



SURFACE TRANSPORTATION BOARD  
ADMINISTRATIVE ISSUANCE

Issuance No.: 5-828

Date: June 17, 2019

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Subject: ANTI-HARASSMENT PROCEDURES

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## **1.0 PURPOSE**

The purpose of this Issuance is to set forth the policies and procedures of the Surface Transportation Board (STB or Board) as it relates to the prevention and elimination of harassment in the workplace. The Board is committed to taking all necessary steps and precautions to prevent all forms of harassment in the workplace and to immediately correct harassing conduct before it becomes severe or pervasive.

The process established under this Issuance is entirely separate and apart from the Equal Employment Opportunity Commission's formal Equal Employment Opportunity (EEO) complaint process. An employee who reports harassment in accordance with this Issuance has not filed an EEO complaint under 29 C.F.R. § 1614.105. An employee who wishes to report harassment pursuant to this Issuance must contact the STB EEO Office within 45 calendar days of the alleged harassment.

## **1.1 AUTHORITY**

- Title VII of the Civil Rights Act of 1964, as amended;
- The Age Discrimination in Employment Act of 1967;
- The Rehabilitation Act of 1973, as amended under the Americans with Disabilities Act Amendments Act of 2008;
- Genetic Information Nondiscrimination Act of 2008.
- Executive Order 13152 (signed May 2, 2000);
- Civil Service Reform Act of 1978;
- 49 C.F.R. § 1019.5 – Regulations Governing Conduct of Surface Transportation Board Employees, Sexual Harassment; and
- 29 C.F.R. § 1614.105 – Pre-complaint Processing

## **1.2 SCOPE**

This Issuance applies to current STB employees, Board members, and applicants for employment.

### **1.3 DEFINITIONS**

*Harassment*— Any unwelcome conduct that is based on race, color, sex (including pregnancy, gender identity/stereotyping, and sexual orientation), national origin, religion, age (40 years and older), disability (physical and/or mental), genetic information, and/or reprisal for opposing discrimination or participating in the EEO process. Harassment includes “sexual harassment” or unwelcome sexual advances, requests for sexual favors, and other verbal or physical harassment of a sexual nature. Harassment becomes unlawful where enduring the offensive conduct becomes a condition of employment, or where the conduct is severe or pervasive enough to create a hostile work environment.

*Harassing Conduct*— The term “harassing conduct” as used in this Issuance, includes, but is broader than, the legal definition of harassment listed above. It includes any comments or conduct that disparages, denigrates, or demonstrates hostility or aversion towards any person (including applicants for employment) that could reasonably be interpreted as harassing and offensive or inappropriate in the workplace. Harassing conduct includes, but is not limited to, slurs, epithets, ridicule, negative stereotyping, insults, bullying, offensive jokes, offensive objects or pictures, intimidation, threats, unwelcome sexual advances, and requests for sexual favors. Harassing conduct can occur in person, in writing, or through phone calls or other forms of technology or social media.

*Hostile Work Environment*— A pattern of continuing unwelcome behavior that unreasonably interferes with an employee’s work performance or that creates an intimidating, hostile, or offensive work environment.

*Sexual Harassment*— A form of harassment that can include unwelcome sexual advances, requests for sexual favors, and/or other verbal or physical conduct of a sexual nature when (a) submission to such conduct is made either explicitly or implicitly a term or condition of an individual’s employment; (b) submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual; or (c) such conduct has the purpose or effect of unreasonably interfering with an individual’s work performance or creating an intimidating, hostile, or offensive work environment.

### **2.0 POLICY**

The STB is committed to a harassment-free work environment and to the prevention of harassing conduct. The STB seeks to eliminate all forms of harassing conduct, even if it does not rise to the level of unlawfulness.

It is the STB’s policy to take immediate and appropriate action after an allegation of harassing conduct. All STB staff are responsible for maintaining a work environment free from harassing conduct. A supervisor or manager who becomes aware of harassing conduct is required to take immediate and appropriate corrective action to ensure that it does not continue. A supervisor or manager who is aware of harassing conduct and fails to take prompt action may face disciplinary action. Employees should report possible incidents of harassing conduct to their immediate supervisor or the next level in their chain of command, or to the Section of Human Resources

(HR). Employees who make a good faith report of harassing conduct or who assist in any inquiry regarding such a report are protected from retaliation. The STB will investigate allegations of harassing conduct and take appropriate corrective or disciplinary action, up to and including removal. Reports of harassing conduct and documents concerning an investigation will be kept confidential to the fullest extent possible.

## I. Roles and Responsibilities

### A. Employees

Board employees shall:

1. Refrain from harassing conduct;
2. Become familiar with these procedures, comply with all requirements, and cooperate with any inquiry under this Issuance; and
3. Complete periodic training on anti-harassment.

Any employee who has been subjected to harassing conduct is encouraged to inform the person(s) responsible for the conduct and request that it cease. If the conduct continues or if the employee is uncomfortable addressing the responsible person(s), the employee is encouraged to report the matter to their immediate supervisor, the next level in their chain of command, the HR Director, or the Employee Management Relations (EMR) point of contact pursuant to procedures set forth in Section II, any incident of harassing conduct that is experienced or witnessed, before it becomes a pattern of misconduct. The STB cannot stop or correct harassing conduct or prevent it from reoccurring if the conduct is not reported.

