



Memorandum of Understanding

Between
US Forest Service
and

the National Federation of Federal Employees, Forest Service Council



This Memorandum of Understanding (MOU), made by and between the National Federation of Federal Employees (NFFE), Forest Service Council (Union) and the US Forest Service (Management) collectively "the Parties," pertains to the implementation of the revised Forest Service Manual (FSM) 1700, Chapter 1760, Section 1765 Anti-Harassment Policy (Policy) and constitutes a full and final agreement of any and all alleged issues raised in regards to the policy language and implementation.

Management and the Union have agreed to the following in regards to implementation of the FSM 1700, Section 1765 Policy:

1. The attached FSM 1700, Section 1765 document, with revisions agreed to on August 12, 2016, is the final agreed to Anti-Harassment Policy to be implemented immediately. (This MOU covers only pages 38 through 48 of the attached document.) The language was reviewed by the Union and Management together and any and all policy language issues raised by the Union have been discussed and resolved. This agreement constitutes the outcome of our negotiations and the Union waives their right to further notification of the implementation and formal negotiations regarding Section 1765.
2. No changes to Chapters 1760 through 1764 have been discussed pre-decisionally or negotiated. The Union reserves all rights of pre-decisional consultation and formal negotiation with regards to those sections.
3. Following submission and review by the Directive Staff (OHRM), the Union will be allowed the opportunity to review the Policy prior to issuance. Should the Union deem any changes made in accordance with the OHRM review to be substantial, the NFFE FS Council reserves the right to negotiate the changes made as a result of this review. The Union agrees to an expedited review process and will respond and engage within seven (7) days.

This MOU becomes effective on the date of final approval by the Agency Head or that date on which the thirty (30) day time limit for agency head review expires, whichever is earlier. Either Party may request, consistent with Article 11 of the Master Agreement, Mid-Term Negotiations, to re-open or re-negotiate the agreement. A copy of this MOU and the negotiated FSM 1700 Section 1765 document will be posted to the FS intranet.

Agreed to on 8/16 by:



for
J. Lenise Lago
Deputy Chief
Business Operations


James C. Berry
President
NFFE Forest Service Council

James C. Fox

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1765 – ANTI-HARASSMENT

1765.01 - Authority

Harassment is prohibited by Title 5 United States Code (U.S.C.), Section 2302, Title VII of the Civil Rights Act of 1964, the Age Discrimination Employment Act of 1967, (ADEA), the Rehabilitation Act of 1973, 29. CFR 1604, 1614, 7 CFR Part 15, Equal Employment Opportunity Commission (EEOC) Management Directive 110 and 715.

1765.02 - Objectives

1. To make Forest Service programs, activities, and the work environment free of harassment (1765.04).
2. To provide training for employees, periodic notification to employees, and appropriate notification in programs and activities concerning the prohibitions against harassment and the steps to take if harassment is experienced or observed.
3. To take actions to prevent harassment from occurring and to take appropriate corrective actions to include disciplinary actions against those responsible when harassment does occur.

1765.03 - Policy

The Forest Service is committed to creating and maintaining a work environment in which all people are treated with dignity, fairness, and respect, and are free from harassment. This includes both Equal Employment Opportunity (EEO) related and non-EEO related harassment. This policy applies to all Forest Service employees in their working relationship with Federal employees, non-Federal employees, and the public. The policy also applies to persons employed under contract or other formal agreements with the Forest Service.

The Forest Service workplace will be characterized by mutual trust and the absence of intimidation, oppression, and exploitation. The Agency will not tolerate:

1. Sexual harassment which is a particularly egregious form of harassment and a form of sex discrimination prohibited by law and regulation. Sexual harassment is not condoned in Forest Service programs, activities, in the work environment, or in situations that impact the work environment (1765.05).
2. Any use of derogatory words, phrases, epithets, gestures, pictures, drawings, or cartoons that:
 - a. deal with or target race, color, religion, age (40 years or older), disability (physical or mental), national origin, sex (gender), sexual orientation, genetic information, marital, and/or parental status regardless of the means of delivery (that is, verbal or electronic communication); or
 - b. intimidates, abuses, offends, or creates a hostile work environment.

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3. The use of Government issued and/or provided electronic devices (computers, cellular telephones, tablets, internet, email and/or other equipment) to harass, demean, or degrade another. This prohibition includes the viewing, downloading, storage, or distribution of pornographic or sexually explicit material on such devices whether in the workplace or not, whether on duty or off duty, and whether or not another employee witnesses it.

