



## DOJ Order

### REPORTING AND RESPONDING TO SEXUAL MISCONDUCT

---

**PURPOSE:** Promotes a safe and professional workplace free from sexual misconduct in the Department of Justice (DOJ or Department)

**SCOPE:** All DOJ components

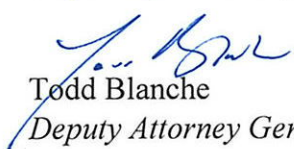
**ORIGINATOR:** Justice Management Division, Sexual Misconduct Response Unit (SMRU)

**CATEGORY:** (I) Administrative, (II) Human Resources

**AUTHORITY:** 28 C.F.R. § 0.15

**CANCELLATION:** April 30, 2018, Memorandum from the Deputy Attorney General, "Sexual Harassment and Sexual Misconduct," including attachment April 30, 2018, Memorandum from the Assistant Attorney General for Administration, "Sexual Harassment and Sexual Misconduct."

**DISTRIBUTION:** Electronically distributed to those referenced in the "SCOPE" section and posted on the DOJ directives electronic repository (SharePoint) at <https://doj365.sharepoint.us/sites/jmd-dm/dm/SitePages/Home.aspx>

**APPROVED BY:**   
Todd Blanche  
*Deputy Attorney General*

---

## ACTION LOG

Issuing Component must review its DOJ directives, at a minimum, every 5 years and make revisions as necessary. The action log records dates of approval, recertification, and cancellation, as well as major and minor revisions to this directive and provides a brief summary of all revisions. In the event this directive is cancelled, superseded, or superseded another directive, that will also be noted in the action log.

Action	Authorized by	Date	Summary
<b>Initial Document</b>	Lisa Monaco Deputy Attorney General	1/16/2025	Establishes the sexual misconduct policy for the Department
<b>Update</b>	Todd Blanche Deputy Attorney General	6/27/2025	Updated to comply with Executive Orders 14148 and 14168, dated January 20, 2025, and to make other technical edits.

## TABLE OF CONTENTS

ACTION LOG .....	2
DEFINITIONS .....	4
ACRONYMS.....	7
I. Policy .....	8
II. Sexual Misconduct Response Unit .....	11
III. Confidential Support and Reporting Options for Sexual Misconduct and Related Retaliation .....	12
IV. Interim Safety and Corrective Measures.....	16
V. Flexibilities for Victims .....	16
VI. Investigations .....	16
VII. Determinations of Policy Violations, Disciplinary Actions and Other Corrective Measures .....	18
VIII. Training Requirements.....	20
IX. Roles and Responsibilities .....	20
X. Relation to Other Administrative Processes .....	22

## DEFINITIONS

Term	Definition
<b>Contractor</b>	An employee of a private business or organization that has a federal contract or subcontract supporting DOJ, or an individual with such a contract.
<b>Employee</b>	Any person employed by DOJ. For purposes of this policy, this includes detailees, fellows, Special Attorneys and Special Assistant United States Attorneys, persons assigned to DOJ under the Intergovernmental Personnel Act, interns, and volunteers working at the Department, but does not include contractors or law enforcement task force officers.
<b>Reporter</b>	Any person, including an employee, contractor, applicant, or other personnel of DOJ who reports sexual misconduct in the DOJ workplace that they personally experienced, witnessed, or received information about.
<b>Respondent</b>	Any individual alleged to have committed sexual misconduct.
<b>Retaliation</b>	Adverse treatment that is based upon a retaliatory motive and is reasonably likely to deter a person from opposing or reporting sexual misconduct, or from participating in the sexual misconduct complaint process.
<b>Safety Plan</b>	A strategy developed in consultation with a victim to implement workplace safety options, which may include, but is not limited to: handling of protection orders; procedures for alerting security personnel; temporary or permanent adjustments to work schedules and locations; change in assigned or designated parking; and request for escort around workplace facilities.
<b>Sexual Assault</b>	Sexual assault refers to a range of behaviors, including but not limited to, a nonconsensual penetrative sexual act (e.g., rape, digital penetration, oral sex), any nonconsensual sexual contact (i.e., unwanted touching), and attempts thereof. Sexual assault includes any sexual conduct, or an attempt thereof, that is perpetrated when someone does not or cannot consent. Lack of consent may be inferred when a perpetrator uses force, harassment, threat of force, threat of adverse personnel or disciplinary action, or other forms of coercion, including mental or emotional manipulation, or when the victim is asleep, incapacitated, unconscious, or physically or legally incapable of consent.

