

U.S. DEPARTMENT OF COMMERCE
DOMESTIC VIOLENCE POLICY



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Approved by: 
Director for Human Resources Management and
Chief Human Capital Officer

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Background

On April 18, 2012, President Obama issued a memorandum on "Establishing Policies for Addressing Domestic Violence in the Federal Workforce." It is the responsibility of the Federal Government to promote the health and safety of its employees by acting to prevent the impact of domestic violence in the workplace, and by providing support and assistance to Federal employees whose working lives are affected by such violence. The Office of Personnel Management issued guidance to agencies on the content of agency-specific policies to address the effects of domestic violence in the workplace, in consultation with the Attorney General, the Secretary of Health and Human Services, the Secretary of Labor, and the Secretary of Homeland Security.

Since passing the Violence Against Women Act in 1994, incidents of domestic violence have dropped by more than 50 percent. However, domestic violence remains a significant problem facing women, families, and communities. Data indicates that one in three women in the United States will experience rape, physical violence, and/or stalking by an intimate partner at some time in their lives. Although women are the majority of victims, men can be victims as well. Domestic violence, sexual assault, and stalking often cause emotional and physical harm, and cross economic, educational, cultural, age, gender, racial, and religious lines. Victims of domestic violence, sexual assault, and stalking continue to be in danger after reporting the crime, during the investigation process, and throughout the prosecution of cases.

Coverage

This policy covers all Department of Commerce (DOC) employees who occupy competitive or excepted service positions regardless of the type of appointment or duration of appointment.

Policy

It is the policy of DOC to promote a healthy and safe work environment for all employees, recognizing that domestic violence is an issue that affects the workplace even if the incidents occur off the work site. Various workplace flexibilities are available to an employee when the employee and/or the employee's family member(s) are victims of domestic violence, sexual assault, or stalking.

Managers and supervisors shall work with employees impacted by a form of violence, to provide leave and other workplace flexibilities such as telework or an alternative work schedule (if applicable to the duties of the position), to help them remain safe while performing their duties. All of the available leave and other workplace flexibilities can be applied to current situations of domestic violence, sexual assault, or stalking, or to situations in which the trauma related to a past situation involving the above mentioned violence is causing a negative impact in the workplace. This policy does not create additional leave categories or workplace flexibilities for employees impacted by acts of violence. However, it solidifies the commitment of DOC to promote a healthy and safe work environment and promotes the use of already established leave and workplace flexibilities to assist employees when they or family members are impacted by domestic violence, sexual assault, or stalking.

In addition to the information contained in this policy, managers/supervisors and employees may find more information in the Office of Personnel Management's "Responding to Domestic Violence: Where Federal Employees Can Find Help" at:
<http://www.opm.gov/policy-data-oversight/worklife/reference-materials/responding-to-domestic-violence-where-federal-employees-can-find-help/>

Proof of Domestic Violence, Sexual Assault or Stalking:

Managers and supervisors are not required to ask for verification or proof of domestic violence, sexual assault, or stalking in order to approve workplace flexibilities, and may accept the employee's statement as verification. However, if provided, verification or proof may include, but not be limited to, a service provider's statement, a protection order, medical records or a doctor's statement, or police or court reports.

Employees are not required to provide personal details in their requests for leave, or for other flexibilities such as telework. However, employees are required to provide enough information in their leave requests so their manager or supervisor knows which type of leave is appropriate (e.g., sick leave, annual leave, Family Medical Leave Act, etc.), as well as to determine an appropriate telework agreement (telework site and schedule), and/or an appropriate alternative work schedule.

Under no circumstances can a manager or supervisor require the employee to contact law enforcement or otherwise report the violence as a condition for accessing leave. To do so could place victims in greater danger.

Definitions

Domestic Violence – A pattern of coercive behavior, including acts or threatened acts, that is used by a perpetrator to gain power and control over a current or former spouse, family member, current or former intimate partner, current or former dating partner, or person with whom the perpetrator shares a child in common. This behavior includes, but is not limited to, physical or sexual violence, emotional and/or psychological intimidation, verbal abuse, stalking, economic control, harassment, threats, physical intimidation, or injury. It can occur in heterosexual and same-sex intimate relationships, including marital, cohabiting, or dating relationships that are not dependent on the existence of a sexual relationship.

