



U.S. Customs and  
Border Protection

FEB 17 2012

TO: Kristy L. Montes  
Director, Field Operations-West  
Office of Diversity and Civil Rights

FROM: Michael J. Wenzler *for Jill Ite*  
Director, Labor-Management Relations  
Office of Human Resources Management

SUBJECT: Agency Head Review  
Memorandum of Understanding – Anti-Discriminatory Harassment Directive

The attached Memorandum of Understanding (MOU) signed February 2, 2012, memorializes an agreement between the U.S. Customs and Border Protection (CBP) and the National Treasury Employees Union (NTEU) concerning the Anti-Discriminatory Harassment Directive. The negotiated terms have been reviewed in accordance with 5 U.S.C. §7114(c) and under Department of Homeland Security, Customs and Border Protection Delegation Order 10-001 dated February 23, 2010.

The MOU does not violate existing law, rule or regulation, and is hereby approved. This approval does not constitute a waiver of, or exception to, any existing law, rule, regulation, or policy.

If you have any questions or need additional assistance, you may contact Don Stakes, Chief Labor Negotiator, by telephone at (202) 863-6335, or by electronic mail at [Donald.Stakes@dhs.gov](mailto:Donald.Stakes@dhs.gov).

CC: Colleen M. Kelley, National President, NTEU  
Jonathan Levine, Assistant Counsel for Negotiations, NTEU  
Franklin C. Jones, Director, Office of Diversity and Civil Rights  
Deborah Eres, Deputy Director, Labor-Employee Relations Field Services

Attachment

**MEMORANDUM OF UNDERSTANDING  
BETWEEN  
U.S. CUSTOMS AND BORDER PROTECTION (CBP)  
AND  
NATIONAL TREASURY EMPLOYEES UNION (NTEU)**

**I. Introduction**

This Memorandum of Understanding (MOU) is entered into by, and between the United States Customs and Border Protection, (hereinafter referred to as "Agency") and the National Treasury Employees Union (hereinafter referred to as "Union").

**II. Background**

On January 20, 2011, the Agency sent the Union a Meet-to-Brief Letter, expressing its desire to brief the Union on potential updates to the Reporting, Addressing, and Investigating Allegations of Discriminatory Harassment Directive. The parties held a teleconference briefing and the Union provided feedback. Notice was served on the Union on March 31, 2011, of the Office of Diversity and Civil Rights' intent to update the Directive. On April 21, 2011, the Union first sent proposals. The parties exchanged proposals back-and-forth and came to an agreement, which is memorialized herein.

**III. Terms or Provisions of Agreement:**

1. This MOU reflects the parties' agreement on all matters related to the update to the Reporting, Addressing, and Investigating Allegations of Discriminatory Harassment Directive (Anti-Discriminatory Harassment Directive).
2. The negotiated Anti-Discriminatory Harassment Directive is attached.

**IV. Effective Date and Termination**

This MOU will be submitted for Agency head review immediately after the final signature of the chief negotiators. This MOU will become effective thirty-one (31) days after the date it is signed by the last chief negotiator or after Agency head review, whichever occurs first. Either party may request to reopen this MOU for revision or modification in accordance with Article 26 (Bargaining) of the CBP & NTEU National Collective Bargaining Agreement.

**V. Signatures**

*[Signature]* 2/2/12  
For the Agency                      Date  
*[Signature]* 2/14/12  
For the Agency                      Date

*[Signature]* 2/1/12  
For the Union                      Date

## **U.S. CUSTOMS AND BORDER PROTECTION DIRECTIVE**

**CBP DIRECTIVE NO.**

**DATE: \*\*\*\*\*, 2012**

**ORIGINATING OFFICE: OC: DCR**

**SUPERSEDES: N/A**

**REVIEW DATE:**

**SUBJECT: ANTI-DISCRIMINATORY HARASSMENT DIRECTIVE**

### **1 PURPOSE**

This directive establishes the procedures for reporting allegations of discriminatory harassment against U.S. Customs and Border Protection (CBP) employees.

### **2 SCOPE**

This directive applies to all CBP employees.

### **3 ANTI-HARASSMENT POLICY**

It is the policy of U.S. Customs and Border Protection (CBP) to maintain a workplace free from discriminatory harassment based on race, color, religion, sex, national origin, age, disability, parental status, genetic information, sexual orientation, and retaliation for participation in EEO activity or opposition to discrimination. Prohibited discriminatory harassment includes, but is not limited to, unwelcome verbal, nonverbal or physical conduct, such as epithets, offensive jokes, slurs, physical violence, or threats of violence. Sexual harassment is a form of prohibited discriminatory harassment. Examples of sex-based harassment may include offensive verbal teasing, unwanted sexual advances or propositions, graphic or demeaning comments about an individual's appearance or sexual activity, leering, sexual gestures, and displaying offensively suggestive or obscene objects, pictures, cartoons, or posters.

### **4 AUTHORITIES**

Title VII of the Civil Rights Act of 1964, as amended; Age Discrimination in Employment Act of 1967, as amended; Rehabilitation Act of 1973, as amended; Americans with Disabilities Act of 1990, as amended; Civil Rights Act of 1991.

### **5 DEFINITION**

**Discriminatory Harassment:** Discriminatory harassment on the basis of race, color, religion, sex, sexual orientation, national origin, age, disability, parental status, genetic information, or any other basis protected by law, is behavior that has the purpose or effect of unreasonably interfering with an individual's work performance or that creates an intimidating, offensive, or hostile work environment.

