

## Circular 95-11

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DEPARTMENT OF HEALTH AND HUMAN SERVICES  
Public Health Service  
Indian Health Service  
Rockville, Maryland

Refer to: EEO-CRS

INDIAN HEALTH SERVICE CIRCULAR NO. 95-11

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Effective Date: 05/25/1995

### SEXUAL HARASSMENT

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1. PURPOSE. The purpose of this circular is to establish the Indian Health Service (IHS) policy regarding sexual harassment, and employees' rights and management's responsibilities for responding to sexual harassment allegations and eliminating sexual harassment in the workplace.

2. BACKGROUND. The Supreme Court has determined that sexual harassment is a form of sex discrimination, which is prohibited under Section 703, Title VII of the Civil Rights Act of 1964, as amended. Sexual harassment is also a conduct issue covered by the Department of Health and Human Services (HHS) conduct regulations, Section 73.735-306 (Standards of Conduct).

Sexual harassment is a prohibited employment practice when it results in personnel decisions for or against an employee on the basis of conduct not related to performance, e.g., sex discrimination. It is illegal, undermines the employer/employee relationship, interferes with productivity, and threatens the mental, emotional, and physical well-being of employees.

Virtually any sexually-oriented language, conduct, or visual material placed in public areas, can be viewed as sexual harassment if it is unwelcome. It is the impact of the conduct or behavior on the recipient (or on observers), not the intent of the alleged harasser, which determines findings of sexual harassment.

3. REFERENCES.

29 CFR 1614  
29 CFR 1604.11  
Civil Service Reform Act of 1978  
Equal Employment Opportunity Commission (EEOC) Management Directive 110  
HHS Standards of Conduct  
HHS, Public Health Service (PHS), and IHS Policy Statements

4. POLICY. Sexual harassment, in any form will not be tolerated in the IHS. Managers and supervisors at all levels in the IHS are accountable for assuring that their work areas are free from sexual harassment. This policy applies to IHS employees in their dealings with Federal and non-Federal employees and persons employed under contract or other formal arrangement with the IHS, regardless of the genders of the individuals involved.
  
5. DEFINITIONS. Sexual harassment occurs in the speech or conduct of individuals and does not occur exclusively between persons of the opposite sex. Sexual harassment also occurs between individuals of the same gender.
  - A. Quid-Pro-Quo Sexual Harassment. Quid-Pro-Quo sexual harassment is defined as any unwelcome sexual advance, request for sexual favors, or other verbal or physical conduct of a sexual nature, when:
    1. Submission to or rejection of such conduct is made, either explicitly or implicitly, a term or condition of an individual's employment.
    2. Submission to or rejection of such conduct is used as a basis for employment decisions affecting an individual.

Quid-Pro-Quo sexual harassment is usually committed by a supervisor on a subordinate employee. Such conduct interferes with an individual's work performance or creates an intimidating, hostile, or offensive work environment.
  
  - B. Hostile Environment Sexual Harassment. This form of sexual harassment is deliberate, unwelcome, or repeated offensive comments, gestures, and/or physical contact of a sexual nature, that is imposed on individuals in the work place or work environment. A hostile or offensive environment is also defined as certain pictures, posters, or graffiti that is located or found in the work environment. Examples of the types of conduct that could constitute sexual harassment are: use of obscene word(s) or language; deliberate touching of another person in a sexual manner; requesting dates from employees; telling off color jokes; displaying pictures of nudes or nearly nude individuals or of individuals in suggestive poses; and displaying or distributing writings or clippings from periodicals that contain such pictures or words.
  
  - C. Third Party Sexual Harassment. This form of sexual harassment, more commonly known as "sexual favoritism," is when employment opportunities or benefits are granted to an individual for submitting to a supervisor's sexual advances or requests for sexual favors. Managers can be held liable for unlawful sex discrimination against qualified individuals who were denied an employment opportunity or benefits in cases where sexual favoritism by the manager is determined to have occurred.

## 6. RESPONSIBILITIES.

A. Director, IHS. The Director, IHS, is accountable for a workplace environment that is free from sexual harassment at all levels in the Agency.