Perpetrator – An individual who commits or threatens to commit an act of domestic violence, sexual assault, and/or stalking.

Protection or Restraining Order – A stay away order or peace order from a court to protect a victim from a perpetrator.

Sexual Assault – A range of behaviors, including but not limited to, a completed nonconsensual sex act (e.g., rape, sodomy, child molestation), an attempted nonconsensual sex act, and/or abusive sexual contact. Sexual assault includes any sexual act or behavior that is perpetrated when someone does not or cannot consent. A victim of sexual assault may know the perpetrator, such as a co-worker or a supervisor, and/or may be involved in a dating or marital relationship

with the perpetrator, or the perpetrator may be unknown to the victim. Lack of consent should be inferred when a perpetrator uses force, harassment, threat of force, threat of adverse personnel or disciplinary action, or other coercion, or when the victim is asleep, incapacitated, unconscious, or physically or legally incapable of consent.

Stalking – Refers to harassing, unwanted, or threatening conduct that causes the victim to fear for his or her safety or the safety of a family member. Stalking conduct may include, but is not limited to, following, spying on, or waiting for the victim in places such as home, school, work, or recreation place; leaving unwanted items, presents, or flowers for the victim; making direct or indirect threats to harm the victim, the victim's children, relatives, friends, pets, or property; posting information or spreading rumors about the victim by accessing public record, using internet search services, hiring private investigators, going through the victim's garbage, following the victim, or contacting victim's friends, family, work, or neighbors. Stalking may occur through the use of technology, including but not limited to, e-mail, telephone, voicemail, text messages, and use of GPS (Global Positioning System) and social networking sites.

Victim – A victim is an individual who is currently subject to, or has in the past been subjected to, domestic violence, sexual assault, and/or stalking.

Workplace-related Incidents – Incidents of domestic violence, sexual assault, and stalking by or against employees and/or against employees' families or property that occur in the workplace or that occur outside the workplace but have an impact on the workplace.

Workplace Flexibilities

Leave

Victims of domestic violence, sexual assault, or stalking may need time off to secure medical assistance, legal assistance, counseling, or to attend to other matters related to the violence, such as court proceedings, relocation, or safety planning. There are various types of leave categories available to an employee when he or she is a victim of domestic violence, sexual assault, or stalking. Managers and supervisors shall work with an impacted employee to provide flexibilities in order to afford the employee a safe work environment. When foreseeable, an employee must provide advance notice to the employer unless it is not feasible.

More information regarding DOC leave policies can be found through the Office of Human Resources Management (OHRM) website: <http://hr.commerce.gov/index.htm>

The following leave options are available, and should be considered for an employee who is a victim of domestic violence, sexual assault, or stalking.

Annual Leave

This type of leave may be used for time off for court proceedings, attorney meetings, or support group meetings. Annual leave can also be used in lieu of sick leave for illnesses or injuries as a result of domestic violence, sexual assault, or stalking. An employee has a right to take annual leave, subject to supervisory approval.

Sick Leave

An employee may use sick leave consistent with current law and regulations (as well as with departmental policies) for granting and using sick leave. Sick leave may be used for injuries resulting from domestic violence, sexual assault, or stalking, to meet with medical providers, for counseling by a health care provider¹, to care for a family member² with injuries or a "serious health condition"³ resulting from domestic violence, sexual assault, or stalking, or to accompany a family member when he or she meets with medical providers for injuries or illnesses resulting from domestic violence, sexual assault, or stalking.

Advanced Annual Leave

Upon request of the employee, managers/supervisors may advance annual leave to an employee in an amount not to exceed the amount the employee would accrue in the remainder of the leave year for the above mentioned purposes if the employee has exhausted his or her accrued annual leave.