### **6 REPORTING DISCRIMINATORY HARASSMENT ALLEGATIONS**

- 6.1** A CBP employee who believes that he or she is being subjected to discriminatory harassment, or that another CBP employee is being subjected to discriminatory harassment, must inform the Office of Internal Affairs through one of the following methods:
- 6.1.1** Calling the toll-free Joint Intake Center (JIC) Hotline at 1-877-2INTAKE (1-877-256-8253), sending a fax to (202) 344-3390, or sending an email message to [Joint.Intake@dhs.gov](mailto:Joint.Intake@dhs.gov).
  - 6.1.2** Sending an email message to the servicing IA Field Office. A list of IA Field Offices may be accessed at the following Web site address:  
[http://cbpnet.cbp.dhs.gov/xp/cbpnet/ia/rm/ia\\_contacts.xml](http://cbpnet.cbp.dhs.gov/xp/cbpnet/ia/rm/ia_contacts.xml).
  - 6.1.3** Informing his or her first or second line supervisor, or another management official in his or her chain of command.
  - 6.1.4** Contacting the local Diversity and Civil Rights Officer.
  - 6.1.5** Contacting the Department of Homeland Security (DHS) Office of Inspector General (OIG) by calling 1-800-323-8603, by sending an e-mail message to [DHSOIGHOTLINE@dhs.gov](mailto:DHSOIGHOTLINE@dhs.gov); or writing to the Department of Homeland Security, Washington, DC 20528, Attn: Office of Inspector General, Hotline.
- 6.2** Employees in the bargaining unit who perceive they are being subjected to discriminatory harassment may also contact their local union representative. Union representatives provide advice and consultant in a manner that respects the privacy of the employee and are not required to disclose information except in those circumstances mandated by law or CBP policy, to the extent necessary to report a crime or which directly threatens loss of life or serious bodily injury.

## **7 RESPONSIBILITIES**

- 7.1 The Office of Internal Affairs (IA)** is responsible for receiving, documenting and ensuring appropriate processing of all discriminatory harassment allegations, to include allegations of sexual harassment when warranted by the available facts.
- 7.2 All employees shall** promptly report any act of suspected discriminatory harassment to their immediate supervisor or any other appropriate entity listed in Section 6 above; and fully cooperate during any inquiry or investigation to address allegations of discriminatory harassment.
- 7.3 Managers and supervisor** shall take prompt and appropriate action when allegations of discriminatory harassment are reported to them by any source.

## **8 EEO COMPLAINT/UNION NEGOTIATED GRIEVANCE PROCEDURES**

Reports made pursuant to this policy do NOT replace, substitute, or otherwise satisfy the separate regulatory requirement to seek informal EEO counseling within 45 calendar days of the alleged discriminatory harassment, if an individual wishes to pursue a claim of discrimination under the applicable federal regulations. Refer to Section 11 below for additional information on the EEO complaint process. As an alternative, a grievance under a union-management

negotiated grievance procedure may also be filed in the event employees believe they are being harassed or discriminated against.<sup>1</sup>

## **9 REMEDIAL MEASURES**

Where allegations are substantiated, appropriate action, including disciplinary action up to and including removal from Federal service, may be taken.

## **10 RETALIATION PROHIBITION**

Retaliatory action against anyone for raising an allegation of discrimination or filing a complaint, helping another employee make an allegation or complaint, participating in an inquiry into potential violations of this directive, or opposing unlawful discrimination or harassment, is strictly prohibited and may result in discipline pursuant to CBP's Standards of Conduct, CBP Directive No. 51735-013, and Table of Offenses and Penalties.

## **11 EQUAL EMPLOYMENT OPPORTUNITY (EEO) COMPLAINT PROCESS**

Any employee, applicant for employment, or former employee who believes he or she has been discriminated against because of race, color, religion, sex, sexual orientation, national origin, age, physical or mental disability, status as a parent, genetic information, or retaliation for prior EEO involvement, and wishes to file an EEO complaint, must seek informal EEO counseling within 45 calendar days of the alleged discriminatory act by contacting the Office of Diversity and Civil Rights (DCR) EEO Complaint Intake Hotline at **1-877-MY-EEO-HELP** (1-877 -693-3643) or the “*CBP EEO Complaint Filing*” mailbox accessed internally through Microsoft Outlook or externally at [cbpeeocomplaintfiling@dhs.gov](mailto:cbpeeocomplaintfiling@dhs.gov). The allegation will be assigned to a DCR staff member to facilitate the informal EEO counseling.

## **12 OFFICE OF SPECIAL COUNSEL**

Complaints of discriminatory harassment on some grounds can be made directly to the Office of Special Counsel, including those based on marital status, political affiliation, or sexual orientation. Instructions for filing a complaint with the Office of Special Counsel can be found at the following web-address: [www.osc.gov](http://www.osc.gov).

## **13 NO PRIVATE RIGHTS CREATED**

This document is an internal policy statement of the U.S. Customs and Border Protection and does not create or confer any private rights, privileges, or benefits for any person or party.

Acting Commissioner  
U.S. Customs and Border Protection

---

<sup>1</sup> The NTEU Contract Article 47, Section 6 provides an alternative method to challenge alleged illegal EEO discrimination.