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OFFICE OF INSPECTOR GENERAL

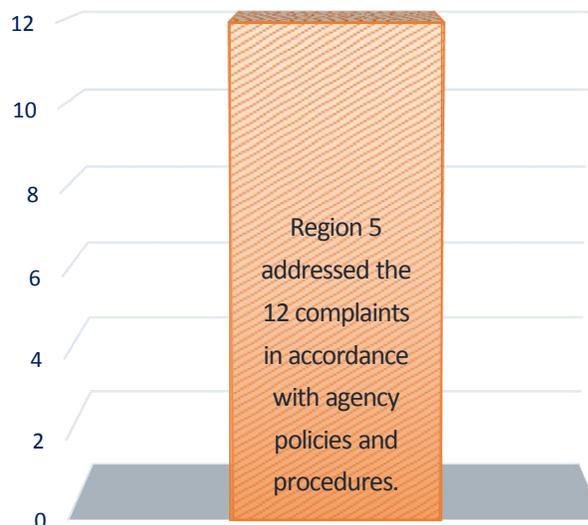
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EPA Region 5 Has Adequate Policies and Procedures for Addressing Sexual Harassment Allegations

Report No. 17-P-0343

July 31, 2017

REGION 5 SEXUAL HARASSMENT COMPLAINTS 2012–2016



Report Contributors:

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Abbreviations

CFR	Code of Federal Regulations
EEO	Equal Employment Opportunity
EEOC	U.S. Equal Employment Opportunity Commission
EPA	U.S. Environmental Protection Agency
LERIS	Labor and Employee Relations Information System
OIG	Office of Inspector General

Cover image: Image regarding Region 5’s sexual harassment complaints, prepared by EPA OIG.

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At a Glance

Why We Did This Audit

The U.S. Environmental Protection Agency (EPA) Office of Inspector General (OIG) conducted this audit in response to a congressional request to determine whether EPA Region 5 managers appropriately handled sexual harassment allegations. The objective of the audit was to determine whether EPA Region 5's policies and practices for addressing sexual harassment complaints made through the human resources complaint process and the Equal Employment Opportunity (EEO) complaint process adhere to established agency policies and meet federal requirements.

This report addresses the following EPA goal or cross-agency strategy:

- *Embracing EPA as a high-performing organization*

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EPA Region 5 Has Adequate Policies and Procedures for Addressing Sexual Harassment Allegations

What We Found

EPA Region 5's policies and practices for addressing sexual harassment allegations adhere to EPA policies and procedures and meet federal requirements in 29 CFR §§ 1604.11 and 1614, as well as U.S. Equal Employment Opportunity Commission guidance.

Region 5 addressed complaints in accordance with agency policies and procedures. No recommendations are being made.

EPA's sexual harassment complaints may be filed through the human resources process, EEO complaint process, or both. Region 5 identified 12 sexual harassment complaints processed between fiscal years 2012 and 2016—six processed by the region's Human Resources Branch and six by the region's Office of Civil Rights. Our review of the case files for the 12 complaints, and interviews with the EPA officials involved in resolving these complaints, confirmed that Region 5 addressed the complaints in accordance with agency policies and procedures.

Agency Response

No recommendations are being made because pertinent policies and procedures were in place and being followed. We issued a discussion document on June 20, 2017, for the agency's review. The agency response suggested only minor edits. The OIG considered the agency's suggestions and modified the report accordingly.

Noteworthy Achievements

During the audit, we learned that, starting March 2016, the Region 5 human resources office began tracking all sexual harassment fact-finding investigations in the agency's national tracking database—Labor and Employee Relations Information System (LERIS)—regardless of whether disciplinary action was involved. Agency policy only requires the tracking of cases involving disciplinary actions. The additional tracking in LERIS could enhance the region's ability to determine the pervasiveness of sexual harassment and address it accordingly. The additional tracking also allows for information sharing with other regions, which could promote consistency in corrective actions agencywide.



