



Defense Logistics Agency **INSTRUCTION**

DLAI 1438.06
Effective October 20, 2015

DLA HUMAN RESOURCES
LABOR AND EMPLOYEE RELATIONS (J13)

SUBJECT: Workplace Harassment Prevention and Response Policy

- References:**
- (a) DoDI 1438.06 “DoD Workplace Violence Prevention and Response Policy,” January 16, 2014
 - (b) Interagency Security Committee, “Violence in the Federal Workplace: A guide for Prevention and Response,” April 2013
 - (c) DLAI 7406, “EEO Complaint Process,” September 10, 2009
 - (d) 5 U.S.C. § 2302 of the Civil Service Reform Act of 1978, as amended
 - (e) DLAI 1426.01, “Maintaining Discipline,” October 29, 2013
 - (f) DoDI 1400.25, Volume 771, “DoD Civilian Personnel Management System: Administrative Grievance System,” December 26, 2013.

1. **PURPOSE.** This Instruction:

- a. Establishes policy, prescribes procedures, and assigns responsibilities to preserve a workplace free from harassment in accordance with Reference (a).
- b. Identifies prohibited harassment, and outlines rights and responsibilities of all levels of Defense Logistics Agency (DLA) employees.
- c. Provides employees with quick and effective tools to identify and report harassment, and quickly correct and prevent misconduct that is or potentially constitutes harassment in accordance with Reference (b).
- d. Is separate from the DLA Equal Employment Opportunity (EEO) complaint process, which provides remedial relief to an employee affected by unlawful harassment under Reference (c).

2. APPLICABILITY. This Instruction applies to all DLA civilian employees. If a conflict exists between this Instruction and any collective bargaining agreement, the latter will prevail.

3. DEFINITIONS. For this Instruction, harassment means unwelcome comments or physical conduct that involves:

a. Severe or pervasive conduct that is unwanted or offensive that has the purpose or effect of unreasonably interfering with an individual's work performance, violating a person's dignity, or creating an intimidating, humiliating, hostile, or offensive environment; or

b. Aggressive, menacing, malicious, or insulting behavior involving the misuse of power that makes a reasonable person feel vulnerable, upset, humiliated, undermined, or threatened. "Power" does not always mean being in a position of authority, but can include both personal strength and the power to coerce through fear or intimidation, and can take the form of physical, verbal, and non-verbal conduct.

NOTE: Legitimate, reasonable, and constructive criticism of an employee's performance or behavior, or reasonable instructions given to employees during their employment, will not amount to harassment on their own.

4. POLICY. It is DLA policy that:

a. Harassment will not be tolerated, nor will retaliation against an employee for reporting it in accordance with Reference (d).

b. Any DLA employee who engages in harassing and/or retaliatory conduct is subject to disciplinary action up to and including removal from Federal service, as appropriate, in accordance with Reference (e). The Agency may take disciplinary action whether or not federal law prohibits the basis of the harassment or retaliation.

c. Allegations of harassment and retaliation are taken seriously and will be addressed at once. Investigations will be conducted with the greatest degree of confidentiality, consistent with completing a fair and thorough investigation.

d. The Agency will maintain a model workplace free from harassment and retaliation, whether or not such misconduct violates federal law.

5. RESPONSIBILITIES. See Enclosure 1.

6. PROCEDURES. See Enclosure 2.

7. INFORMATION.

a. DLA employees or employee representatives seeking further information on this policy may contact their servicing DLA Human Resources Services Office.

b. All information gathered and kept under this policy will follow information and record storage requirements under References (e) and (f).

8. INTERNAL CONTROLS.

a. Responsibility for reporting and investigating harassment and retaliation described in Enclosure 1.

b. Protections for employees reporting harassment described in Enclosure 2.

9. RELEASIBILITY. Unlimited. This instruction is approved for public release and is available on the Internet from the DLA Issuances Internet Website at <https://hq.dla.mil/Issuances/Pages/default.aspx>.

10. EFFECTIVE DATE. This instruction:

a. Is effective on October 20, 2015.

b. Must be reissued, cancelled, or certified current within 5 years of its publication in accordance with DLAI 5025.01, DLA Issuance Program. If not, it will expire effective October 20, 2025 and will be removed from the DLA Issuances Website.

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ENCLOSURE(S)

Enclosure 1 - Responsibilities

Enclosure 2 - Procedures

ENCLOSURE 1

RESPONSIBILITIES

1. THE DLA VICE DIRECTOR must resolve any dispute or conflict about any inquiry or investigation between the affected Director, Commander, or similar high-ranking official and the Director of DLA Human Resources/designee.

2. THE DIRECTOR, DLA HUMAN RESOURCES (J1), through his or her designee, must:
 - a. Issue annual reminders to all employees on this policy and its requirements.

 - b. Provide training to all managers and supervisors on this policy and its requirements.

 - c. Receive and respond to reports of violations of this policy and seek further inquiries into such reports as necessary.

