

THE FEDERAL LAW ENFORCEMENT TRAINING CENTERS POLICY PROHIBITING DISCRIMINATION AGAINST EMPLOYEES AND APPLICANTS FOR EMPLOYMENT AND ANTI-HARASSMENT PROCEDURES

It is the Federal Law Enforcement Training Centers (FLETC) policy to ensure that every employee enjoys a non-hostile work environment free of discrimination or harassment of any kind. All employment decisions such as hiring, promoting, training, and rewarding will be made exclusively on the basis of job-related criteria, i.e., employees' knowledge, skills, abilities, and performance. Disciplinary actions will be taken solely on the basis of employees' behavior and performance. Harassment of any kind based on race, color, religion, sex (including gender identity, pregnancy, and sexual orientation), national origin, age, disability, genetic information, marital status, parental status, political affiliation, reprisal, and/or any other basis protected by law will not be tolerated and will result in appropriate disciplinary action¹. Examples of the types of unwelcome conduct prohibited by this policy are epithets, slurs, stereotyping, intimidating acts, and the circulation or posting of written or graphic materials that show hostility toward individuals because of their protected status. Acts of physical violence, and actual, implied, or veiled threats of violence, are forms of prohibited harassment. Any form or manner of threatening or provoking remarks or threatening gestures in the workplace is prohibited. FLETC prohibits harassment even if it does not rise to the level of actionable harassment under the law. Although a single utterance or act may not rise to a level of harassment that may be actionable under the law, it still has no place at FLETC. This policy prohibits harassment by or of any employee, supervisor, manager, contractor, vendor, applicant, or other individual with whom FLETC employees come into contact by virtue of their work for FLETC.

EEO Reporting Process and Procedures

Any aggrieved persons who believe they have been discriminated against on the basis of race, color, religion, sex (including gender identity, pregnancy, and sexual orientation), national origin, age, genetic information, disability, or protected Equal Employment Opportunity (EEO) activity must initiate contact with the EEO office **within 45 calendar days** from the date that they became aware of the matter alleged to be discriminatory or, in the case of a personnel action, **within 45 calendar days** of the effective date of the action. Please contact the FLETC EEO Officer (912) 267-2692, FLETC EEO Complaints Manager (912) 267-2101, FLETC EEO Office (912) 267-3316, the Human Capital Officer, or any supervisor. All Supervisors/Managers are required to report incidents of harassment immediately to the FLETC EEO Officer. (See FLETC Directive and Manual 58-01, EEO and Anti-Harassment).

¹ **NOTE:** Complaints of harassment based on marital status, parental status, political affiliation, and other non-protected classes are not enforced by the Equal Employment Opportunity Commission (EEOC). However, the FLETC EEO Office will initially process those complaints and forward to the Department of Homeland Security (DHS), Office for Civil Rights and Civil Liberties, for issuance of a Final Agency Decision.

Definition of Discriminatory Harassment

Discriminatory harassment is verbal or physical conduct that demeans or shows hostility or aversion toward an individual because of his/her race, color, religion, sex (including gender identity, pregnancy, and sexual orientation), national origin, age, disability, genetic information, or because of retaliation for engaging in protected activity, and that:

- Has the purpose or effect of creating an intimidating, hostile, or offensive working environment; or
- Has the purpose or effect of unreasonably interfering with an individual's work performance; or
- Otherwise adversely affects an individual's employment opportunities.

Harassing conduct includes, but is not limited to the following:

- Epithets, slurs, jokes, bullying, negative stereotyping or threatening, intimidating, or hostile acts that relate to a person's race, color, religion, sex, national origin, age, disability, or genetic information.
- Written or graphic material which demeans or shows hostility or aversion toward an individual or group because of race, color, religion, sex, national origin, age, disability, or genetic information and is posted on walls, bulletin boards, e-mail, or elsewhere on the FLETC facility.
- Submission to or rejection of such conduct by an individual is used as the basis for decisions affecting an individual's employment.

The terms intimidating, hostile, and offensive are interpreted according to legal standards as determined by the law, and are viewed from the perspective of a reasonable person in similar circumstances as the complainant.

Race

Title VII of the Civil Rights Act of 1964 prohibits discrimination based on race. Racial discrimination occurs when persons are treated differently than others who are similarly situated because they are members of a specific race, e.g., White, Black, Asian, etc. Examples of employees who are similarly situated may be those working in the same position and grade, the same component, or under the same line of supervision.

Color

Title VII of the Civil Rights Act of 1964 prohibits discrimination based on color. This type of discrimination occurs when persons are treated differently than others who are similarly situated because of the color of their skin. Color discrimination can occur together with race discrimination, but may also occur between members of the same race.

