



Office of the Attorney General
Washington, D.C. 20530

December 14, 1998

MEMORANDUM FOR THE HEADS OF ALL COMPONENTS

FROM: THE ATTORNEY GENERAL
SUBJECT: The Prevention of Sexual Harassment

I am taking the opportunity afforded by three recent Supreme Court decisions to review with you existing Department of Justice (Department) policy and management obligations regarding sexual harassment in the workplace. I also want to advise you of recent initiatives by my Advisory Committee on the Prevention of Sexual Harassment, and the elimination of the required Points of Contact Program. Further, I am asking that you designate an individual to serve as the coordinator for the prevention of sexual harassment in your organization, if you have not already done so.

The Supreme Court Decisions

Recently, the Supreme Court issued three decisions concerning sexual harassment in the workplace. In Oncake v. Sundowner Offshore Services, Inc., the Court held that harassment on the basis of sex, where both the harasser and the victim are the same sex, is prohibited by Title VII. In Faragher v. Roca Ratner and Burlington Industries, Inc. v. Ellerth, the Supreme Court held that when a manager or supervisor sexually harasses an employee and the harassment results in a "tangible employment decision" (such as discharge, demotion or undesirable reassignment), the employer has violated federal law. Other types of illegal sexual harassment by supervisors and managers are treated as hostile environment harassment. The Court held that the employer will not be held responsible for hostile environment harassment by its managers or supervisors if it: (1) exercised reasonable care to prevent and correct promptly any sexually harassing behavior; and (2) the victim of harassment unreasonably failed to take advantage of any preventive or corrective opportunities provided by the employer.

The Attorney General's Advisory Committee on the Prevention of Sexual Harassment has reviewed these decisions and has determined that the Department of Justice's current sexual harassment policies and procedures, which are summarized below, are consistent with them.

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Existing Departmental Policies and Procedures

The Department has procedures for reporting and processing complaints of discrimination including sexual harassment. Through its Equal Employment Opportunity (EEO) offices, the Department provides for EEO counseling of all aggrieved individuals. By regulation, all complaints must be fairly and thoroughly investigated and final agency decisions issued in a fair and timely manner.

In October 1997, I approved a Plan for the Prevention of Sexual Harassment in the Department. Each component and office, board and division (OBD) has in place a sexual harassment prevention plan that is consistent with the Department's plan. These plans require managers and supervisors to be held responsible for ensuring nondiscrimination in their offices. The plans require management to take appropriate action against individuals found to have engaged in unlawful harassment. Action is also required against supervisors who allow such conduct to persist in their organizations. In addition, the plans require periodic training and outreach to ensure that all employees, supervisors, and managers understand their rights and responsibilities with respect to the prevention and eradication of sexual harassment.

Any employee who believes that he or she has been subjected to harassment should report such behavior immediately to a supervisor, any higher level manager, the personnel officer in their office, or to individuals who may have been identified specially by their office to receive sexual harassment reports. Employees can also seek assistance from their Office of Equal Employment Opportunity, the Office of Professional Responsibility, or the Office of the Inspector General. In addition, employees in a collective bargaining unit may also seek assistance through appropriate provisions of their collective bargaining agreement.

Advisory Committee Initiatives

To ensure that the Department has addressed sexual harassment comprehensively and in response to a request for additional assistance from some of the litigating divisions, the Advisory Committee has undertaken several initiatives to

supplement and complement the Department's existing sexual harassment policies and procedures:

- Development of an all employees memorandum to be distributed with pay checks in January 1999, that will explain the holdings of the new Supreme Court

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decisions and reaffirm the Department's "zero tolerance" policy with respect to harassment. The memorandum is Attachment 1 hereto.

Development of a plan to ensure that the OBDs that do not have in-house investigators are given the necessary resources to ensure proper handling of harassment complaints made directly to managers and supervisors. The Justice Management Division (JMD) will provide trained investigators to assist these OBDs in the investigations of sexual harassment complaints when needed. Further information concerning this program will be forthcoming in the near future from the JMD Personnel Staff.

- Survey of components' training initiatives and development of additional sexual harassment training resources to ensure proper training of all employees, managers, and supervisors. Attachment 2 is a list of training vendors approved by the General Services Administration (GSA). This list will be updated and reissued each July by the EEO Staff.