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

THE INSPECTOR GENERAL

July 31, 2017

MEMORANDUM

SUBJECT: EPA Region 5 Has Adequate Policies and Procedures for Addressing
Sexual Harassment Allegations
Report No. 17-P-0343

FROM: Arthur A. Elkins Jr.

A handwritten signature in black ink, appearing to read "Arthur A. Elkins Jr.", is written over the printed name.

TO: Robert A. Kaplan, Acting Regional Administrator
Region 5

This is our report on the subject audit conducted by the Office of Inspector General (OIG) of the U.S. Environmental Protection Agency. The project number for this audit was OA-FY16-0177. This audit did not identify any problems requiring corrective actions.

This report contains no recommendations and you are not required to provide a written response. Should you choose to provide a final response, we will post your response on the OIG's public website, along with our memorandum commenting on your response. Your response should be provided as an Adobe PDF file that complies with the accessibility requirements of Section 508 of the Rehabilitation Act of 1973, as amended. The final response should not contain data that you do not want to be released to the public; if your response contains such data, you should identify the data for redaction or removal along with corresponding justification.

We will post this report to our website at www.epa.gov/oig.

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Purpose

In response to a congressional request, the U.S. Environmental Protection Agency's (EPA's) Office of Inspector General (OIG) conducted this audit to determine whether EPA Region 5's policies and practices for addressing sexual harassment complaints made through the Equal Employment Opportunity (EEO) complaint process, and the human resources complaint process, adhere to established agency policies and meet federal requirements.

Background

On July 29, 2015, a congressional committee held a hearing and received testimony from EPA Region 5 employees that included concerns about how sexual harassment allegations had been addressed. On September 1, 2015, the OIG received a congressional request to investigate whether Region 5 managers appropriately addressed sexual harassment allegations, and whether managers retaliated against employees who raised concerns. The request also asked the OIG to provide recommendations to ensure that all EPA staff are aware of their rights and obligations with respect to whistleblowers if the allegations related to retaliation are substantiated.

The OIG's Office of Investigations initiated an investigation into the concerns raised in the congressional request and conducted witness interviews. It was later determined that, based on areas of expertise, the OIG's Office of Audit would review Region 5's policies and procedures for handling sexual harassment allegations and the Office of Investigations would continue to investigate concerns raised in the congressional request.

Title VII of the Civil Rights Act of 1964, as amended, prohibits employment discrimination based on several bases, including sex, and provides for recovery of compensatory and punitive damages in case of unlawful intentional violations. The act puts the primary responsibility on each of the federal agencies to assure nondiscrimination in employment. The act created the U.S. Equal Employment Opportunity Commission (EEOC) and granted the EEOC the authority to enforce the act and issue rules, regulations, orders and instructions as necessary and appropriate. Executive Order 11478 implemented the prohibition of employment discrimination on the basis of sex.

Sexual harassment regulations are codified in 29 CFR §1604.11 as follows:

- (a) Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when (1) submission to 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 by an individual is used as the basis for employment decisions affecting

such individual, or (3) such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.

Pursuant to 29 CFR § 1604.11(d):

... an employer is responsible for acts of sexual harassment in the workplace where the employer (or its agents or supervisory employees) knows or should have known of the conduct, unless the employer can show that it took immediate and appropriate corrective action.

EEOC Guidance No. N-915-050, issued March 19, 1990, provides further clarification and guidelines. The EEOC guidance and 29 CFR § 1604.11 encourage employers to take all steps necessary to prevent sexual harassment from occurring. According to the EEOC guidance:

An effective preventive program should include an explicit policy against sexual harassment that is clearly and regularly communicated to employees and effectively implemented. The employer should affirmatively raise the subject with all supervisory and non-supervisory employees, express strong disapproval, and explain the sanctions for harassment.