Term	Definition
<b>Sexual Misconduct</b>	Sexual misconduct is an umbrella term that encompasses any inappropriate behavior of a sexual nature, including, but not limited to, sexual harassment, domestic violence, sexual assault, distribution of intimate digital images without consent, and stalking, whether legally actionable or not.
<b>Stalking</b>	Harassing, unwanted, or threatening conduct that causes a person to reasonably fear for their safety or the safety of a family member. Stalking conduct can include, but is not limited to: following or spying on a person; appearing uninvited and unwanted at a person's home or work; waiting at a place in order to make unwanted contact with a person or to monitor a person; leaving undesired items (e.g., presents or flowers) for a person; and posting information or spreading rumors about a person on the Internet, in a public place, or by word of mouth. It also includes "cyberstalking": following a person's Internet activity with malicious intent, hacking into someone's email, making anonymous contact with someone over the Internet or by email, or otherwise using technology to make unwanted contact. Stalking may occur through use of technology including, but not limited to, e-mail, voice-mail, text messaging, and use of Global Positioning System and social networking sites.
<b>Trauma Informed</b>	Approaches for interacting with people delivered with an understanding of the vulnerabilities and experiences of trauma, including the prevalence and physical, social, and emotional impact of trauma. A trauma-informed approach recognizes signs of trauma in people and responds by integrating knowledge about trauma into policies, procedures, practices, and settings.
<b>Victim</b>	Anyone who experiences sexual misconduct in the DOJ workplace, as defined below. This term does not necessarily mean that the individual is a victim of a crime rising to the level of a violation of state or federal law and does not import to the employee any legal rights that apply to victims of crime as codified by state or federal statutes. It simply acknowledges that DOJ will take certain actions when there is a disclosure that covered personnel has experienced sexual misconduct.
<b>Victim Advocate</b>	A DOJ SMRU employee with specialized training in trauma informed, victim centered people skills who provides confidential support services to victims of, or witnesses to, sexual misconduct.
<b>Victim Centered</b>	Placing a victim's priorities, needs, and interests at the center of the work with the victim; providing nonjudgmental assistance, with an emphasis on victim choice, where appropriate; keeping victims

Term	Definition
	apprised of information, when appropriate; making restoration of safety and security a priority; respecting a victim's dignity and privacy; and safeguarding against policies and practices that may inadvertently re-traumatize victims.
<b>Workplace</b>	For purposes of this order, a person is considered to be in the DOJ workplace anywhere that the person is conducting business on behalf of the Department. This includes, but is not limited to, federal offices, facilities, DOJ-approved telework locations or other work sites, vehicles, or locations used while on work-related travel.

## ACRONYMS

Acronym	Meaning
<b>DOJ</b>	Department of Justice
<b>EAP</b>	Employee Assistance Program
<b>EEO</b>	Equal Employment Opportunity
<b>HRO</b>	Human Resources Officer
<b>JMD</b>	Justice Management Division
<b>MDRT</b>	Multi-Disciplinary Response Team
<b>OIG</b>	Office of the Inspector General
<b>SMRU</b>	Sexual Misconduct Response Unit

## **I. Policy**

The Department of Justice (DOJ or Department) expects all employees to conduct themselves in a respectful and professional manner and to provide a work environment that is free from sexual misconduct and retaliation for reporting allegations of sexual misconduct. Sexual misconduct in the DOJ workplace is a violation of the Department's core values of integrity, respect, and excellence. This harmful behavior degrades trust among employees who must adhere to the highest standards of ethical behavior, mindful that, as public servants, employees must work to earn the trust of, and inspire confidence in, the public.

This order defines sexual misconduct, outlines ongoing measures to actively promote a respectful, safe workplace, and establishes a uniform framework for reporting and responding to complaints of sexual misconduct in the DOJ workplace. This order requires that all components provide a level of care for victims and witnesses that is both victim-centered and trauma-informed, and an unbiased reporting process that consistently supports the ongoing safety and well-being of those persons impacted by the sexual misconduct.

### **A. Department of Justice Commitment**

The Department is committed to maintaining a safe and professional work environment free from sexual misconduct. All Department employees, regardless of their position or rank, are required to comply with this order.

This order reflects the Department's commitment to: maintaining a clear prohibition against sexual misconduct and related retaliation; establishing a reporting process that includes the option of receiving confidential support, and that is well publicized, accessible and encourages employees to report sexual misconduct and related retaliation; creating a support system for victims that provides assistance in navigating the complaint process; providing free support services where appropriate and resources permit, as well as interim safety measures, to promptly address allegations of sexual misconduct in the DOJ workplace to ensure that further misconduct does not occur; maintaining a robust training and prevention program to address sexual misconduct and increase reporting of misconduct by educating employees; ensuring an investigation process that is prompt, thorough, and unbiased; striving for investigations to be conducted by investigators trained in trauma-informed practices; maintaining an accountability process that ensures due process and lack of bias, while also imposing appropriate and consistent discipline against those who are found to have engaged in sexual misconduct; and maintaining a reporting and tracking process that ensures accountability and enables the Department to identify and address issues and trends.