Religion

Title VII of the Civil Rights Act of 1964 prohibits discrimination based on religion. In defining religious discrimination, the United States Supreme Court held that religion is not limited to Orthodox or well recognized denominations, e.g., Catholic, Baptist, or Judaism. All that is required is a sincere and meaningful belief equivalent to the belief in God held by the more well-recognized religions. Atheists are also protected. Under Title VII an Agency is required to accommodate an individual's religious beliefs unless the religious accommodation poses an undue hardship.

Sex

Title VII of the Civil Rights Act of 1964 prohibits discrimination based on sex. Sex discrimination may occur in two ways. The first is a policy or practice which treats similarly situated men or women differently from the opposite gender. The second occurs when a gender-neutral policy or practice has a disproportionate adverse effect on one of the genders. Same sex harassment because of sex is prohibited under Title VII. See Supreme Court decision in Oncale v. Sundowner Offshore Services, Inc., 523 U.S. 75 (1998). As used in Title VII, the term "sex" encompasses both sex (biological differences between men and women) and gender. Title VII bars not just discrimination because of biological sex, but also gender identity, i.e., failing to act and appear according to expectations defined by gender. Pregnancy discrimination is a form of sex discrimination prohibited under the Pregnancy Discrimination Act as an amendment to Title VII. Pregnancy includes pregnancy, childbirth, or any medical condition associated with pregnancy.

Sexual Orientation

Discrimination based on sexual orientation is directed at persons who are gay, lesbian, bisexual or transgender, who are perceived to be gay, lesbian, bisexual or transgender or who associate with persons who are gay, lesbian, bisexual or transgender. This may take the form of harassment or treatment that is different than that afforded similarly situated employees or applicants. Discrimination against an individual because of gender identity, including transgender status, or because of sexual orientation is discrimination based on sex in violation of Title VII of the Civil Rights Act of 1964.

Sexual Harassment

It is unlawful to harass a person (an applicant or employee) because of that person's sex. Harassment can include "sexual harassment" or unwelcome sexual advances, requests for sexual favors, and other verbal or physical harassment of a sexual nature.

Harassment does not have to be of a sexual nature, and can include offensive remarks about a person's sex. For example, it is illegal to harass a woman by making offensive comments about women in general.

Both victim and the harasser can be either a woman or a man, and the victim and harasser can be the same sex.

Although the law doesn't prohibit simple teasing, offhand comments, or isolated incidents that are not very serious, harassment is illegal when it is so frequent or severe that it creates a hostile or offensive work environment or when it results in an adverse employment decision (such as the victim being fired or demoted).

The harasser can be the victim's supervisor, a supervisor in another area, a co-worker, or someone who is not an employee of the employer, such as a client or customer.

National Origin

Title VII of the Civil Rights Act of 1964 prohibits discrimination based on national origin. National origin discrimination includes that based on an individual's or his or her ancestors' place of origin, or physical, cultural, or linguistic characteristics.

Age

The Age Discrimination in Employment Act of 1967 prohibits discrimination based on age. For Federal employees, the protected age group is age 40 and above, with no upper age limit. Age discrimination also occurs among age groups who are over age 40, e.g., the selection of a 45-year old candidate may appear to be discriminatory to 55-year old candidates if it can be shown that management has never selected a candidate at or above age 55.

Disability

The Rehabilitation Act of 1973 and the Americans with Disabilities Act of 1990 prohibit discrimination based on disability. Disability discrimination can occur in two ways. The first occurs when employees or applicants are treated differently on the basis of their physical or mental disabilities. The second occurs when management fails to make reasonable accommodation for the disabling condition(s).

A person with a disability is defined as one who has a physical or mental impairment which substantially limits one or more major life functions, e.g., walking, speaking, breathing, learning, etc.; one who has a record of such; or one who is regarded as having a disability.

Reprisal

Title VII of the Civil Rights Act of 1964 prohibits discrimination based on reprisal. Reprisal occurs when employees are treated differently because they are, or were, involved in a protected EEO activity, e.g., seeking or participating in EEO counseling, providing testimony in an EEO investigation or at an EEO hearing, filing a discrimination complaint, or speaking out against discriminatory activities. The U.S. Supreme Court has confirmed that a Complainant may allege reprisal based on association. For example, if an individual has an intimate relationship with someone involved in protected activity, and that individual experiences adverse treatment, he or she may claim the protection of Title VII based on association. **Retaliation is the most frequently alleged basis of discrimination in the federal sector and the most common discrimination finding in federal sector cases.**

Genetic Information

Under Title II of the Genetic Information Nondiscrimination Act (GINA) of 2008, it is illegal to discriminate against employees or applicants because of genetic information. Title II of the GINA prohibits the use of genetic information in making employment decisions, restricts acquisition of genetic information by employees and other entities covered by Title II, and strictly limits the disclosure of genetic information.

