO. These statutes prohibit harassment based on race; color; national origin; sex, including sexual orientation, pregnancy, and gender identity; age; religion; disability (mental and physical); genetic information; and/or reprisal (protected classes). In addition, these procedures are also applicable to allegations of harassment based on service in the uniformed services, marital status, and/or political affiliation.

This AAO provides an expedited process for reviewing allegations of harassment, stopping further incidents of harassment, and taking appropriate corrective action against employees found to have engaged in misconduct, up to and including unlawful harassment. The procedures established in this AAO are distinct from the equal employment opportunity (EEO) complaint process, which is administered by the USPTO's Office of Equal Employment Opportunity and Diversity (OEEOD).

II. AUTHORITIES

- Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e et seq.
- Equal Pay Act of 1963, as amended, 29 U.S.C. § 206(d) et seq.
- Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § 621 et seq.
- Section 501 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 791 et seq.
- Uniformed Services Employment and Reemployment Rights Act of 1994, as amended, 38 U.S.C. § 4301 et seq.
- Genetic Information Nondiscrimination Act of 2008, 42 U.S.C. § 2000ff et seq.

- Civil Service Reform Act of 1978, 5 U.S.C. § 2302

III. POLICY

The USPTO is responsible for, and committed to, maintaining a workplace free of prohibited harassment. Therefore, it is the USPTO's policy to strictly prohibit unlawful harassment, as well as offensive, unwelcome conduct based on membership in a protected class that, if left unchecked, could become sufficiently severe or pervasive as to constitute unlawful harassment. Moreover, employees must feel free to report such conduct without fear of retaliation.

The USPTO will take immediate and appropriate corrective action in response to any findings of unlawful harassment, as well as any findings of misconduct that, if left unchecked, could become unlawful harassment.

In addition, all managers and supervisors must report all known allegations of harassment or reasonably suspected harassment, as discussed in the procedures below, regardless of whether the alleged victim(s) consent.

IV. SCOPE

A. Prohibited Harassment

Prohibited harassment under this AAO includes unwelcome conduct targeting an employee based on their membership in a protected class. Harassment could occur at any place where work is being performed on behalf of the USPTO, as well as outside the workplace if it impacts the victim at work.

Supervisors, non-supervisors, members of the public, vendors, and contractors may not engage in prohibited harassment. Prohibited harassment can be verbal, visual, or physical conduct that denigrates or shows hostility or aversion toward an individual because of their membership in a protected class or because of their association with someone in a protected class. Prohibited harassment consists of offensive conduct that includes, but is not limited to, written or verbal insults or slurs; unwelcome physical contact; or threatening, intimidating, or hostile acts. Forwarding or disseminating any electronic information, including through social media and via any texting or instant messaging application, that contains, in whole or in part, any harassing content, regardless of whether the employee is the author or creator of the content, also constitutes prohibited harassment.

Harassment is unlawful when it involves:

- Unwelcome conduct targeting an employee, based on their membership in a protected class, that results in a tangible employment action; or

- Unwelcome conduct directed at an employee, based on their membership in a protected class, resulting in a hostile work environment. A hostile work environment exists when: (1) an employee was subjected to unwelcome conduct so severe or pervasive that a reasonable person in that position would have found the conduct hostile or abusive, and (2) the unwelcome conduct was based on their membership in a protected class.

B. A Separate Note on Sexual Harassment

Prohibited sexual harassment can occur regardless of the sex, sexual orientation, or gender identity of the alleged harasser(s) or the victim. Prohibited sexual harassment occurs when unwelcome sexual advances, requests for sexual favors, or other physical or verbal conduct of a sexual nature are made under the following circumstances: (1) when submission to a sexual advance is a term or condition of employment; (2) when submission to or rejection of sexual advances is used as a basis for personnel decisions; or (3) when conduct unreasonably interferes with work performance or creates an intimidating, hostile, or offensive work environment.