## **B. Prohibition Against Sexual Misconduct and Related Retaliation<sup>1</sup>**

All Department employees and contractors are strictly prohibited from engaging in sexual misconduct toward anyone with whom they interact in connection with their job and from retaliating against others for reporting sexual misconduct or participating in the complaint or response process. This includes conduct that occurs outside the workplace or off-duty, including when at home or using a personal device, when there is a nexus between the sexual misconduct and the efficiency of the service, such as conduct occurring during work travel, conferences, retreats, trainings, and office happy hours or parties.<sup>2</sup>

### **1. Sexual Misconduct**

- a. Sexual misconduct is an umbrella term that encompasses any inappropriate behavior of a sexual nature, including, but not limited to, sexual harassment, domestic violence, sexual assault, and stalking, whether legally actionable or not.<sup>3</sup> The Department's prohibition against sexual misconduct is broader than federal anti-discrimination laws; therefore, sexual misconduct may violate this policy before it results in a legally-actionable adverse employment action (e.g., a demotion, poor rating, termination, non-promotion), or becomes severe or pervasive.
- b. Sexual misconduct can be committed by anyone with whom Department employees interact as part of their job, including political appointees, supervisors, co-workers, individuals who work in other DOJ components or other agencies, and non-employees, such as job applicants, contractors, task force officers, visitors, experts, stakeholders, and grantees. Sexual misconduct can be committed against anyone, regardless of who they are or whether they have or had a preexisting consensual intimate relationship with the respondent. Examples of prohibited sexual misconduct include, but are not limited to:

---

<sup>1</sup> This policy governs sexual misconduct, which includes but is not limited to sexual harassment. Discrimination or harassment based on protected categories, such as sex, race, color, religion, national origin, age, disability, genetic information, status as a parent, marital status, and political affiliation, as well as related unlawful retaliation, are covered by the Department's anti-harassment policy statement. The Department's anti-harassment policy statement, as well as any component-specific anti-discrimination and anti-harassment policies, complement this policy and should be applied in parallel where applicable.

<sup>2</sup> The Department may show a nexus between off-duty misconduct and the efficiency of the service by three means: (1) a rebuttable presumption in certain egregious circumstances, e.g., commission of a violent crime or sexual misconduct with minors; (2) preponderant evidence that the misconduct adversely affects the employee's or co-workers' job performance or the Department's trust and confidence in the employee's job performance; or (3) preponderant evidence that the misconduct interfered with or adversely affected the Department's mission.

<sup>3</sup> Appropriate workplace responses to incidents of sexual misconduct that involve domestic violence, sexual assault, or stalking are also addressed in DOJ Policy Statement 1200.02 - FEDERAL WORKPLACE RESPONSES TO DOMESTIC VIOLENCE, SEXUAL ASSAULT, AND STALKING.

- Inappropriate and unwelcome verbal or written communications of a sexual nature, such as e-mails, phone calls, text messages or other forms of electronic messaging, blog comments, social media posts and communications on other application platforms or websites. Inappropriate and unwelcome comments of a sexual nature include offensive or inappropriate name-calling; jokes; slurs; profanity; insults; negative stereotyping; threats; teasing; commenting on an individual's body, appearance, or how their clothing fits; or bullying;
- Unwelcome sexual advances; pressure for sexual favors or dates; making or threatening to make employment decisions based on an individual's submission to or rejection of sexual advances or pressure for sexual favors or dates; stalking; or giving inappropriate gifts of a sexual nature, even where the individuals involved once had a consensual relationship;
- Inappropriate and unwelcome nonverbal conduct of a sexual nature, such as sexual gesturing or leering;
- Stalking, including following or spying on a person, appearing uninvited and unwanted at a person's home or office, or waiting at a place in order to make unwanted contact with a person or to monitor a person;
- Unwanted or nonconsensual physical contact of a sexual nature, such as sexual assault, groping, rubbing up against, or other inappropriate and unwelcome touching, or attempts thereof;
- Distribution of intimate digital images without consent of the other party; sending, forwarding, or displaying sexually derogatory, offensive, or inappropriate pictures, images, or cartoons in hard copy or electronic form; and
- Soliciting, procuring, or accepting commercial sex even when off-duty or where it is legal.

## **2. Retaliation**

All Department employees and contractors are prohibited from retaliating against individuals who make a complaint about sexual misconduct or who participate in the reporting or response processes. The Department's prohibition against retaliation is broader than the federal anti-discrimination laws, and actions that might not constitute sexual misconduct can still be considered retaliation in violation of this order if they are based on a retaliatory motive and are reasonably likely to deter a person from opposing or reporting sexual misconduct or participating in the sexual misconduct complaint process. Retaliatory conduct can include, but is not limited to, a variety of actions taken based on a retaliatory motive: denying or interfering with assignments, awards, or promotions;

transferring someone to a less desirable position or assigning them less desirable work; unjustifiably increasing scrutiny of someone's work; providing unwarranted negative performance appraisals; declining to recommend someone for another job; ostracizing someone; or taking other actions that would discourage a reasonable person from initiating a complaint of or participating in any process for responding to sexual misconduct. Reports of retaliation against a person for making or supporting a claim of sexual misconduct or related offenses in the workplace, or for participating in the reporting or response process will be handled under the same process for responding to reports of sexual misconduct laid out in this order.