4. Viewing or displaying pornographic or sexually explicit materials that may be viewed by other employees during the course of employment regardless of the means or methods (such as, but not limited to, print, hard copy, audio or electronic).

5. Retaliation against any employee for reporting matters under this policy, or for assisting in an inquiry related to such a report.

Reports of harassment must be handled in a confidential manner, to the extent allowed by law (1765.07). Only individuals who need to know in order to determine if harassment occurred and to develop recommendations and implement corrective measures shall be made aware of harassment reports. As appropriate, measures will be taken to ensure that retaliation will not occur before and during the inquiry or investigation.

Appropriate steps must be taken to investigate any known incidents or reports of harassment and to remedy situations (1765.08). This includes implementing appropriate corrective and disciplinary action when a record of inquiry supports a finding that harassment has occurred, or when an employee, Manager, or Supervisor fails to follow the procedures in this policy.

Employees who believe they have experienced harassment are encouraged to voice their objections concerning this behavior to the offending person and to report such incidents to a management official or report the harassment through one of the harassment hotlines (1765.05).

1765.04 - Responsibility

1765.04a - Chief

It is the responsibility of the Forest Service Chief to:

1. Establish the Forest Service Anti-Harassment Policy;
2. Provide overall direction for Agency-wide program implementation.

1765.04b - Regional Foresters, Station/Area Directors, and Washington Office Directors

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It is the responsibility of the Regional Foresters, Station/Area Directors, and Washington Office Directors to:

1. Ensure employees are informed of the current Forest Service Anti-Harassment Policy and Procedures;
2. Promote management and employee efforts to eliminate harassment;
3. Enforce the anti-harassment policy and procedures;
4. Evaluate subordinate Supervisors and Managers on their performance under this policy;
5. Provide periodic notification to employees concerning prohibitions against harassment, methods for reporting incidents, and procedures for filing complaints and grievances; and
6. Display or make copies of relevant policies and procedures available.

1765.04c - National Director, Civil Rights

It is the responsibility of the National Director of Civil Rights to:

1. Provide technical assistance, support, and oversight to ensure compliance with this policy;
2. Disseminate the Anti-Harassment Policy to all Agency employees annually;
3. In collaboration with the Director of Human Resources Management:
 - a. Establish, update, and administer Anti-Harassment policies, procedures, and guidelines for the Forest Service; and
 - b. Develop, coordinate, and conduct Anti-Harassment Training for employees, Supervisors, and Managers.

1765.04d - Director, Human Resources Management

It is the responsibility of the Director of Human Resources Management to:

1. Provide technical assistance, support, and oversight to ensure compliance with this policy;
2. In collaboration with the National Director of Civil Rights:

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- a. Establish and update policies, procedures, and guidelines to administer the Forest Service Anti-Harassment Program; and
- b. Develop, coordinate, and conduct Anti-Harassment Training for employees, Supervisors, and Managers.
- c. When there is a conflict of interest, refer notifications of harassment to the Deputy Chief of Business Operations so the inquiry into the report of harassment can be reassigned to another program or to the Regions, Stations, and Area; and
- d. Ensure all established Employee Relations (ER) processes and procedures are followed.

1765.04e - All Supervisors and Managers

It is the responsibility of all Supervisors and Managers to:

1. Cooperate and collaborate with CR and ER to ensure everyone complies with the requirements of this policy.
2. Foster a workplace climate free of harassment and set a personal example of appropriate workplace conduct.
3. Ensure employees know the specific procedures for dealing with harassment and provide training on these procedures and on awareness and prevention of harassment.
4. Receive notifications of harassment and make notifications in accordance with the procedures outlined in this policy (1765.08).
5. Initiate inquiries and subsequent investigations into notifications of harassment in accordance with this policy (1765.09).
6. If assigned to be an Inquiry Official, fulfill all responsibilities in accordance with this policy (1765.09).
7. Take action to prevent all known harassment in the workplace.
8. Stop harassing behavior immediately, which may include separating the offending person from the affected employee(s). If separation of the parties is necessary:
 - a. The affected employee should not be moved unless they specifically request it; and
 - b. Contact the Region/Station/Area Employee Relations Supervisor for guidance and assistance.
9. Prevent retaliation against those who report harassment.

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10. Handle notifications of harassment promptly, thoroughly, and appropriately, in accordance with the procedures in this policy.

11. Hold individuals, who have been found to have harassed others, accountable for their actions. Coordinate and consult with Employee Relations (ER) to implement appropriate corrective and disciplinary actions, as recommended and necessary.