Update on Ombuds Program Proposal

Last year, I approved in principle the creation of an ombuds program that would enable employees to discuss harassment and other workplace problems in confidence and without fear of retaliation. With the assistance of the Office of Legal Counsel (OLC), the Advisory Committee is addressing legal issues concerning the confidentiality of ombuds programs. Until we have resolved these issues, no final decision will be made regarding implementation of an ombuds program. I have asked the Advisory Committee to brief me concerning these issues by the end of the year.

Role of Coordinators for the Prevention of Sexual Harassment

While the Advisory Committee and the Justice Management Division have taken a leading role in developing sexual harassment guidance and resources, I want to take this opportunity to remind you that principal responsibility lies with the component heads for the prevention of sexual harassment within their organizations. As managers, you have an obligation to respond promptly and effectively to all allegations of inappropriate conduct, including any form of harassment. This response must, at a minimum, include appropriate action to ensure that any harassing conduct ceases, in a manner that minimizes the effect on the victim to the extent possible. This obligation of

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managers continues to exist even when an employee invokes other avenues of relief within the Department, including the administrative Equal Employment Opportunity process.

To assist you in fulfilling this obligation, I am asking each of you to designate a coordinator for the prevention of sexual harassment, if you have not already done so. This person will serve as a resource for you and your managers as you address any allegations of harassing behavior or conduct within your component. All allegations of harassment made to supervisors and managers must be immediately reported to the coordinator. Managers and supervisors must also report their response to each allegation to the coordinator, who will monitor to ensure that responses to credible allegations of harassment are prompt and effective. Please provide the name of the coordinator to Anna Rosario ((202) 616-4809) within 30 days of receipt of this memorandum. Training for the coordinators will be scheduled by the Justice Management Division EEO Staff by January 1, 1999. The EEO Staff will also provide periodic guidance to the coordinators.

Each coordinator for the prevention of sexual harassment should maintain, at a minimum, records of all communications regarding the Department's and your component's sexual harassment policy, all related training provided to your managers and employees, as well as records reflecting all allegations of harassing conduct and management's response.

Elimination of POC Program Requirement

A year ago it became clear through our surveys that the Points of Contact (POC) program established in 1994 is not working as intended in most parts of the Department. Accordingly, I have accepted the Advisory Committee's recommendation that the components no longer be required to maintain a POC program. However, any component that continues to use a POC program or a similar program must: (1) abide by the principles set forth in the April 25, 1994 component heads memorandum establishing the program; and (2) must ensure that all points of contact are trained to carry out their responsibilities properly.

Training

Training is a key element of an effective sexual harassment prevention plan. As head of the component, it is your responsibility to communicate directly to managers, supervisors and employees what is expected of them in terms of how they treat one another and to emphasize that decisive action will be taken

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to investigate and correct problems. In addition, training programs must:

- be offered on a regular basis;
- conducted by individuals who have in-depth knowledge of the subject matter;
- be tailored to the organization in order to address specific and general concerns;
- familiarize employees with the Department's and component's policies against sexual harassment;
- give employees working knowledge of what constitutes sexual harassment;
- provide the names and telephone numbers of persons to contact to discuss any concerns they may have;
- encourage dialogue and effective communication between employees at all levels; and
- inform employees of what they can do to help prevent sexual harassment and to end harassing behaviors when they occur.

Particular emphasis should be given to the training of managers, supervisors, and sexual harassment coordinators in preventing, investigating, and addressing sexual harassment. In addition, you must also ensure that persons working in the areas of EEO, employee relations and employee assistance are trained to effectively advise victims and supervisors on matters regarding sexual harassment. I am also asking you to summarize your training efforts on an annual basis as part of your EEO reports, to help ensure that the Department's training on the prevention of sexual harassment is both sufficient and consistent across components.

Finally, component heads should issue periodic reminders to all employees on sexual harassment policy, and provide other up-to-date information, as appropriate.

Conclusion

As the Supreme Court's decisions strongly suggest, an employer will be held accountable for failing to exercise reasonable care to prevent and correct promptly any harassing behavior. These decisions underscore the importance of effective implementation of each component's sexual harassment plan. I hold each of you responsible for ensuring full implementation of your component's plan, as well as assessing the effectiveness of the plan you adopted.

Attachments