 - d. Provide guidance and support to DLA managers and supervisors to assure compliance with this policy.

3. ALL SUPERVISORS AND MANAGEMENT OFFICIALS must:
 - a. Ensure a workplace free from harassment and retaliation.

 - b. Ensure that their subordinate employees are aware of this policy and its requirements.

 - c. Investigate allegations of harassment and retaliation, and take corrective and/or disciplinary action as appropriate to ensure DLA remains free from such behavior. Failure to address allegations of harassment or retaliation may result in serious consequences for the Agency and will not be tolerated.

 - d. Act promptly and effectively to stop hostile or retaliatory conduct of which they are aware.

 - e. Notify appropriate officials of reported or observed harassing or retaliatory conduct in accordance with Enclosure 2, paragraph 5.

 - f. Notify employee(s) who reported and/or subjected to harassment or retaliation the status of any investigation.

4. DLA General Counsel must:
 - a. Provide legal support as necessary.

b. Acknowledge receipt and notify appropriate officials when an allegation of harassment or retaliation is made directly to Counsel.

c. Provide guidance to the person investigating reports of harassment or retaliation.

5. ALL DLA EMPOLYEES are expected to:

a. Report incidents they perceive as harassment or retaliation, which includes those that they have personally experienced or witnessed, to the supervisor of the offending employee (if known), their supervisor, or to DLA Human Resources. DLA cannot correct harassing conduct if the conduct is not known by to the appropriate people in the Agency who can take corrective action.

b. Act professionally and refrain from harassing and retaliatory conduct.

c. Consider whether their words or conduct could be offensive.

d. Understand their rights and responsibilities under this policy.

e. Promptly report incidents of harassment or perceived harassment, or retaliation that violate this DLAI.

f. Cooperate fully in any investigation. An employee's rights will not be violated and union representation will be allowed if requested, consistent with contractual and statutory requirements.

g. Be protected for their union activities, consistent with terms of the Federal Services Labor-Management Relations Statute.

ENCLOSURE 2

PROCEDURES

1. Reporting Harassment or Retaliation. Any person who believes that he or she has been the subject of harassment or retaliation in violation of this policy should immediately report the matter to the supervisor of the employee engaging in the harassing or retaliatory conduct (if known), their supervisor, or to DLA Human Resources.
2. Employees who witness harassing or retaliatory conduct directed toward others should report the matter to the supervisor of the offending employee (if known), their supervisor, or to DLA Human Resources.
3. Filing a complaint. An employee who believes that he or she has been the subject of harassment based on a protected characteristic (sex (including pregnancy and gender identity), race, color, national origin, age (40 years old and older), religion, disability, sexual orientation, genetic information, or retaliation) and wishes to seek relief, may file an EEO complaint with their servicing DLA Office of EEO and Diversity no later than 45 calendar days from the date of the alleged discriminatory act in accordance with Reference (c). All other complaints (i.e. those not based upon a protected characteristic actionable before the Equal Employment Opportunity Commission) of harassment should be filed under either the administrative grievance, in accordance with Reference (f), or negotiated grievance procedures, where appropriate.

NOTE: Complaints or grievances made under this DLAI **do not** replace, substitute, or otherwise satisfy the separate obligations of an EEO complaint, administrative grievance, negotiated grievance, Merit Systems Protection Board (MSPB) appeal, or other statutory process. For further information on how an employee may pursue their rights under one of these separate processes, see Section 12 of Enclosure 2.

4. Management Response to Reports of Harassment or Retaliation.
 - a. A supervisor or manager who becomes aware of alleged harassing or retaliatory conduct involving subordinates within his or her chain-of-command must contact the servicing DLA Human Resources office or local General Counsel as soon as possible for advice and guidance.
 - b. Supervisors or managers must promptly investigate allegations of harassment or retaliatory conduct involving subordinates within his or her chain-of-command. Normally, the lowest level supervisor who is not implicated or otherwise involved, directly or indirectly, in the allegation will conduct the investigation.
 - c. The investigation must result in a record sufficient to support corrective or disciplinary action taken, or to indicate there is not sufficient evidence to support corrective or disciplinary action. The investigator must contact local Counsel for guidance on how to conduct the investigation. This includes how to take sworn statements; accessing and obtaining appropriate personnel information and records; maintaining confidentiality during the course of the investigation; and meeting all labor relations obligations while conducting the inquiry.