1765.04f - Field Service Center, Civil Rights Directors

It is the responsibility of the Field Service Center, Civil Rights (CR) Directors to:

1. Provide technical assistance and support as required to ensure compliance with this policy;
2. Provide assistance and support to all affected individuals when reports and/or notifications of harassment are made, including, but not limited to ensuring that they are aware of their EEO rights as well as support and care available to them (physical and/or emotional);
3. Disseminate the Anti-Harassment Policy to all Agency employees annually; and
4. Collaborate with ER Supervisor and jointly develop, coordinate, and conduct training on harassment in the workplace for employees, Supervisors, Managers and others doing work on behalf of the Forest Service.

1765.04g - Region/Station/Area Employee Relations Supervisors

It is the responsibility of the Region/Station/Area Employee Relations Supervisors to:

1. Provide technical assistance and support as required to ensure compliance with this policy;
2. Collaborate with Field Service Center CR Directors and jointly develop, coordinate, and conduct training on harassment in the workplace;
3. Provide guidance, advice, and assistance to Inquiry Officials to ensure management inquiries are done timely and meet the requirements of this policy (1765.09);
4. Provide guidance, advice, and assistance to management officials to request a formal misconduct investigation if necessary, once an inquiry is completed, (1765.09);
5. Refer notifications of harassment to the Assistant Director of Employee Relations when there is a conflict of interest; and
6. Follow normal ER processes and procedures for case management when there are no additional reporting or tracking requirements.

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1765.04h - Employees and others performing work on behalf of the Forest Service

It is the responsibility of the employees and others performing work on behalf of the Forest Service to:

1. Act professionally and refrain from engaging in harassment and adhere to a standard of conduct that is respectful and courteous to others;
2. Understand the provisions of these procedures, comply with all requirements, and cooperate with any inquiry/investigation;
3. Participate in periodic training; and
4. Promptly report incidents of harassment that are experienced, known of, or witnessed in accordance with the procedures in this policy (1765.06).

1765.05 – Definitions

Harassment. Generally, there are three types of harassing behavior: Sexual Harassment, Equal Employment Opportunity (EEO) Based Harassment; and Other Workplace Harassment.

1. Sexual Harassment. Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of sexual nature when:
 - a. Submission to such conduct is made, either explicitly or implicitly, a term or condition of an individual's employment;
 - b. Submission to, or rejection of, such conduct by an individual is used as the basis for employment decisions affecting such individual; or
 - c. Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive work environment (29 CFR 1604.11).
 - d. Examples of sexual harassment include: graphic verbal commentaries, verbal exchanges, or jokes with a sexual connotation; behavior with sexual overtones which is intimidating or offensive to the recipient, or to one who observes such behavior or other displays; unnecessary or inappropriate touching or grabbing; making lewd gestures; pressuring for sexual activity; offensive sexual flirtation, advances, or propositioning; using sexually degrading words to describe an individual; and/or the display in the workplace of sexually suggestive objects, pictures, computer screen savers, or written materials.
 - e. Sexual harassment can occur at any time and any location, regardless of whether the acts occur on or off the workplace or federal property, and whether they occur during or after work hours.

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f. Inappropriate Conduct of a Sexual Nature (referred to herein as sexual misconduct) can create or be the basis of sexual harassment. It may consist of an isolated incident of behavior with a sexual connotation or could include repeated unwelcomed flirtations; repeated unwanted requests for dates; or repeated suggestive comments about or references to someone's anatomy; or ridicule or teasing regarding an employee's gender identity, gender expression, or sexual orientation.

2. EEO Based Harassment. Includes unwelcome intimidation, ridicule, insults, comments, or verbal or physical conduct that is based on race, color, religion, age (40 years or older), disability (physical or mental), national origin, reprisal, sex/gender (whether or not of a sexual nature), sexual orientation, disability, marital, and/or parental status when:

- a. Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment;
- b. A Manager/Supervisor makes an employee's submission to or rejection of such conduct the basis for employment decisions affecting the employee; or
- c. The conduct is intended to or actually has the effect of unreasonably interfering with an individual's work performance or creates an intimidating, hostile, or offensive work environment.

3. Other Workplace Harassment (non-EEO, including Bullying). Any form of unwelcome, pervasive, persistent, and unsolicited verbal, non-verbal, written, or physical conduct that is objectively offensive and could alter the affected employee's terms and conditions of employment.