The employer should also inform employees of their rights to raise sexual harassment concerns and have procedures for raising and resolving such issues. The procedures should “ ‘encourage victims of harassment to come forward’ and should not require a victim to complain first to the offending supervisor.” The procedures should also “ensure confidentiality as much as possible and provide effective remedies, including protection of victims and witnesses against retaliation.”

Under the EEOC guidance, when an employer receives a complaint or otherwise learns of alleged sexual harassment in the workplace, the employer should:

- Investigate promptly and thoroughly;
- Take immediate and appropriate corrective action by doing whatever is necessary to end the harassment;
- Make the victim whole by restoring lost employment benefits or opportunities; and
- Prevent the misconduct from recurring.

Regulations and details of the EEO complaint process are in 29 CFR Part 1614. The regulation requires federal agencies to have procedures for processing discrimination complaints.

Responsible Offices

Region 5's Resources Management Division, Human Resources Branch, is responsible for the addressing complaints filed through the human resources process. The Region 5 Office of Civil Rights is responsible for addressing informal complaints made through the EEO process.

Noteworthy Achievements

During the audit, we learned that, starting March 2016, the Region 5 Human Resources Branch began tracking all sexual harassment fact-finding investigations in the agency's national tracking database—Labor and Employee Relations Information System (LERIS)—regardless of whether disciplinary action was involved. Agency policy only requires the tracking of cases involving disciplinary actions. The additional tracking in LERIS could enhance the region's ability to determine the pervasiveness of the sexual harassment issue and address it accordingly. The additional tracking also allows for information sharing with other regions, which could promote consistency in corrective actions agencywide.

Scope and Methodology

We conducted this audit from August 2016 to June 2017, in accordance with generally accepted government auditing standards issued by the Comptroller General of the United States. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

To determine whether Region 5's policies and practices adhere to established policies and meet federal requirement, we performed the following:

- Reviewed applicable federal laws, regulations and EEOC guidance.
- Reviewed agency and Region 5 policies and procedures pertaining to sexual harassment allegations.
- Interviewed officials in Region 5's Human Resources Branch and Office of Civil Rights to obtain an understanding of the general processes for addressing sexual harassment allegations.
- Reviewed case files provided by the agency for sexual harassment allegations processed through Region 5's Human Resources Branch and Office of Civil Rights from fiscal years 2012 through 2016.

- Interviewed agency officials involved in addressing the sexual harassment allegations processed from fiscal years 2012 through 2016 to obtain an understanding of their roles, responsibilities and processes used to investigate the allegations.
- Coordinated with the OIG's Office of Investigations to confirm the number of sexual harassment cases identified and complainants interviewed during the investigative process. To avoid duplication and potential interference with the investigative process, we did not interview the complainants regarding the process used to address their complaints.

Our audit was limited to only those processes conducted within Region 5's Human Resources Branch and Office of Civil Rights. The audit did not include the process for addressing formal EEO complaints conducted by the EPA headquarters' Office of Civil Rights.

Results of Audit

Region 5's policies and practices for handling sexual harassment allegations adhere to EPA policies and procedures and meet federal requirements in 29 CFR §§ 1604.11 and 1614, as well as EEOC guidance.

EPA sexual harassment complaints may be filed through the human resources process, EEO complaint process, or both. Region 5 identified 12 sexual harassment complaints processed between fiscal years 2012 through 2016—six by the Human Resources Branch and six by the Office of Civil Rights. Our review of the case files for the 12 complaints and interviews with the EPA officials involved in resolving these complaints confirmed that Region 5 addressed the complaints in accordance with agency policies and procedures.

Human Resources Complaint Process

Region 5's Human Resources Branch addressed sexual harassment complaints made through the human resources process in accordance with agency policies and procedures that meet federal requirements. Consistent with federal regulations in 29 CFR § 1604.11 and EEOC guidance, the EPA has explicit policies against sexual harassment and procedures that require sexual harassment allegations to be investigated promptly, and immediate and appropriate corrective actions to be taken to address the allegations and prevent the misconduct from recurring.