## **II. Sexual Misconduct Response Unit**

To ensure that the Department's sexual misconduct policy is effectively implemented, the Department created a centralized Sexual Misconduct Response Unit (SMRU). The core function of the SMRU is to respond to all allegations of sexual misconduct in the DOJ workforce, collaborating with components to ensure consistency in response to reports of sexual misconduct and accountability for those who violate the Department's prohibition against sexual misconduct or retaliate against those who report sexual misconduct, while minimizing further trauma to victims and witnesses. Individuals who personally experience or witness sexual misconduct may file a report directly to the SMRU, as well as to other entities described in Section III.B.3 below. Components must promptly report all allegations of sexual misconduct and related retaliation to the SMRU, even if the allegations have been reported to another entity such as the Office of Inspector General (OIG).<sup>4</sup> Where appropriate, the SMRU will convene and lead a Multiple-Disciplinary Response Team (MDRT), consisting of a victim advocate; SMRU staff, investigator and management; and human resources representatives, legal counsel, and other appropriate representatives from the affected component. The MDRT will collaboratively develop a response plan with the affected component, including determining necessary interim safety or corrective measures, ensuring appropriate support for victims, conducting or monitoring timely and trauma-informed investigations by unbiased trained investigators, making findings as to whether sexual misconduct or related retaliation occurred in violation of this order. If an MDRT is not convened, the component will be responsible for developing a response plan. The SMRU will monitor components' efforts to ensure that all individuals who are engaged in receiving or responding to reports of sexual misconduct have received proper training on trauma-informed, victim-centered investigatory approaches when possible, and will conduct analysis of all components' responses to sexual misconduct to ensure consistency and lack of bias. The SMRU will also coordinate with the OIG.

For more information about the SMRU and specific information about available support services, please visit the SMRU's intranet site.

---

<sup>4</sup> Component officials are also obligated to report all nonfrivolous allegations of criminal wrongdoing or serious administrative misconduct to the OIG. The requirement to promptly report allegations of sexual misconduct and related retaliation to the SMRU does not apply to the OIG when it is conducting an investigation. The SMRU has subject matter expertise in responding to complaints of sexual misconduct with trauma-informed and victim-centric best practices. For that reason, the SMRU and OIG should work collaboratively as appropriate when handling sexual misconduct and related retaliation reports.

### **III. Confidential Support and Reporting Options for Sexual Misconduct and Related Retaliation**

The Department seeks to create an environment that encourages full and candid reporting of sexual misconduct by establishing clear reporting processes, protecting victims and reporters from retaliation, and safeguarding their personal information to the greatest extent possible. Everyone is strongly encouraged to report sexual misconduct and related retaliation that they experience, witness, or otherwise learn about in connection with their jobs or the Department's work. Supervisors, including those who rate, review, or direct the work of others, or otherwise substantially influence tangible employment actions, are required to report such misconduct to the SMRU and anyone else designated by their component when they become aware of it. The purpose of these reporting options is to encourage everyone to bring sexual misconduct and related retaliation to the Department's attention so that it can be promptly addressed, and victims can receive appropriate support.

#### **A. Confidential Sexual Misconduct Response Unit Victim Advocate Support<sup>5</sup>**

1. Confidential support after an incident of sexual misconduct but prior to official reporting allows victims of sexual misconduct to disclose their experience to a trauma-informed SMRU Victim Advocate without publicly revealing their identity. A confidential support option encourages victims to come forward and seek support without fear of repercussion, ultimately allowing victims access to support services while maintaining control over their privacy and personal information. However, as further described below, this option limits the ability of the Department to fully investigate and hold accountable those who violate the DOJ's prohibition against sexual misconduct.
2. Prior to reporting an incident of sexual misconduct to one of the persons or entities identified in Section III.B.3 below—all of which will initiate an official investigation—Department employees, contractors, and other non-employees who are victims of or witnesses to sexual misconduct in the DOJ workplace may engage in confidential discussions with a SMRU Victim Advocate to discuss reporting and response options and processes, available support services, such as the Employee Assistance Program, and safety planning.
3. SMRU Victim Advocates will protect the confidentiality and privacy of victims and reporters to the greatest extent possible and will not disclose, reveal, or release identifying information unless disclosure is compelled by a statutory or court mandate or the victim or reporter provides written, informed, time-limited consent to the release of the specific information. Communications with the SMRU Victim Advocate may also be protected by state or federal victim advocate privilege. SMRU Victim Advocates must disclose the extent of, and any limits to, confidentiality to the individuals they serve.

---

<sup>5</sup> This option is a supportive option for victims and not a report as contemplated by 28 CFR § 0.29c.

4. Confidential support sessions with the SMRU Victim Advocate will not trigger an official filing of a sexual misconduct report and, because of the confidential nature of the support, will not constitute notice of a sexual misconduct incident to the Department or components. Employees, contractors, and other non-employees electing to utilize this confidential support option must acknowledge their choice to keep the information they discuss with the SMRU Victim Advocate confidential and acknowledge that the respondent, respondent's supervisors, and Department and component management will not be notified of the alleged sexual misconduct by the Victim Advocate. Therefore, unless the employee, contractor, or other non-employee separately makes a report with a person or entity other than the SMRU Victim Advocate, component management and the SMRU will not conduct an investigation or take corrective action to address any misconduct, absent exigent circumstances, such as to mitigate a serious safety threat. In exigent circumstances, such as to mitigate a serious safety threat, the SMRU may disclose information to DOJ officials with a need to know the information for appropriate action.
5. Contact with the SMRU or an SMRU Victims Advocate is not considered contact with an EEO counselor and therefore does not initiate the EEO administrative complaint process. The EEO complaint process is a separate process.
6. A victim or reporter may choose to officially report the sexual misconduct at any time before or after consulting with the SMRU Victim Advocate and may request that the SMRU Victim Advocate assist them in the process.