B. Equal Employment Opportunity Officers. The professional staff in Equal Employment Opportunity (EEO) Offices across the IHS are responsible for:

1. Coordinating the conduct of the fact-finding process for all sexual harassment allegations received from employees in work areas under the jurisdiction of the EEO Office. Fact-finding will begin within 3 workdays after the EEO Office receives notification of alleged sexual harassment. This includes designating management officials to assist in the fact-finding and/or investigatory process of an alleged incident of sexual harassment.
2. Making recommendations for appropriate corrective action to management officials upon completion of an investigation of an alleged incident of sexual harassment.
3. Assisting IHS managers and supervisors in training employees in the prevention of sexual harassment.
4. Ensuring compliance with this policy and related procedures through oversight and periodic assessment of managers' and supervisors' efforts to prevent sexual harassment.
5. Ensuring that appropriate corrective actions are implemented in work areas where incidences of sexual harassment are determined to have occurred.
6. Maintaining confidentiality to the fullest extent possible.
7. Area EEO managers are required to notify the Director, EEO/Civil Rights Staff (CRS), at Headquarters of each alleged incident of sexual harassment for purposes of tracking and monitoring sexual harassment allegations and guidance for immediate corrective action.
8. Advising employees of the procedures and timeframes involved in investigating complaints of sex discrimination or sexual harassment.

C. Personnel Offices. The professional staff, usually the Employee/Labor Relations staff, in the Servicing Personnel Offices are responsible for:

1. Assisting the EEO staffs in formulating recommendations for appropriate corrective action to management officials upon completion of an investigation of an alleged incident of sexual harassment.

2. Assisting IHS managers and supervisors in training employees in the prevention of sexual harassment.
3. Monitoring compliance with this policy and related procedures through periodic assessment of managers' and supervisors' efforts to prevent sexual harassment.
4. Assisting managers and supervisors to implement corrective actions in work areas where incidences of sexual harassment are determined to have occurred.
5. Assisting the EEO staffs in educating employees on the procedures and timeframes involved in investigating complaints of sex discrimination or sexual harassment.

D. Managers/ Supervisors. Managers and supervisors in the IHS are accountable for their behavior and actions in promoting a work environment that is free from sexual harassment. This includes:

1. Communicating the IHS policy for zero tolerance of any sexual harassment in the workplace to all employees under their supervision.
2. Becoming familiar with the HHS, EEOC, and, IHS regulations and policies that pertain to the elimination of sexual harassment and other forms of discrimination in the workplace.
3. Taking seriously all allegations of sexual harassment regardless of gender of the alleged harasser or the purported victim.
4. Taking immediate action to effectively determine the validity of the allegation in order to avoid agency liability by allowing sexual harassment to continue once they become aware of it.
5. Promptly implementing corrective actions that are recommended by the local EEO staff, management officials, and personnel offices.
6. Ensuring that employees who report incidences of sexual harassment are protected from any form of reprisal.
7. Immediately notifying designated offices and officials upon becoming aware of an alleged incident of sexual harassment.
  - a. At IHS Headquarters, managers and supervisors are required to notify their respective Associate Directors and the Director, EEO/CRS.

- b. Managers and supervisors in Area Offices and Service Units are required to notify their respective Area Director, Area EEO Manager, immediately upon becoming aware of an alleged incident of sexual harassment.
8. Encouraging employees who report that they have been a victim of sexual harassment to use the agency employment assistance program, and to contact friends, co-workers, relatives, or other individuals who may be able to provide emotional support.
9. Following up with employees who have reported sexual harassment to advise them that appropriate corrective actions have been taken.
10. Conducting impartial and comprehensive fact-finding investigations on each allegation of sexual harassment as requested by higher level management officials or the EEO Office.
11. Submitting, within 5 work days after an investigation ends, written reports to higher level management officials and to the local EEO Office. Interviews must be conducted with the complainant, the alleged harasser, and all relevant witnesses.
12. Coordinating with the respective EEO and Personnel Offices to provide or obtain training for subordinates in the prevention of sexual harassment.

Failure by a manager or supervisor to comply with the requirements of this policy and the responsibilities charged to them by this policy will be grounds for management to take corrective or disciplinary action up to and including removal from Federal employment.