The EPA Administrator issued EEO and anti-harassment policy statements several times since 2011. These policy statements include:

- Reaffirm that sexual harassment is unlawful and will not be tolerated.

- Clarify that harassment may be misconduct subject to corrective or disciplinary action, even if it does not rise to the level of unlawful harassment.
- Require sexual harassment to be reported immediately to a first-line supervisor, a higher-level supervisor or manager in the affected person's chain of command, the OIG, or Labor Employee Relations staff.
- Require supervisors to investigate and take corrective actions promptly.

The Region 5 Regional Administrator and Deputy Regional Administrator also issued a number of memorandums between fiscal years 2014 and 2015 that reiterated the Administrator's statements that discrimination and harassment are not tolerated. The memorandums made it mandatory for all employees to report sexual harassment they witnessed or allegations they received.

The EPA's formal procedures for addressing sexual harassment allegations through the human resources process were first issued on November 20, 2015, under EPA Order 4711. Prior to EPA Order 4711, Region 5 followed its own step-by-step guide developed by the Human Resources Branch for use by supervisors and managers in responding to sexual harassment allegations.

Based on our review of the case files for the six complaints filed through the human resources process and our interviews with the officials involved in resolving these complaints, Region 5 adhered to the procedures in EPA Order 4711. Management, in consultation with Region 5's Human Resources Branch and Office of Regional Counsel, investigated the sexual harassment allegations promptly and thoroughly, and took immediate and appropriate corrective actions to address the complaints.

As discussed in the "Noteworthy Achievement" section above, Region 5 is tracking all sexual harassment fact-finding investigations in LERIS. However, it should be noted that "sexual harassment" cases do not have their own category within the system. Sexual harassment complaints are tracked under "Additional ER/LR¹ Activities" (i.e., miscellaneous or other category). As a result, sexual harassment cases cannot be easily sorted and identified. According to Region 5 officials, the universe of cases identified for our audit had to be manually extracted from a LERIS report of cases in the "Additional ER/LR Activities" category. The lack of a separate category for "sexual harassment" cases reduces the agency's ability to obtain data to effectively self-monitor (e.g., determine the extent of the sexual harassment issue and address accordingly). While LERIS programming and specifications are not within Region 5's control, it would be beneficial for the agency to enhance its system to allow easy identification of the sexual harassment cases.

¹ ER/LR stands for "Employee Relations/Labor Relations."

EEO Complaint Process

Region 5 addressed sexual harassment complaints made through the EEO process in accordance with EPA policies and procedures that meet federal requirements. The agency issued standard operating procedures on January 24, 2014, to make sure EEO complaints are addressed in accordance with the federal regulations in 29 CFR § 1614 and EEOC Management Directive 110. The procedures established timeframes and detailed procedures for the informal and formal complaint resolution process, as well as complaint tracking in the iComplaints database.

Based on our review of the case files and iComplaints event logs for the six cases processed through the Region 5 Office of Civil Rights, as well as interviews with EEO officials, Region 5 conducted the informal stage of the EEO sexual harassment complaint process in accordance with the federal regulations and agency policies and procedures explained above. As discussed in the Scope and Methodology section, we did not review the formal complaint process. Once an allegation becomes a formal complaint, the case is handed over to the EPA headquarters' Office of Civil Rights.

Conclusion

EPA policies and procedures for addressing sexual harassment allegations meet federal requirements, and Region 5 followed the agency policies and procedures. Our interview of agency officials and review of case files confirmed that Region 5 managers properly investigated and addressed sexual harassment allegations in accordance with agency policies and procedures. Therefore, no recommendations are being made.

EPA Response and OIG Comment

A discussion document presenting our audit results was issued to the agency on June 20, 2017. The agency response provided on July 5, 2017, suggested only minor edits. The OIG considered the agency's suggestions and modified the report accordingly.

Distribution

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