**B. Trauma-Informed Disclosure Process for Victims of Sexual Misconduct**

1. A trauma-informed disclosure process for victims of sexual misconduct allows victims to make a personal decision based on their individual needs and comfort level, without fear of further trauma, re-victimization, or reprisal from a reporting process that may feel intrusive or overwhelming. Being a victim of sexual misconduct is often considered different from other misconduct because of the deeply personal and often traumatic nature of the violation, leading to significant psychological impacts like shame, guilt, self-blame, and a heightened fear of further victimization, which are not as prevalent in other types of misconduct. With this understanding, a trauma-informed disclosure process helps to build trust with victims and encourages them to come forward when they are ready.
2. Consistent with regulatory rules governing judicial administration, the Department strongly encourages all employees and contractors to report sexual misconduct and related retaliation, but employees who are victims of sexual misconduct will not be disciplined under this order for not disclosing it. When a victim is ready to report sexual misconduct, and where the SMRU or component conducts an investigation, all employees are required to cooperate in that investigation.
3. Victims who report sexual misconduct may report it to any of the following:
  - SMRU staff, complaint line, or email box;

- The employee's component's internal affairs unit, such as the Federal Bureau of Investigation, Inspection Division; Drug Enforcement Administration, Office of Professional Responsibility; Bureau of Alcohol, Tobacco, Firearms, and Explosives, Internal Affairs Division; Federal Bureau of Prisons, Office of Internal Affairs; and United States Marshals Service, Office of Professional Responsibility;
  - Any supervisor in their component, including anyone in their supervisory chain;
  - Any Human Resources Officer (HRO) or personnel officer in or servicing their component;
  - Any other person or entity designated by their component;
  - If the person alleged to have engaged in misconduct works for a different component from the victim or reporter, any person in that component serving in a position similar to those listed above;
  - Their component's servicing EEO office. Employees who believe they have been subjected to discrimination, or to retaliation for participating in EEO activity or for opposing discrimination, should contact their DOJ component EEO office within 45 calendar days of when the alleged harm occurred. Notifying the EEO office is not the same as consulting with the SMRU Victim Advocate and does not necessarily trigger the support services outlined in this order. Moreover, the EEO office should notify component management about allegations of sexual misconduct that it receives; and
  - The Office of the Inspector General, although making a report to the OIG staff will not necessarily make an employee's component management aware of the complaint or trigger the other provisions of this policy. In addition, employees who elect to voluntarily report sexual misconduct to component officials should be aware that component officials are obligated to report all nonfrivolous allegations of criminal wrongdoing or serious administrative misconduct to the OIG.
4. Reports may be made in writing or orally, and employees are encouraged to preserve any evidence of the sexual misconduct or related retaliation, including emails, text messages, voicemails, notes, and other tangible evidence, such as videos, gifts, clothing, or other items. Oral reports must be memorialized in writing by the person receiving the report. Once an employee has made a formal complaint of sexual misconduct, the Department will investigate and respond to the misconduct complaint as appropriate.

### **C. Mandatory Reporting Requirement for Supervisors**

1. Department supervisors, including those who rate, review, or direct the work of others, or otherwise substantially influence tangible employment actions, who become aware of sexual misconduct or related retaliation, either by observing it, hearing about it from others, or receiving a complaint about such conduct, must report it promptly to their component Human Resources Officer, legal counsel, or other designated component point of contact. This reporting requirement must be met even where the reporting party requests anonymity or asks that their complaint be kept confidential or that no action be taken. Failure to adhere to this reporting requirement may result in disciplinary or other corrective action, including, but not limited to, removal of supervisory responsibilities.
2. Component management officials receiving reports of sexual misconduct or related retaliation must also promptly report the incident to the SMRU. Consistent with Justice Manual 1-4.400, component officials are obligated to report all non-frivolous allegations of criminal wrongdoing or serious administrative misconduct to the OIG.

### **D. Voluntary Reporting Process for Contractors & Other Non-Employees**

1. Although this order does not create any legal rights or remedies for employees of contractors and other non-DOJ employees, they are encouraged to report sexual misconduct and related retaliation in the DOJ workplace or arising out of their business with the Department to their employer, as well as the SMRU, the component's contracting officers, contracting officer's representatives, or any other points of contact identified by components to receive contractor or other non-employee complaints, who should coordinate with DOJ in responding to the misconduct. Reports may be made in writing or orally, and once a complaint is made, the Department will investigate and respond to the complaint as appropriate.
2. Except with respect to confidential support sessions with an SMRU Victim Advocate, the Department or component will share reports of sexual misconduct involving contractor victims and respondents with the contractor's employer.

### **E. Confidentiality**

All Department employees involved in the sexual misconduct response process must keep information regarding allegations of sexual misconduct confidential and may only share that information with others who have a need to know or as otherwise permitted and necessary under applicable policies, regulations, or laws. An unauthorized disclosure of sexual misconduct-related information may result in disciplinary action. Outside of the confidential support offered by the SMRU Victim Advocate above, the Department cannot guarantee victim confidentiality, including where an investigation is warranted, but will take precautions to safeguard sensitive and private information to the greatest extent possible.