V. PROCEDURES

A. Responsibility for Reporting Allegations of Harassment

- Non-supervisory employees are strongly encouraged to report any incident they reasonably perceive to be harassment, to include incidents personally experienced, and those reported to them and/or that they personally witnessed. Employees have the option to report harassment to their first- or second-level supervisor, to the Employee Relations Division of the Office of Human Resources, to OEEOD, or to the Agency's harassment intake points via harassment@uspto.gov or 571-270-7004. Employees are never required to report harassment through their chain of command.
- **All managers and supervisors are *required* to report all reported allegations of harassment, as well as any harassment they witness, to the Agency's harassment intake points via harassment@uspto.gov or 571-270-7004. This must be done as soon as possible, but no later than the next business day.** Managers and supervisors are mandatory reporters, regardless of any complainant's requests for confidentiality or assertions that the employee will not pursue a complaint. Thus, any manager or supervisor who receives an allegation of harassment must also inform the employee that the Agency cannot guarantee complete confidentiality because it has an affirmative duty to prevent and correct unlawful harassment. Failure by managers and supervisors to adhere to this requirement of the AAO may result in corrective action taken against the involved manager(s)/supervisor(s).
- To the extent possible, the USPTO will protect the confidentiality of

complainants who report harassment and share information only with those who need to know. The USPTO cannot guarantee complete confidentiality because it cannot conduct an effective inquiry without revealing certain information to the alleged harasser and potential witnesses.

- Employees who report harassment or provide information as part of a harassment investigation will be protected from retaliation.

B. Initiation of Interim Measures

All reports of harassment will be promptly evaluated by the investigating office to determine if appropriate interim measures need to be taken.

- Interim measures may include, but are not limited to, contacting appropriate law enforcement authorities, placing employees on full-time telework, temporarily removing supervisory duties, banning individuals from USPTO workplaces, and reassigning supervisors. Interim measures are not disciplinary and will focus on the alleged harasser; an alleged victim of harassment will not be subject to any interim measures absent their consent.
- Generally, where warranted, a decision to implement interim measures will be made within three business days after receipt of the allegations, absent exigent circumstances requiring an earlier determination or information revealed during the course of an investigation warranting later action.

C. Procedures for Conducting an Inquiry

- All reports of harassment will be promptly evaluated by the investigating office to determine if the allegations are within the scope of this AAO and whether the harassment alleged has been previously investigated. Those reports that fall within the scope of this AAO will be investigated promptly, thoroughly, and impartially, in accordance with this AAO. Complaints outside the scope of this AAO or those that have been previously investigated will not be investigated in accordance with this AAO, but the Agency may still take appropriate administrative action based on allegations raised under this process. If it is determined that allegations fall outside the scope of this AAO or that the allegations have been previously investigated, that determination will be appropriately documented.
- Any report of harassment must be properly documented by the investigating office. Any reports of harassment requiring investigation will result in a Harassment Inquiry Report (Report), which contains a finding of whether the allegations fall within the scope of the AAO, and if so, whether unlawful harassment occurred. The Report will also contain any

findings of potential misconduct stemming from allegations of harassment, even when the potential misconduct does not rise to the level of unlawful harassment.

- When an inquiry is required, the case is assigned to an Investigator. In situations in which all parties admit the allegations are true and the facts are not in dispute, the Investigator shall immediately work with the supervisor to initiate appropriate corrective action, including, but not limited to, stopping any ongoing, prohibited misconduct.
- The Investigator shall take signed, sworn statements from the employee who has alleged prohibited harassment (Complainant), the employee(s) against whom the allegations are made, and any appropriate witnesses; or sign a sworn summary of the interview with the employee who has alleged prohibited harassment, the employee(s) against whom the allegations are made, and any appropriate witnesses.
- The Investigator is responsible for ensuring all labor relations obligations are met in conducting the inquiry.
- Generally, the Investigator applies the following inquiry process absent exigent circumstances:
 - Makes reasonable attempts to begin the investigation by contacting the Complainant as soon as possible, generally within two business days, but no later than 10 calendar days, from when the Agency receives notice of the allegations;
 - Obtains from the Complainant all information necessary to determine whether unlawful harassment has occurred, including, but not limited to, a description of the alleged unwelcome conduct; the dates, times, and locations of the reported unwelcome conduct; the names of those responsible for the alleged unwelcome conduct; the names of any witnesses to, or persons with knowledge of, the reported unwelcome conduct; and what impact, if any, the alleged unwelcome conduct had on the Complainant's work;
 - With regard to allegations of prohibited sexual harassment, determines specifically whether the Complainant alleges that someone has made or carried out any threats or promises regarding the Complainant's terms and conditions of employment or taken a personnel action in relation to the harassment;
 - Obtains from those accused of the alleged unwelcome conduct a detailed response to each of the Complainant's allegations, as well as the names of any witnesses who can corroborate the accused's account of events;