Advanced Sick Leave

Upon request of the employee, managers/supervisors are encouraged to approve advanced sick leave for any of the above referenced purposes if the employee has exhausted his or her available sick leave. Managers/supervisors may advance up to 13 days of sick leave for the employee's own, or a family member's medical, dental, or optical examinations or treatment, or to care for a family member who is incapacitated by a medical or mental condition. Managers/supervisors may advance up to 30 days of sick leave if the employee is incapacitated or has a family member whose injuries rise to the level of "serious health condition."⁴

Leave without Pay

If other forms of paid leave are unavailable, supervisors may grant leave without pay (LWOP) to employees who are victims of domestic violence, sexual assault, or stalking. Employees may be eligible for up to 12 weeks of leave without pay under the Family and Medical Leave Act (described below).

Note: Managers, supervisors, and impacted employees need to consult with their servicing human resources office (SHRO) in order to understand the impact of LWOP on benefits, retirement service computation date, leave accrual, etc.

Excused Absence (Administrative Leave)

Managers and supervisors have the discretion to excuse employees from their duties without loss of pay or charge to leave. Excused absence may be granted when it is determined that the employee's perpetrator poses a threat to the employee and his or her co-workers in the

¹ For the definition of "health care provider" for sick leave and FMLA purposes, please see Title 5, Code of Federal Regulations (CFR) §§ 630.201 and 630.1202.

² For the definition of "family member" for sick leave purposes, please see Title 5, CFR § 630.201(b) and the Office of Personnel Management's fact sheet, "Definitions Related to Family Member and Immediate Relative."

³ For the definition of "serious health condition" for sick leave and FMLA purposes, please see Title 5, CFR §§ 6301.201 and 630.1212.

⁴ For the definition of "serious health condition" for sick leave and FMLA purposes, please see Title 5, CFR §§ 630.201 and 630.1202.

workplace, when it is in the best interests of the bureau/operating unit, and when the bureau/operating unit determines that it is not prohibited by law. When deciding to grant administrative leave, managers and supervisors should consider the safety of all employees in the workplace.

Family and Medical Leave Act

Under the Family and Medical Leave Act (FMLA), an employee is entitled to up to 12 weeks of unpaid leave if domestic violence, sexual assault, or stalking results in a serious health condition for the employee that makes the employee unable to perform the essential functions of his or her position. FMLA can also be used to care for a spouse, son, or daughter (under 18, or over 18 but incapable of self-care because of a mental or physical disability), or a parent of the employee who has a serious health condition resulting from domestic violence, sexual assault, or stalking. Annual leave, sick leave, and annual leave donated under the Voluntary Leave Transfer Program may be substituted for unpaid leave under FMLA.

Voluntary Leave Transfer Program

An employee may be eligible for donated annual leave through DOC's voluntary leave transfer program if the domestic violence, sexual assault, or stalking results in a medical emergency for either the employee or the employee's family member⁵ that is likely to require the employee to be absent from duty for a prolonged period and to result in a substantial loss of income because of the employee's lack of available paid leave.

Telework

An employee may work from an alternative site, upon managerial/supervisory approval, if the employee is experiencing problems associated with domestic violence, sexual assault, or stalking. Telework is an option for employees who are telework-ready⁶. Telework agreements must be in compliance with DOC current Telework Policy as well as their bureau/operating unit specific Telework Policy.

More information on the DOC's Telework Policy may be found at:
http://hr.commerce.gov/Employees/WorkLifeIssues/DEV01_006085

Flexible Work Schedules

An employee may adjust his or her work schedule, upon managerial/supervisory approval, to accommodate events driven by domestic violence, sexual assault, or stalking. Managers/supervisors should permit an employee to adjust his or her schedule consistent with DOC and bureau/operating unit alternative work schedule policy.

More information on the DOC's alternative work schedules may be found at:
<http://hr.commerce.gov/Employees/WorkLifeIssues/index.htm>

⁵ For the definition of "family member" for VLTP purposes, please see Title 5, CFR §§ 630.902 and 630.1212 and OPM's fact sheet, "Definitions Related to Family Member and Immediate Relative."

⁶ A telework-ready employee is an employee who has been deemed eligible to telework by their bureau/operating unit, and who has a valid official telework agreement with his or her manager/supervisor.