## **F. Mandatory Reporting to the SMRU of All Incidents of Sexual Misconduct**

All reports of sexual misconduct and related retaliation received by Department components or designated individuals within components must be reported promptly to the SMRU.

## **IV. Interim Safety and Corrective Measures**

When indicated by relevant circumstances, including the expressed concerns of victims and witnesses, component management officials, in consultation with legal counsel or the MDRT, should immediately implement appropriate interim measures to prevent further misconduct, mitigate ongoing threats to the victim or witnesses, and safeguard the integrity of the investigation.

Interim measures may include directing the respondent not to have any contact with the victim or witnesses; physically separating the individuals at issue (such as working from other offices or buildings, or teleworking); temporarily reassigning a new supervisor for the victim to report to during an ongoing investigation; temporarily reassigning duties; and approving administrative or other leave, consistent with applicable leave regulations and policies. In determining appropriate interim measures, strong consideration should be given to the preferences of the victim, and every reasonable effort should be made to minimize the burden or negative consequences of any interim measures on the victim, but component management retains the discretion to determine which interim measures to implement, if any.

## **V. Flexibilities for Victims**

Consistent with the interests of the Department, components should provide victims with workplace flexibilities that permit them to continue to perform their jobs while providing, to the extent possible, a safe environment for them and their co-workers. Where Department management determines that such options are feasible and applicable, these workplace flexibilities may include, but are not limited to, new or revised telework or remote work agreements, additional security at work sites, work schedule adjustments, relocation of workspace, telephone number or email address changes, or approved absences. Whether specific arrangements are appropriate in an individual instance will be determined on a case-by-case basis at the discretion of component management.

## **VI. Investigations<sup>6</sup>**

- A.** The Department is committed to conducting prompt, impartial, and thorough internal investigations into allegations of sexual misconduct and related retaliation. Investigations should be initiated promptly and no later than ten (10) calendar days after notice of the complaint, unless good cause for a delay exists. They should be completed as promptly as possible, and no later than sixty (60) calendar days from notice of the complaint, unless the allegations are particularly complex or other

---

<sup>6</sup> These provisions, including those related to timelines, do not apply to the OIG, which acts independently and sets its own internal standards and guidelines for investigations.



extenuating circumstances arise that impede or delay the completion of the investigation. In such cases, the investigator shall document the need for extended time and report such to the SMRU. The SMRU or the component (according to which is investigating) should keep the victim informed of the status of the investigation as is appropriate.

- B.** The purpose of the investigation will be to make findings of fact that can be used to determine by a preponderance of the evidence if sexual misconduct or related retaliation in violation of this policy occurred. Such findings can then provide a basis for the component to take corrective action to stop the misconduct, prevent future misconduct, and hold the individual who engaged in the misconduct accountable.
1. Investigations will be conducted by individuals who have been trained in trauma-informed methods and best practices related to sexual misconduct investigations. Investigations must also be conducted by investigators who do not have a conflict of interest or bias in the matter.<sup>7</sup> If a component does not have an investigator trained in trauma-informed methods specific to interviewing victims of sexual misconduct, the SMRU will provide the component with an appropriately trained investigator.
  2. The SMRU may conduct investigations of allegations arising within the Offices, Boards, and Divisions, or where there may be a conflict of interest for a component to conduct the investigation. The SMRU may also investigate allegations involving individuals from different components, or request assistance from a component with greater investigative capacity. If the SMRU investigates any allegations, this will take the place of any component investigation, and the SMRU will inform the component that it is conducting the investigation and of the outcome.
- C.** Employees are required to cooperate in investigations and may be subject to discipline for failure to do so.<sup>8</sup> At the conclusion of an investigation, the investigator will issue a report to the component officials or appropriate members of the MDRT involved in addressing the complaint, as appropriate, that states the factual findings of the investigator and other information relevant to the allegations. Components may be

---

<sup>7</sup> Smaller components may have difficulty in using internal personnel to investigate allegations and determining appropriate corrective actions because of a conflict of interest. Additionally, a conflict of interest may exist when harassment allegations involve senior officials, EEO staff, or anti-harassment program personnel. Small offices may prevent conflicts of interest by seeking assistance from the SMRU or other components to provide investigative services in such circumstances.

<sup>8</sup> Justice Manual 1-4.200 discusses obligations of Department employees to report allegations of professional misconduct by Department attorneys (and related law enforcement misconduct) to OPR, and obligations to report allegations of criminal wrongdoing or administrative misconduct by Department employees to OIG. This policy does not alter those obligations. That provision further describes the duty of cooperation for administrative investigations, which applies equally to sexual misconduct administrative investigations pursuant to this Order: "All Department employees have an obligation to cooperate with . . . misconduct investigations (28 C.F.R. § 45.13) and must respond truthfully to questions posed during the course of an investigation upon being informed that their statements will not be used to incriminate them in a criminal proceeding." Nothing in this order is intended or should be construed to affect employee's obligations to report evidence and non-frivolous allegations of criminal wrongdoing or serious administrative misconduct by Department employees to the OIG. (28 C.F.R. § 0.29c).

required to share these reports with the SMRU as necessary. Victims, witnesses, and respondents will not be provided with a copy of the investigation report as part of the Department's or component's response process under this policy.