Maintaining a Non-Hostile Workplace Free of Discriminatory Harassment

Equal Employment Opportunity Commission (EEOC) regulation 29 CFR, Part 1614, Section 102 (a) (3) requires agencies to help make the Federal Government a model employer by eliminating discrimination from personnel policies, practices, and working conditions. A hostile work environment allows ridicule, abuse, insults, or derogatory comments that are directly or indirectly based on race, color, national origin, sex (including gender identification, pregnancy, and sexual orientation) religion, age, disability, reprisal, marital status, political affiliation, or parental status. It is further defined as an offensive or intimidating environment that unreasonably interferes with work performance or that otherwise adversely affects employment opportunities. Personal conversations that can be overheard by other employees who consider the conversation offensive can also create a hostile environment.

FLETC will follow guidance regarding harassment established by the EEOC and standards regarding harassment set by the Supreme Court in two landmark decisions: Burlington Industries, Inc. v. Ellerth, 118 S. Ct. 2257 (1998) and Faragher v. City of Boca Raton, 118 S. Ct. 2275 (1998). In these decisions, the Supreme Court made clear that employers are subject to vicarious liability for unlawful harassment by supervisors. Liability is premised on two principles: 1) an employer is responsible for the acts of its supervisors; and 2) employers should be encouraged to prevent harassment and employees should be encouraged to avoid or limit the harm from harassment.

Employees are responsible to come forward and report any behavior they view as harassment before it becomes severe or pervasive. While isolated incidents of harassment generally do not violate federal law, a pattern of incidents may be unlawful. Employees are also responsible to take advantage of any preventive or corrective opportunities provided by FLETC or to otherwise avoid harm.

Such allegations should be confirmed with the employees directly involved in the incident and witnesses who might have firsthand information. It is very important to demonstrate to concerned employees that the allegations are taken seriously and that management will not condone offensive behavior. Disciplinary or other remedial action should reflect management's findings during the course of the inquiry.

Anti-Harassment Policy Reporting Process

This FLETC Anti-Harassment Policy does not affect an employee's right to file an EEO complaint of harassment or discrimination. An employee's use of the Anti-Harassment Policy reporting procedures does not replace, substitute, or satisfy the separate requirements for filing a discrimination complaint, negotiated grievance, merit system protection board appeal, or other statutory grievance procedure. An employee must make an election between filing an EEO complaint or a negotiated grievance, or administrative grievance (as applicable), but may not file both a grievance and an EEO complaint over the same matter. Employees may use the reporting procedure referenced in this policy, in addition to filing a complaint of harassment or discrimination based on race, color, religion, sex (including gender identification, pregnancy, and sexual orientation), national origin, age, disability, genetic information, or retaliation by contacting the FLETC EEO Office within 45 days of the alleged harassment².

Under the FLETC Anti-Harassment Policy any employee who believes he or she has been the target of harassment is encouraged to inform the offending person orally or in writing that such conduct is unwelcome and must stop. If the employee does not wish to communicate directly with the offending person, or if such communication has been ineffective, the employee is encouraged to report the unwelcome conduct as soon as possible to a responsible FLETC official, including a management official within the employee's chain of command, the offending person's chain of command, Office of Security and Professional Responsibility (OSPR), EEO Officer, Chief of Workforce Relations Branch (WRO), or any other FLETC management official. Students should report any incident to any of the sources listed above or to an Instructor, Program Technician, Program Specialist, their Program Managers, or Agency Representative. Training Program Managers are also required to brief students on this policy during orientation.

Responsibilities of Supervisors and Managers

- Provide a copy of FLETC's Anti-Discrimination/Harassment policy to employees and to obtain employees' signatures on the policy's awareness certification during new employee orientation and annually during the performance evaluation meeting;
- Act immediately to prevent harassment in the workplace and/or retaliation against those who complain of harassment;
- All supervisors and managers who observe or are informed of allegations of harassment **shall** report the conduct or allegations to the appropriate officials (i.e., FLETC OSPR, EEO Officer, HCO, or supervisory chain), even if the employee raising the allegations request confidentiality;
- Consult with the OSPR, Human Capital Office, WRB, and the EEO Officer to provide any appropriate interim relief to the alleged victim of harassment pending the outcome of a fact-finding inquiry or investigation and take responsible steps to ensure any further misconduct does not occur.