### B. Supervisors and Managers

Supervisors and managers shall:

1. Take appropriate action to enforce these procedures;
2. Act promptly and appropriately to prevent harassing conduct and retaliation against those who complain of harassing conduct;
3. Receive and handle allegations of harassing conduct promptly and appropriately, using the procedures set forth in Section II;
4. Promptly report to their immediate supervisor, the next level in their chain of command, the HR Director, or the EMR point of contact, pursuant to procedures set forth in Section II, any incident of harassing conduct that they witness or is otherwise brought to their attention;
5. In consultation with the HR Director, the Office of General Counsel (OGC), and, if needed, the EEO Director, provide interim relief to alleged victims of harassing conduct pending the outcome of the inquiry to ensure that further misconduct does not occur;
6. Use the procedures set forth below in consultation with the HR Director, OGC, and if needed, the EEO Director, to take prompt and appropriate corrective and disciplinary

action, up to and including removal, against personnel who have engaged in harassing conduct or who have not carried out their responsibilities under this Issuance.

7. Ensure that their staff is aware of this Issuance and its requirements; and
8. Protect employees who report harassing conduct from retaliation.

The fact that an employee alleging harassing conduct has or will file an EEO complaint does not relieve a supervisor or manager of their duty to act pursuant to this Issuance.

### C. EEO Office

The EEO Director shall:

1. Ensure that the STB's anti-harassment policy statement is disseminated annually to all STB employees and Board Members, and posted on STB's internal and external websites;
2. Ensure all employees are informed of this Issuance and the procedures to follow in connection with reporting harassing conduct;
3. Provide technical assistance and support to assure compliance with this Issuance and provide other assistance as needed to supervisors and managers;
4. Report allegations of harassing conduct received by the EEO Director to the EMR point of contact as soon as possible, but no later than two business days after receipt of the allegations;
5. When requested, and in conjunction with the EMR point of contact, appoint a fair and impartial fact-finder to conduct and inquire into the allegations;
6. Advise alleged complainants of their rights under the EEO process;
7. Advise the Chairman or other person(s) who need to know of allegations of harassing conduct and the resolution of those allegations under this Issuance; and
8. Provide periodic anti-harassment training to employees.

### D. Section of HR

The HR Director shall:

1. Provide advice to managers and supervisors on taking appropriate disciplinary actions for conduct that violates this Issuance;
2. Receive allegations of harassing conduct;
3. In conjunction with OGC, and if needed, the EEO Director, advise supervisors and managers on the provision of interim relief to the alleged victims of harassing conduct, pending the outcome of the inquiry to ensure further incidents do not occur; and
4. Appoint an HR staff member to serve as the EMR point of contact, and post the EMR point of contact's name and contact information in employee gathering spaces.

The EMR Point of Contact shall:

1. Receive allegations of harassing conduct;

2. In conjunction with the HR Director and OGC, and if needed, the EEO Director, appoint a fair and impartial fact-finder when an inquiry is required; and
3. Assist supervisors or managers in taking appropriate action upon completion of an inquiry.

#### E. OGC

OGC shall:

1. Provide legal advice and guidance to management concerning the implementation and interpretation of this Issuance.

## II. Procedures for Reporting Harassing Conduct

The procedure for reporting incidents of harassing conduct are as follows:

1. Any person who believes that he or she has been harassed or witnesses harassing conduct should report the incident to their immediate supervisor, the next level in their chain of command, the HR Director, or the EMR point of contact. Reports can be made by email, telephone, or in person.
2. All information will be maintained on a confidential basis to the greatest extent possible, appropriately limited to officials and employees within the STB with a need to know, to carry out the purpose and intent of this Issuance. The maintenance of records and any disclosures of information from these records shall be in compliance with the Privacy Act of 1974, 5 U.S.C. § 552a.
3. A supervisor or manager who receives an allegation of or witnesses harassing conduct shall immediately:
  - a. Report it to their immediate supervisor or the next level in their chain of command, the HR Director, or the EMR point of contact, and seek guidance as to further actions;
  - b. Consult with the HR Director, the EMR point of contact, and OGC in order to take action to stop the allegedly harassing conduct and prevent further incidents while the allegations are being investigated, including granting appropriate interim relief to the alleged victim; and
  - c. Document the allegation received and efforts to address it.
4. When necessary, the EMR point of contact, in consultation with the HR Director, OGC, and if needed, the EEO Director, will appoint an impartial, independent fact-finder to conduct an inquiry into allegations of harassing conduct. The fact-finder shall:
  - a. Ensure a prompt, thorough, impartial, and appropriate inquiry is initiated within five business days of receiving a complaint of harassing conduct;
  - b. Advise the involved individuals of the start of the inquiry; and,
  - c. Recommend appropriate action to stop any alleged harassing conduct and prevent further incidents, including granting appropriate interim relief to the alleged victim while the allegations are being investigated.