## **VII. Determinations of Policy Violations, Disciplinary Actions, and Other Corrective Measures**

### **A. Determinations of Policy Violations**

Under some existing component investigative processes, such as for the OIG and some component internal affairs units, the investigator will determine whether the respondent violated this policy. For investigations in which an MDRT is convened, and no finding is presented by the investigator (except where other divisions such as Office of Professional Responsibility have this responsibility or where it would violate component personnel practices), the MDRT will make that determination and present their findings to component management for their decision on any disciplinary or corrective action.

### **B. Discipline and Other Corrective Actions**

1. Where a policy violation is found to have occurred under this order, component officials will follow their component's existing procedures and follow applicable laws, regulations, and precedent for imposing discipline or other corrective measures, taking into consideration the factors that must be considered under applicable federal law (known as the *Douglas* factors<sup>9</sup>), the investigation report, findings, and any victim impact statement, as well as the nature of the misconduct and how it impacted the victim, any other staff, their work environment, and the Department's and component's missions. In all cases, the person making the disciplinary determination must not have a conflict of interest or bias in the matter.
2. The appropriate disciplinary action will necessarily vary due to the specific facts at issue, the individualized assessment required under the regulatory process for disciplinary actions, and the *Douglas* factors. The Department will treat certain circumstances as aggravating factors, including but not limited to sexual assault, stalking, the subject's supervisory role *vis-a-vis* the victim, repetition, situations involving quid pro quo for official actions, any form of voyeurism (such as peeping), retaliation for reporting prior misconduct, and prior discipline for any form of misconduct. Disciplinary or corrective action processes should be initiated within thirty (30) calendar days from completion of the investigation (i.e., the receipt of the final report) or the MDRT's findings.
3. For contractors who engage in misconduct, components should work with the contracting officer and the contracting officer's representative to take all appropriate corrective action. Similarly, components must coordinate with the

---

<sup>9</sup> *Douglas vs. Veterans Administration*, 5 M.S.P.R. 280 (1981).

home agency or department of any task force officers and detailees who engage in sexual misconduct.

4. Components must track any findings and disciplinary actions or other corrective measures and provide that information to the SMRU when requested for tracking and program evaluation purposes.
5. Any adverse information resulting from a sexual misconduct investigation may impact security clearances and job suitability and, therefore, must be reported to the component security personnel and other appropriate personnel security officials.
6. Components must notify the victim and respondent of the closure of the inquiry, a general summary of the findings made, and if any action will be taken. Other information may be shared as deemed appropriate by the proper component officials.

**C. Consideration of Sexual Misconduct and Related Retaliation in Awards, Promotions and Other Favorable Personnel Actions, and Performance Ratings**

Supervisors who are aware of sexual misconduct are required to consider whether such misconduct may appropriately be a factor when making decisions about awards, promotions, quality step increases, other forms of public recognition, and other favorable personnel actions. Employees who have been formally disciplined for sexual misconduct or related offenses should not receive an award, promotion, quality step increase, or other form of favorable public recognition for at least two years after the effective date of the disciplinary action.

Performance appraisals (for the rating cycle in which the misconduct occurred or the disciplinary action was imposed) must reflect substantiated violations of this policy when they correlate to specific performance elements such as teamwork, professionalism, or adherence to Department or component policies. When determining performance ratings, supervisors must consider the impact of this misconduct on the victim, witnesses, and coworkers, the effect of the offense upon the respondent's ability to perform at a satisfactory level, and its effect upon supervisors' confidence in the respondent's ability to perform assigned duties.

**D. Safe Harbor for Minor Policy Violations by Victims and Witnesses**

To encourage full and candid reporting, in certain circumstances, components may determine in their discretion not to discipline victims or witnesses who committed minor violations of workplace policies in connection with or as a result of sexual misconduct they experienced or witnessed. Components maintain the complete discretion to make these determinations on a case-by-case basis and are encouraged to consult with the MDRT if one has been convened.

## **VIII. Training Requirements**

All Department employees must complete SMRU's annual mandatory training on sexual misconduct, including harassment, sexual assault, and stalking. All new employees must complete this training within 90 calendar days of entry on duty. All supervisors and Department staff responsible for receiving reports, investigating, or responding to sexual misconduct, including determining appropriate disciplinary or remedial measures, under this policy must complete training on best practices for handling such reports, including training on trauma-informed methods, within 90 calendar days of assuming such responsibilities and annually thereafter.