Note: Requests and approvals for any of the workplace flexibilities listed above must be in accordance with Department, Bureau, and specific office policies, as well as any applicable collective bargaining agreements.

Confidentiality

DOC shall respect the employee's right to privacy and need for confidentiality. When information provided by a victim must be disclosed to protect the safety of the disclosing employee and/or others in the workplace, only necessary information is allowed to be disclosed. The recipient of the information will attempt to provide advance notice to the disclosing employee that the information will be disclosed, to whom it will be disclosed, and the reasons for disclosure.

Disciplinary Actions

If it is determined that an employee has engaged in acts of domestic violence, sexual assault, or stalking, appropriate disciplinary action proportionate to the offense, up to and including termination, to the extent there is a nexus between the conduct and the "efficiency of the service," will be taken. Managers and supervisors must contact their servicing human resources office (SHRO), Employee Relations Specialist, prior to taking any action to ensure the action is appropriate and consistent with DOC policies and procedures, and if applicable, collective bargaining agreements. Due process for disciplinary and termination actions must be followed.

When taking adverse action against an employee, the agency official must be able to show that there is a clear and direct relationship between the grounds for the adverse action and the employee's ability to perform his or her duties or some other legitimate governmental interest promoting the "efficiency of the service."

A nexus links an employee's off-duty misconduct with the efficiency of the service, among other things, through 1) a rebuttable presumption of nexus that arises in certain egregious circumstances based on the nature and gravity of the misconduct; 2) a showing that the misconduct affects the employee's or his or her co-workers' job performance, or that the nature and seriousness of the offense impacts management's trust and confidence in the employee's future job performance; or 3) a showing that the misconduct interfered with or adversely affected the bureaus/operating units' mission.

If disciplinary action is taken against the employee who is the victim of domestic violence, sexual assault, or stalking for an action resulting from his or her being victimized, the impact of the domestic violence, sexual assault, and stalking should be taken into consideration as a mitigating factor once the manager/supervisor has become aware. A referral for appropriate assistance should be offered to the employee, and be allowed a reasonable amount of time to obtain assistance regarding the domestic violence.

If the victim and perpetrator are Federal employees working at the same location, appropriate action shall be taken to ensure separation while at work. This may include changing work hours, changing work locations, and a written directive to avoid contact. The directive will be written

and provided by the SHRO Employee Relations Specialist and will instruct the victim and perpetrator of their obligation to avoid contact while performing work duties.

Department Administrative Order (DAO) 202-751, "Discipline," describes various types of disciplinary actions that can be taken, along with the Table of Offenses and Penalties, and can be found at: http://www.osec.doc.gov/opog/dmp/daos/dao202_751.html.

Training, Awareness, and Employee Assistance Programs

The DOC will ensure that all supervisors, managers, and employees receive appropriate training regarding domestic violence, sexual assault, and stalking in accordance with OPM standards. The training will ensure that all employees are aware of the resources available in the event that they are or become a victim of domestic violence or become aware of an employee that is a victim of domestic violence. In addition, the training will teach managers and supervisors the appropriate manner in which to handle reports from an employee who is a victim or has a family member who is a victim of domestic violence, sexual assault, or stalking.

Employees who are affected by domestic violence, sexual assault, or stalking may need a range of services including child care, health care, legal aid, shelters, counseling, and support groups. The various Employee Assistance Program (EAP) offices within the DOC will be a key component of awareness as they can assist supervisors and employees with options and referrals of groups and resources outside the agency.

The SHROs will be responsible for including training on the DOC Domestic Violence Policy during their supervisory training sessions, as well as during an employee orientation. During the first year of this policy being effective, the SHROs will provide training sessions for all of their serviced clients in order to train employees that will not be attending supervisory training or orientation.

The Office of Human Resources Management (OHRM) will be responsible for establishing and maintaining a Domestic Violence webpage on the OHRM website that provides the DOC's Domestic Violence Policy, as well as human resources, security personnel, and EAP points of contact (POCs) by bureau.

OHRM will be responsible for sending out periodic DOC-wide e-mails that provide information pertaining to DOC policy on domestic violence, sexual assault, and stalking as well as resources available to both victims and managers/supervisors.