5. Notifying Appropriate Officials of Reported Harassment or Retaliation.

a. A supervisor or manager who becomes aware of alleged harassing or retaliatory conduct involving employees outside of his or her chain-of-command must report, as soon as possible, one of the following officials:

(1) The harassing employee's supervisor/Director/Commander; or

(2) If the alleged harassment involves the supervisor or Director or Commander in the direct chain of command of the harassed employee, the Director of DLA Human Resources/designee, or local Counsel; or

(3) The alleged victim's supervisor and Director or Commander.

b. Supervisors, managers, human resources personnel, or local counsel who becomes aware of harassing or retaliatory conduct within their chain-of-command must notify the Director of DLA Human Resources/designee or local Counsel as soon as possible. This notice must include the specific allegations, the parties involved, and any steps taken, if any, in response to the report.

c. When a report is made directly to the Director of DLA Human Resources/designee or local Counsel, he/she must:

(1) Immediately acknowledge receipt of report;

(2) Notify the appropriate official in the Office(s) implicated in the report; and

(3) Recommend how the investigation should proceed.

6. Performing Investigations.

a. The Director of DLA Human Resources/designee, in coordination with local Counsel, must advise supervisors and management officials on the appropriate course of action.

b. All investigations must be thorough, impartial, and completed in a timely manner appropriate to the allegation(s).

7. Allegations Against a Director, Commander, or Similar High-ranking DLA Official.

a. If a Director, Commander, or similar high-ranking official is implicated in the alleged harassing or retaliatory conduct, the Director of DLA Human Resources/designee, in coordination with the DLA General Counsel/designee, is responsible for conducting the preliminary inquiry and directing any further investigation, if warranted.

b. The DLA Vice Director will resolve any dispute or conflict, about any inquiry or investigation between the Director, Commander, or similar high-ranking official and the Director of DLA Human Resources/designee.

8. Corrective or Disciplinary Action.

a. If the investigation or inquiry determines harassing or retaliatory conduct occurred, the findings will be reported to the Director or Commander of the appropriate Primary Level Field Activity or J/D Code for necessary action the Director of DLA Human Resources/designee and local Counsel.

b. The appropriate supervisory or management officials in the affected office, in coordination with the Director of DLA Human Resources/designee and local Counsel, will ensure appropriate corrective or disciplinary action is taken.

9. Maintaining Confidentiality, Keeping Records, and Monitoring Procedural Compliance.

a. **Maintaining Confidentiality.** All reports of harassing or retaliatory conduct and related information are maintained on a confidential basis to the extent possible, consistent with the requirements of the applicable complaint process, adverse action procedures, or investigative practices. However, confidentiality is not guaranteed.

b. **Writing Reports and Maintaining Records.** Consistent with the requirements regarding other alleged misconduct, a written report must be made regarding harassment allegations, including the resolution of the complaint, with a copy provided to the Director of DLA Human Resources/designee.

(1) Reports must identify the individual implicated, the conduct involved, and the corrective action taken, if any. Records must be sufficient to aid the Director of DLA Human Resources or their designee in determining how to address any future incidents.

(2) If requested by the Director of DLA Human Resources or their designee, written reports may also include a detailed description of the investigation, an explanation of any conclusions, the reasoning for any corrective action issued, and documents or other evidence from the investigation.

(3) All reports should be maintained in a secure location and are protected by the Privacy Act.

10. Monitoring the Work Environment.

Directors, supervisors, and managers must comply with the requirements of this DLAI. This includes monitoring the work environment following a report alleging a violation of this DLAI to ensure that there are no further violations, or retaliation against individuals who have reported harassment or participated in the investigation.

11. Conclusion of an Investigation.

Once an investigation is completed, the appropriate supervisor or management official (with guidance from DLA Human Resources) will notify the employee(s) who filed the complaint or subjected to harassment or retaliation of the findings of the investigation.

12. Filing a Statutory Complaint, Grievance under a Negotiated Procedure, or MSPB Appeal.

a. Reporting harassment or retaliation to a supervisor or management official or filing a complaint under this DLAI **does not** satisfy the filing requirements for an EEO complaint, union grievance, MSPB appeal, or other procedure and obtaining remedies pursuant to them, **nor does it delay the time limits for initiating those procedures.** Thus, an employee who chooses to pursue statutory or collective bargaining remedies for harassment or retaliation **may** select one of the available forums as follows:

(1) For an EEO complaint pursuant to 29 C.F.R. § 1614, as required in 29 C.F.R. § 1614.105(a)(1), contact local EEO office within 45 days of the date of the matter alleged to be discriminatory, or in the case of a personnel action, within 45 days of the effective date of the action.

(2) For grievances filed under a negotiated grievance procedure, file a written grievance in accordance with the provisions of the Collective Bargaining Agreement. Bargaining unit employees should review their applicable negotiated grievance procedure (NGP) to determine if the NGP is the appropriate vehicle for their complaint.

(3) For an appeal to the MSPB pursuant to 5 C.F.R. § 1201, as required in 5 C.F.R. § 1201.22, file a written appeal with the Board within 30 days of the effective date of an appealable adverse action as defined in 5 C.F.R. § 1201.3, or within 30 days of the date of receipt of the agency's decision, whichever is later.

b. The DLA Human Resources designee will provide the written report and documents or other evidence taken under this DLAI to the office handling a parallel statutory or collective bargaining claim.