- Obtains statements from witnesses to any of the incidents described by the Complainant alleging prohibited harassment and the employee accused of unwelcome conduct;
- Informs all interviewees that they should refrain from discussing their statements with others;
- Informs all interviewees about the prohibition of retaliation against the Complainant, any witnesses, and any employee(s) providing information related to the allegations;
- Obtains relevant documentation identified by the parties that supports or refutes the allegations at issue or otherwise helps to establish the credibility of witnesses (the documentation may be electronic, photographic, or recorded); and
- Documents the investigation and factual findings of the inquiry in a Report. The Report will include the findings of the investigation, including whether the evidence: (1) supports a finding of unlawful harassment or a hostile work environment; or (2) supports a finding that the unwanted targeted conduct occurred (even if it did not rise to the level of a hostile work environment or unlawful harassment).
- Generally, harassment inquiries will be completed and, if necessary, corrective action will be taken within 60 calendar days from the date the Agency received notice of the allegations of harassment. The amount of time it will take to complete the investigation will depend on the particular circumstances of each specific case, including, but not limited to, complicated or numerous allegations of harassment.

D. Procedures Following the Inquiry

- If the Report finds that unlawful or prohibited harassment has occurred, the Investigator will share findings and recommendations with the harasser's supervisor(s) within five business days of completion of the Report. The supervisor shall initiate corrective action(s), including, but not limited to, stopping any ongoing harassment.
- The Investigator will refer any potential misconduct found to the Employee Relations Division of the Office of Human Resources for disposition. The Employee Relations Division will assist the manager in taking any appropriate disciplinary action.
- The Investigator will notify the Complainant within five business days of completion of the Report: (1) that the inquiry has been completed, (2) whether

or not the unlawful hostile work environment allegations were substantiated, (3) whether the Agency took appropriate action, and (4) that reprisal for making the allegation is strictly prohibited.

- The investigating office shall maintain a record of all inquiries conducted in accordance with this AAO, including those that result in disciplinary action.
- The investigating office will transmit a list of all employees who are disciplined for misconduct pursuant to a harassment investigation, even if the investigation does not result in a finding of unlawful harassment, and the discipline imposed, to the OEEOD's EEO Manager (Formal Complaint Program) for the prior fiscal year no later than November 30 of the next fiscal year. This requirement does not affect any other recordkeeping requirements that may apply to inquiries conducted in accordance with this AAO.

E. REPORTING TO THE OFFICE OF INSPECTOR GENERAL

Although the USPTO is not required to report allegations of individual harassment complaints to the Department of Commerce's Office of Inspector General (OIG), if the investigating office, consulting with other members of the Agency as necessary, determines there is evidence of a pattern of prohibited harassment discrimination within the USPTO, that evidence should be reported to the OIG in accordance with Department Administrative Order 207-10, "Inspector General Investigations." Any such report to the OIG does not relieve the USPTO of its obligations to correct any unlawful harassment.

F. INTERACTION WITH THE EEO PROCESS (29 CFR PART 1614)

Employees or applicants for employment who believe they have been subject to unlawful harassment may pursue an EEO complaint according to the process set forth in 29 CFR part 1614 and in the Agency's AAO on the "EEO Policy and Complaint Processing Procedure" (AAO 214-01):

- They must contact OEEOD within 45 days of the alleged discriminatory event or action.
- If employees or applicants raise allegations of harassment during the EEO process, OEEOD will notify the Agency's harassment intake point (via harassment@uspto.gov) in writing within one business day, except where exigent circumstances warrant immediate notification. Upon notification, the investigating office will treat the case as any other report of alleged harassment. The harassment inquiry will proceed independently of the EEO process; as a neutral entity, OEEOD cannot make findings of fact that employee misconduct occurred.
- When OEEOD investigates a formal EEO complaint alleging prohibited

harassment, a copy of the Harassment Inquiry Report must be included in the Report of Investigation completed pursuant to 29 CFR § 1614.108(f). Accordingly, OEEOD must contact the investigating office to obtain the Report.

VI. EFFECT ON OTHER AAOs

This AAO supersedes all previous Anti-Harassment AAOs, including the one dated December 22, 2014 and May 25, 2022.

ISSUED BY:

Bismarck Myrick
Director, Office of Equal Employment Opportunity and Diversity
U.S. Patent and Trademark Office
Date: _____

Frederick Steckler
Chief Administrative Officer, Office of the Chief Administrative Officer
U.S. Patent and Trademark Office
Date: _____

APPROVED BY:

Katherine K. Vidal
Under Secretary of Commerce for Intellectual Property and
Director of the U.S. Patent and Trademark Office
Date: _____

OFFICES OF PRIMARY INTEREST: Office of Equal Employment Opportunity and Diversity/Office of Human Resources/Office of the General Counsel