- a. Workplace harassment happens by either culminating in a tangible employment action or by being sufficiently severe or pervasive as to interfere with an employee's work performance by creating an intimidating, abusive, offensive, or hostile work environment.
- b. Workplace harassment also includes bullying. Bullying is repeated abusive behavior that is threatening, humiliating, or intimidating. It may be direct or indirect, whether verbal, physical or otherwise, by one or more persons against another or others, at the place of work and/or in the course of employment.

Sexual assault/violence. Any type of sexual contact or behaviors that are attempted or completed against an individual's will or when an individual cannot consent because of age, disability, the influence of alcohol or drugs, or any other reason preventing the individual from providing consent. Falling under the definition of sexual assault are sexual activities including but not limited to the following: forced or attempted sexual intercourse, voyeurism, exposure to exhibitionism, undesired exposure to pornography, public display of images that were taken in a

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private context or when the individual was unaware, fondling, grabbing, unwanted sexual contact and attempted rape.

Affected Individual. An individual who:

1. experiences harassment (either sexual or non-sexual), or
2. witnesses or is aware of harassing behavior toward another.

Offending Individual. An individual who is alleged to have engaged in harassing behavior.

1765.06 - Reporting an Incident

The Forest Service can only take action if it knows about incidents of harassment, and management will not retaliate against any employee for reporting harassment or participating in an inquiry or investigation.

1. Individuals who experience harassment (either sexual or non-sexual) are encouraged to resolve incidents at the lowest organizational level possible. This may include confronting the offending person and asking them to stop the harassing behavior. If an individual is not comfortable confronting the offending person or if they have confronted the offending person and the behavior has not stopped, they are encouraged to immediately report the behavior either verbally or in writing to a management official.
2. Individuals who witness or are aware of harassing behavior toward another shall immediately report the behavior either verbally or in writing to a management official or one of the harassment hotlines. Reports can be made anonymously.

For the purpose of this policy, a management official is one of the following:

1. Immediate Supervisor, 2nd level Supervisor, or any other management official within the organizational unit;
2. Incident Commander (if on a fire/emergency assignment);
3. Field Service Center (R/S/A) CR Director or Specialist;
4. Field Service Team Human Resources Officer (HRO); and/or
5. R/S/A ER Supervisor or ER or LR Specialist.

Reports of harassment can also be made through the following Harassment Hotlines:

- a. USDA Office of Inspector General (OIG) Hotline. This hotline (1-800-424-9121) is for reporting incidents of sexual harassment, in addition to waste, fraud, abuse, and so on. Within the Washington, D.C., metropolitan area, the hotline also can be

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reached on 1-202-690-1622; the number equipped with a telecommunications device for the hearing impaired (TTD) is 1-202-690-1202.

b. Unit Hotlines. Forest Service units can establish hotlines for reporting harassment. Some units already have established hotlines for reporting sexual harassment.

Employees who believe they have been subjected to unlawful discrimination including sexual harassment or reprisal for harassment-related CR activity may also file a complaint of discrimination by contacting an EEO Counselor at (404) 347-1908. Employees have 45-calendar days after becoming aware of such unlawful discrimination to contact an EEO Counselor. Expiration of the 45-calendar-day period does not preclude the employee from reporting the incident to an appropriate official to have the incident investigated.

Non-employees and contractors should follow the same process as above.

1765.07 – Confidentiality

Reports of harassment must always be handled in a confidential manner, to the extent allowed by law. Only individuals who need to know in order to determine if harassment occurred and to develop recommendations and implement corrective measures shall be made aware of harassment reports.

Individuals can make anonymous reports. However, reports must have sufficient information for management to begin an inquiry.

1765.08 - Notification Requirements

1. Sexual Assault/Violence. Management officials (per the definition in this policy) who receive a report of sexual assault, or sexual violence are required to notify local law enforcement immediately, not to exceed 24 hours. Management officials are also required to notify the Field Service Center CR Director and the R/S/A ER Supervisor of the issue within 1 day (duty day) of receiving the report of sexual assault or sexual violence. Initial notification can be made by email or by telephone but must describe the issue completely, however, Form FS-1700-0007, Management Harassment Notification Form, must be submitted to the Field Service Center CR Director and the R/S/A ER Supervisor within 3 days (duty days).

2. Sexual Harassment. Management officials (per the definition in this policy) who receive a report of sexual harassment are required to notify the Field Service Center CR Director and the R/S/A ER Supervisor of the issue within 24 hours of receiving the report. Initial notification can be made by email or by telephone but must describe the issue completely, however, Form FS-1700-0007, Management Harassment Notification Form, must be submitted to the Field Service Center CR Director and the R/S/A ER Supervisor within 3 days (duty days).