## **IX. Roles and Responsibilities**

### **A. Heads of Components**

1. Ensure that all incidents of sexual misconduct are promptly reported to the SMRU.
2. Be accountable for and hold component management accountable for effective implementation of and compliance with this order within their component.
3. Ensure that appropriate staff participate in all MDRT response measures as convened by the SMRU.
4. Ensure that current sexual misconduct reporting contact information is readily available to all employees and contractors.
5. Ensure that this order is recirculated to all component employees annually and distributed to all new employees as part of the onboarding or orientation process.
6. Ensure that the component collects incident data and maintains a case management system to track reports of and responses to allegations of sexual misconduct and related retaliation, including disciplinary and corrective action taken, to ensure appropriate resolution of each case as well as to identify problem areas and trends.
7. Ensure a timely response to SMRU data requests.
8. Ensure that component employees, supervisors, and staff responsible for receiving reports, investigating, or responding to sexual misconduct complete the required training.

### **B. Sexual Misconduct Response Unit**

1. Ensure this policy is posted on the Department's Internet and intranet sites.
2. Receive and process complaints from Department employees and provide guidance regarding reporting options, response processes, and available support services.

3. Coordinate and monitor component responses to allegations of sexual misconduct and related retaliation, including review of component interim safety and corrective measures, investigations, and findings.
4. Develop and maintain an investigation procedure manual for all Department personnel who investigate or respond to sexual misconduct.
5. Convene MDRTs where appropriate.
6. Provide guidance when consulted by the components on appropriate disciplinary and remedial measures for sexual misconduct.
7. Conduct or oversee investigations of sexual misconduct allegations as necessary.
8. Collect incident data and maintain a case management system to track reports of and responses to allegations of sexual misconduct and related retaliation to ensure appropriate resolution of cases, as well as to identify any issue areas and trends.
9. Continuously review the effectiveness of this order and related processes and recommend modifications as needed.
10. Develop and coordinate implementation of trauma-informed sexual misconduct training for all Department employees; training for all supervisors regarding their responsibilities in preventing, reporting, and responding to allegations of sexual misconduct; and training for all staff involved in receiving, investigating, or responding to allegations of sexual misconduct. Coordinate with components to track compliance with training requirements.
11. Administer periodic DOJ Sexual Misconduct in the Workforce surveys to monitor and address workplace sexual misconduct prevalence rates.
12. Prepare periodic reports for the Deputy Attorney General regarding the effectiveness of and component compliance with this order.

**C. Bureau and Component Procurement Chiefs**

1. Contracting officers must follow all applicable Federal Acquisition Regulation and Justice Acquisition Regulation provisions, as well as any DOJ acquisition policies, notices, or guidance, that relate to addressing sexual misconduct in the workplace.

**D. Supervisors**

1. Set an example of appropriate workplace behavior by not engaging in sexual misconduct or taking actions or communicating in any way that would give the appearance of encouraging or condoning such misconduct by others.

2. Foster a respectful, inclusive, and safe work environment.
3. Promptly report all allegations of sexual misconduct and related retaliation as required by this order.
4. Participate and/or cooperate in the implementation of safety plans and interim measures, as well as the investigation and response processes, and ensure that appropriate discipline and other corrective actions are imposed for those found to have committed sexual misconduct.
5. Refrain from retaliating against anyone who reports sexual misconduct or participates in the investigation or response processes, and take steps to prevent others from engaging in such retaliation.
6. Maintain confidentiality of reports and investigations of sexual misconduct to the maximum extent possible.
7. Encourage employee compliance with required training related to sexual misconduct and participation in any Department workplace surveys.

**E. All Department of Justice Employees**

1. Refrain from engaging in sexual misconduct and retaliation, including any actions that would discourage others from reporting sexual misconduct or participating in the investigation or response process.
2. Cooperate in any investigation.
3. Participate in required training related to sexual misconduct.

**X. Relation to Other Administrative Processes**

Employees may also raise concerns regarding sexual misconduct and related retaliation through other administrative processes, where applicable, including through the Department's or component's EEO complaint process, the Department's grievance process, or a grievance process under a collective bargaining agreement, whistleblower complaints filed with the Office of Special Counsel, misconduct claims filed with the OIG pursuant to Justice Manual 1-4.400, or the appeal process to the Merit Systems Protection Board. Reporting misconduct or retaliation to an SMRU Victim Advocate or component supervisor does not satisfy the requirements for filing complaints, grievances, or appeals through other administrative processes and does not delay applicable filing deadlines. For instance, employees who believe they have been subjected to discrimination, or to retaliation for participating in EEO activity or for opposing discrimination, should contact their DOJ Component EEO office within 45 calendar days of when the alleged harm occurred. Employees may raise concerns through both the internal process set forth in this order and other applicable administrative processes at the same time.

Nothing in this order is intended to conflict with or limit whistleblower protections, such as those provided in 5 U.S.C. § 2302 (for non-FBI DOJ personnel) and 5 U.S.C. § 2303 (for FBI personnel) and applicable regulations. Rather, “[t]hese provisions are consistent with and do not supersede, conflict with, or otherwise alter the employee obligations, rights, or liabilities created by existing statute or Executive order relating to (1) classified information, (2) communications to Congress, (3) the reporting to an Inspector General of a violation of any law, rule, or regulation, or mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety, or (4) any other whistleblower protection. The definitions, requirements, obligations, rights, sanctions, and liabilities created by controlling Executive orders and statutory provisions are incorporated into this order and are controlling.”<sup>10</sup>

---

<sup>10</sup> 5 U.S.C. § 2302(b)(13)(A).