E. Employees. All employees in the IHS are responsible for ensuring that their behavior and actions promote a work environment that is free of sexual harassment. This includes:

1. Informing or advising co-workers when their conduct is offensive and requesting them to immediately stop the offensive behavior.
2. Notifying their immediate supervisor or other appropriate agency official who has the authority or responsibility to initiate an investigation or fact-finding if the sexual harassment continues despite the above-cited notification.
3. Contacting the Area EEO manager and the Director, EEO/CRS, at Headquarters directly, if corrective actions are not promptly initiated.
4. Maintaining a detailed journal that documents every incident of alleged sexual harassment that includes the name of the harasser; what specifically was said/done by the harasser; where and when the harassment took place (location, date, and time); who, if anyone, was told about the harassment; the names of witnesses; what was said to the harasser to communicate the unwelcome nature of his or her

conduct; and the harasser's response when told to stop. Employees should keep a copy of all letters or other written material received from the harasser. Document telephone calls or visits to the office, home, or any other location where the harassment occurs.

Employees should document observed incidences of sexual harassment to other individuals and keep all documentation in a safe place. During a formal inquiry or investigation employees should provide all related written documentation to the investigators.

5. Taking advantage of all avenues for emotional support and counseling such as speaking with friends, co-workers, relatives, or other individuals. Employees are encouraged to use the agency employee assistance program or other counseling services and support networks.

Cooperating with the EEO Counselor and/or agency officials in an attempt to reach resolution of the complaint. This entails providing names, documentation, and other information as requested by the management official designated to investigate or conduct fact-finding on the allegation. Employees who fail to cooperate with an investigation may be subject to disciplinary action in accordance with the Standards of Conduct and this policy.

7. PROCEDURES. An employee who believes he/she has been subjected to sexual harassment may:

- A. File a grievance, either under the Agency grievance procedure or through a union-negotiated grievance procedure, if applicable. Note that these two procedures would not be available if the employee wished to claim sexual harassment under Title VII of the Civil Rights Act, 29 CFR 1614, rather than as misconduct under agency standards of conduct.
- B. Raise the allegation of sexual harassment under Title VII with an employee designated to counsel employees regarding EEO discrimination or sexual harassment complaints. After discussing the allegation, the employee:
  1. May proceed to file an informal complaint under the EEO process. Because of differences in EEO laws, civil service employees have 45 calendar days and Commissioned Corps employees have 30 calendar days from the date of the last alleged incident of sexual harassment to file such complaints.
  2. May decide not to proceed any further with the allegation. However, under EEO laws, supervisors and managers still have an affirmative obligation to address any possible sexual harassment. Therefore, IHS management officials responsible for employees at the site of the alleged harassment may proceed in fact-finding to resolve the allegation. In such instances, the Headquarters EEO/CRS must be notified of the allegation before the fact-finding proceeds. All employees involved in the allegation will be treated with fairness and respect during the fact-finding.
- C. Only the following IHS employees have been designated to advise employees on the procedures for filing complaints of sex discrimination or sexual harassment:

- All Headquarters East EEO/CR Professional Staff
  
- All Area EEO Manager/Specialists
  
- Designated EEO Counselors
  
- Employee/Labor Relations Specialists
  
  
- Managers and Supervisors

8. REPRISALS PROHIBITED. Any attempt by an employee, supervisor, or manager, to restrain, interfere, coerce, or otherwise take reprisal action against an employee who has initiated an EEO complaint or grievance based on an alleged incident of sexual harassment is against the law. Such actions may result in the same range of disciplinary action taken on those individuals found to have harassed the employees.

9. CONSEQUENCES OF SEXUAL HARASSMENT. The loss to the HHS in terms of financial and human resources as a result of sexual harassment is substantial in leave usage, reduced individual and group productivity, training costs, and other costs related to turnover of personnel. Sexual harassment reflects poorly on the integrity of the HHS and IHS, and adversely affects the morale of employees, supervisors, and managers who strive to promote ethical standards of conduct in the performance of their official duties.

The consequences to individuals accused of sexual harassment are also significant. Any Federal employee can be disciplined up to and including removal from employment, or be found personally liable. Additionally, the Civil Rights Act of 1991 provides further remedies for intentional discrimination (e.g., sexual harassment) including compensatory damages and jury trials. Traditional remedies such as back-pay and reinstatement are available.

10. EFFECTIVE DATE. This policy Circular is effective on the date it is signed by the Director, IHS.

*/Michael H. Trujillo, M.D./*  
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