Security

The appropriate servicing security office should be consulted immediately in the event that an employee is threatened. Depending on the circumstances, appropriate security measures will be taken, which may include providing guards with the abuser's name and photograph and/or escorting the victim to his or her car. If needed, the servicing security office will develop a security plan that is based on the need(s) of the employee. Only individuals who have an official

and immediate need to know the matter with the employee's consent will be involved in any security action.

In cases where the victim of domestic violence has provided an order of protection, the employee should be encouraged to keep a copy of that order with him or her at all times, and should be encouraged to provide a copy of that order to the appropriate servicing security office in order to provide adequate protection for the victim and other DOC employees. The servicing security office will keep the order in a confidential file. If the employee also provides a copy of that order to managers or supervisors, those managers or supervisors must also maintain a copy of an order of protection, it must be kept in a confidential file separate from the employees' personnel file. If applicable, servicing security offices should assist the employee in gathering documentation from the workplace such as e-mail, and voice mail messages that could assist the employee's efforts to obtain or maintain safety from a perpetrator.

Reporting Domestic Violence

Federal Employees

When there is a workplace impact or accommodation needed, employees who are victims of domestic violence, sexual assault, or stalking are encouraged to report the abuse to their supervisors, other management officials, their SHRO Employee Relations Specialist, their security office, and/or their EAP when they feel it is safe for them to do so. In addition, employees who have concerns about co-workers who are victims are also encouraged to report concerns to one of the above mentioned individuals or offices, **only if they have the full consent of the victim**. Reporting without full consent of the victim is only appropriate in incidence of imminent and severe harm to employees or DOC property and/or as required by law.

Upon receiving a report of domestic violence, sexual assault, and stalking, the receiving supervisor, management official, Employee Relations Specialist, security personnel, or EAP counselor, shall use the attached "Domestic Violence, Sexual Assault, and Stalking: Threat Assessment" (Appendix A) to gather pertinent information and provide to the appropriate SHRO, Employee Relations Specialist, and the appropriate servicing security office.

All records that pertain to domestic violence, sexual assault, and stalking incidents must be kept in a properly secured, confidential file within the servicing security office and only shared on a strict "need to know" basis, with appropriate personnel, such as those in security and management roles.

Contractor Employees

Contractor employees are not Federal employees; therefore, concerns regarding the conduct of contractors should promptly be brought to the attention of the relevant contracting officer or contracting officer's technical representative and/or appropriate security personnel. If a contractor is a victim of domestic violence, sexual assault, or stalking, the manager or supervisor who this information is reported to should make the appropriate security personnel aware.

Monitoring and Accountability

Upon issuance of this policy, each SHRO will designate a POC that will be responsible for providing OHRM's Domestic Violence Program Manager with data call responses.

The SHROs, servicing security offices, and EAP offices will maintain records relevant to domestic violence, sexual assault, and stalking in order to respond to data calls from OHRM. The SHROs will be responsible for obtaining information from the servicing security offices and EAP offices and providing a consolidated response to data calls.

The information will be used by OHRM to monitor and evaluate its current progress on handling these issues. This will allow the DOC the ability to adjust, change, or add new procedures as appropriate to ensure success of this plan. More specifically, OHRM, in collaboration with the SHROs, will monitor the program to ensure that employees are aware of available resources, and are satisfied with available resources. The frequency of the resources being used will also be tracked.

Monitoring and accountability will be conducted through various methods such as department-wide surveys, and record keeping. Surveys will be developed by OHRM, in collaboration with the SHROs and servicing security offices. In addition, the Annual Review Checklist (Appendix B) will be used to monitor the effectiveness of responses to domestic violence, sexual assault, and stalking.

Fiscal Year Annual Reporting Summary

OHRM will issue the Fiscal Year Annual Reporting Summary by the end of the first quarter of the following fiscal year. The report will be provided to DOC stakeholders such as the Chief Financial Officer and Assistant Secretary for Administration, Director for Human Resources Management and Chief Human Capital Officer, Deputy Director for Human Resources Management and Deputy Chief Human Capital Officer, Principal Human Resources Managers, Director for the Office of Security, and other DOC leadership.