² **Please note:** Allegations of Sexual Harassment and/or Hostile Work Environment filed with the EEO Office will result in **two** separate simultaneous investigations (Management Review and EEO Investigation) being conducted at the same time.

Management Review into Allegations of Harassing Conduct

Once a determination is made that a management review or fact-finding will be conducted:

- The Assistant Director (AD) with ultimate supervisory authority over the employee whose conduct is the subject of the management review will serve as the Appointing Authority (AA) and must inquire into the matter sufficiently in consultation with the Chief WRB, and the EEO Officer to determine whether a full management review is needed or whether a more limited fact-finding is appropriate;
- If the harassment allegations involve an AD, the FLETC Director or the FLETC Deputy Director will serve as the AA and select the Management Review Official (MRO);
- The AD will serve as the AA and will appoint an impartial MRO to begin a prompt, thorough, and impartial management review or fact-finding within 10 days of receiving notice of the harassment allegations;
- The AD will provide the MRO with a written appointment letter of review that defines the allegations and scope of the investigation. The appointment may be initiated by oral direction, when necessary, but the appointment will be put in writing within seven calendar days of receipt of the allegations.
- The MRO is authorized to inquire into all aspects of the harassment allegations; require FLETC employees to cooperate; require all employees having any knowledge of the complaint to furnish information without a pledge of confidentiality; obtain voluntary statements from other individuals; and gather other information that the MRO determines is necessary and relevant. These authorities are delegated to the MRO for the purposes and duration of the management review only.
- Preparations for the fact-finding or management review should begin immediately after appointment of the MRO. The MRO shall submit a completed report to the AA within 30 days of being appointed MRO, unless an extension is granted by the AA.

Actions Upon Completion of the Management Review

Upon completion of the management review, the responsible AD and/or other appropriate FLETC management officials shall thoroughly evaluate the MRO's report and if necessary, take immediate and appropriate corrective action within 60 days of receiving notice of a harassment complaint. Reports of harassment are kept confidential to the fullest extent possible. FLETC does not tolerate retaliation against an employee for reporting harassment or assisting another individual in reporting harassment, participating in an inquiry into a report of harassment, or opposing discrimination or harassment. Any person who believes he or she has been subject to retaliation should use the same reporting procedures as for complaints of harassment. Reports of harassment are addressed through a prompt, thorough, and impartial fact-finding, administrative/management inquiry or administrative investigation. FLETC takes immediate corrective action when it determines that harassment has occurred. Any employee found to have engaged in harassment may be subject to disciplinary action, up to and including removal.

**Contact Information for
POLICY PROHIBITING DISCRIMINATION
AGAINST EMPLOYEES AND APPLICANTS FOR EMPLOYMENT AND ANTI-
HARASSMENT PROCEDURES**

Listed below are subject matter experts in the EEO, Office of Professional Responsibility, and Human Capital Office, including telephone numbers and areas of expertise. These individuals can assist with interpretation of FLETC's policy prohibiting discrimination against employees and applicants for employment and can provide technical guidance in applying policy in specific cases.

Contact	Phone Number
John C. Weaver EEO Officer	(912) 267-2692
Rick Purvis Chief, Office of Professional Responsibility	(912) 554-4348
Candice K. Porter Human Capital Officer	(912) 267-3376
Connie Delaney Chief, Workforce Relations Branch	(912) 267-2116
Celeste T. Merrixx Complaints Manager, EEO Office Hispanic Program Manager	(912) 267-2101
Elise M. Burtrum Senior EEO Specialist (Acting) Disability Program Manager	(575) 746-5989
Elise M. Burtrum Senior EEO Specialist Native American Program Manager	(575) 746-5989
Monte Council Senior EEO Specialist Black Employment Program Manager LGBT Program Manager	(912) 267-2113
Jennifer G. Hair Senior EEO Specialist Federal Women's Program Manager	(912) 261-3705
Jodi R. Hershey EEO Specialist Asian Pacific Program Manager	(912) 267-2106

**FLETC ANTI-HARASSMENT/ ANTI-DISCRIMINATION
ANNUAL POLICY AWARENESS CERTIFICATION**

I hereby certify that I have read and understand the Federal Law Enforcement Training Centers policy prohibiting harassment and discrimination.

Employee Signature

Date

I hereby certify that I have discussed the above-listed policy with the employee whose signature appears above and have reminded him/her of the requirement to read the policy.

Supervisor Signature

Date