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3. EEO Based and Other Workplace Harassment. Management officials (per the definition in this policy) who receive a report of non-sexual harassment are required to notify the R/S/A ER Supervisor and the Field Service Center CR Director of the issue within 2 days (duty days) of receiving the report. Initial notification can be made by email or by telephone but must describe the issue completely, however, Form FS-1700-0007, Management Harassment Notification Form, must be submitted to the Field Service Center CR Director and the R/S/A ER Supervisor within 3 days (duty days).

1765.09 – Inquiry/Investigation Requirements

An initial management inquiry is required to be completed for all reports of harassment. Upon receipt of a report of harassment, Management will take action as necessary to prevent any retaliation before, during and after the inquiry/investigation.

1. Once the ER Supervisor is notified of an incident of harassment, they shall notify an appropriate Supervisor, Manager, or Line Officer having authority over the unit involved. An appropriate Supervisor, Manager, or Line Officer means an individual who:
 - a. Is not implicated in the report of harassment;
 - b. Has the authority to appoint/assign an Inquiry Official; and
 - c. Can authorize a Formal Misconduct Investigation. A Misconduct Investigation will only be requested after a management inquiry has been completed and only when the ER Supervisor concurs that one is necessary.
2. Once an Inquiry Official has been appointed/assigned, they shall begin the inquiry within 3-duty days and complete it within 14-duty days.
 - a. Inquiry Officials shall be provided contact information for the R/S/A ER Supervisor and shall coordinate with the ER Supervisor and the individual who appointed/assigned them prior to starting the inquiry, throughout the inquiry (as needed), and at the end of the inquiry.
 - b. At the conclusion of the inquiry, Inquiry Officials shall provide a copy of their final report and all supporting documentation and evidence to the ER Supervisor and the individual who appointed/assigned them. This may also include an in-person discussion of their findings.
 - c. At a minimum, management inquiries consist of: conducting interviews and taking written statements; collecting available evidence; and preparing a written report summarizing the findings.

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- d. If an extension is needed, the Inquiry Official, shall request the extension from the individual appropriate Supervisor, Manager, or Line Officer (the individual who assigned them the inquiry). Extension requests of up to 5-duty days are permitted. R/S/A ER Supervisors shall be notified by the appropriate Supervisor, Manager, or Line Officer when extensions are granted.
3. The R/S/A ER Supervisor shall ensure each management inquiry report is assessed in accordance with normal ER processes and procedures. This includes making a recommendation to the appropriate Supervisor, Manager, or Line Officer (as described above) on necessary corrective action and/or determination that a Formal Misconduct Investigation should be requested.
4. If a Formal Misconduct Investigation is necessary, the investigation request must be prepared by the appropriate Supervisor, Manager, or Line Officer (as described above) and must be reviewed and submitted by the R/S/A ER Supervisor to the Agency Misconduct Investigation Program Manager for assignment of an Investigator.
- a. Formal Misconduct Investigations must begin within 14-calendar days of receiving the request and must be completed within 45-calendar days of the investigation start date. Complex investigations may take longer based upon the number of interviewees and amount of evidence collected.
- b. The Misconduct Investigations Program Manager shall forward a copy of the investigative report to the R/S/A ER Supervisor and individual who requested the investigation.
- c. The R/S/A ER Supervisor shall ensure each investigative report is assessed in accordance with normal ER processes and procedures. This includes making a recommendation to the appropriate Supervisor, Manager, or Line Officer (as described above) on necessary corrective action.

1765.10 – Grievances

1. Agency Administrative Grievance Procedure. For direction on filing a grievance related to harassment under the administrative grievance system, see Departmental Regulation, 4070-771, Administrative Grievance System.
2. Negotiated Grievance Procedure. Bargaining unit employees may file grievances related to harassment under applicable negotiated procedures for their represented unit which can be found on the Forest Service Labor Relations web site located at: http://fsweb.asc.fs.fed.us/HRM/labor_relations/union.php

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1765.11 – Labor Relations

1. FSM 1700, Chapter 1760, Section 1765 contains items that have been negotiated between the Forest Service and NFFE-FSC. It is not to be altered or supplemented below the national level by units covered by NFFE, except as provided in this Directive and the Master Agreement between the Parties. National level changes must not be made without notice and bargaining between the Parties.

2. For units represented by other labor organizations that have been granted exclusive representation status under the Federal Labor-Management Relations Statute, the implementation of FSM 1700, Chapter 1760, Section 1765 is contingent upon the completion of appropriate labor relations obligations.

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