The report will contain the following information:

- Goals for the specified period of time (short- and long-term goals)
- Progress toward meeting specified goals
- Identification of measures for evaluating program effectiveness
- Identification of goals for the following fiscal year

Identifying information of victims shall not be exposed in the annual reports.

APPENDIX A

DOMESTIC VIOLENCE, SEXUAL ASSAULT, AND STALKING: THREAT ASSESSMENT

This checklist is to be used when an employee self-discloses domestic violence, and should be completed by the individual to whom the employee has made the self-disclosure. **If it appears that the employee or other employees within the workplace may be in immediate danger, call the following in the order presented:**

- local servicing security office;
- the Federal Protective Service (FPS); then
- 911.

Step 1: Explain to the employee that only certain information will be shared with human resources, security, and other key people within the Department of Commerce to ensure his or her safety.

Step 2: Ask the employee the following questions. If the employee does not want to respond to the questions, or particular questions, annotate the form accordingly. **Do not coerce the employee into responding or make it a condition of reporting the violence.** Written responses can be provided as an attachment to this checklist.

- 1) What is the situation? Please explain any details that you are comfortable sharing.
- 2) Has your significant other made any threats?
- 3) What type of abuse have you been exposed to?
- 4) Have there been any harassing phone calls?
- 5) Have there been any harassing phone mail messages?
 - If so, have they been deleted?
- 6) Are your co-workers aware of the situation?
 - If so, who are they and what information has been given to them?
- 7) Does your significant other know where you work? Has he/she visited the facility in the past?
- 8) Does your significant other have a history of violence?
 - If so, please explain each situation.
- 9) Do you think you or others are in danger here?
- 10) Does your significant other possess any firearms or weapons?

- a) If so, are they registered?
 - b) Please describe the type (handgun, shotgun, assault rifle, etc.)
- 11) What is the status of your relationship?
 - 12) Have you contacted the Employee Assistance Program or a domestic violence program in the community?
 - 13) Has a report been filed with the police?
 - If so, please provide a copy of the report.
 - 14) Has an order of protection been issued?
 - a) If so, can you provide us with a copy?
 - b) If not, will one be filed?
 - 15) Can you provide us with a description and current picture of the abuser?
 - 16) What is your need for safety NOW?
 - 17) Do you feel safe at work?
 - Has your significant other/spouse/partner (use the term the victim uses) made any threats, specifically to try to hurt you at work?
 - 18) Do you need to discuss a possible safety plan with the security office?

Step 3: Fill out the following information.

Do you need to discuss possible workplace flexibilities that may assist you? Name of the individual reporting the violence: _____

Bureau/Office of the individual: _____

Name of the individual receiving the report: _____

Bureau/Office of the receiving individual: _____

Relationship to the victim (supervisor, Employee Relations Specialist, security personnel, EAP counselor): _____

Step 4: Provide this assessment to the appropriate Servicing Human Resources Office, Employee Relations Specialist, and the appropriate security office.

APPENDIX B

ANNUAL REVIEW CHECKLIST

The following checklist is to be used to monitor and evaluate the effectiveness of the Department of Commerce's Domestic Violence Policy. This information will be used to plan changes that will increase awareness of helpful responses to domestic violence, sexual assault, and stalking.

Servicing Human Resources Office:

Bureau:

- 1) The number of employees and managers who received training or educational information on domestic violence, sexual assault, and stalking (including sexual harassment).
- 2) The number of employees requesting information, referrals, or time off for needs relating to domestic violence, sexual assault, and stalking.
- 3) The number of orders of protection or restraining orders (in aggregate form) given to management by employees or taken out by the employer in consultation with employee.
- 4) The number and/or percentage of employees requesting help for domestic violence, sexual assault, and stalking through employee assistance services.
- 5) The number of records of threat assessment and violence prevention actions related to domestic violence, sexual assault, and stalking, specifically plans made to respond to domestic violence, sexual assault, and stalking threats and/or prevent incidents of sexual harassment and violence.
- 6) The number of incident reports of any violent events that involved employees or others at work.
- 7) Changes to policies or procedures that were implemented during the last year.