

Strategies for Recognizing, Preventing, Responding to and Resolving Harassment Complaints

Federally Employed Women's National
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What is Workplace Harassment?

Harassment is any unwelcome verbal or physical conduct based on one of the protected bases that is so objectively offensive as to alter the conditions of the victim's employment.



Two Types of Harassment

- ✓ The conduct culminates in a tangible employment action, or
- ✓ The conduct was sufficiently severe or pervasive to create a hostile work environment



Basis

EEO statutes prohibit harassment in the workplace involving discriminatory treatment on the basis of:

- ✓ Race
- ✓ Color
- ✓ Sex
- ✓ Religion
- ✓ National Origin
- ✓ Age
- ✓ Disability
- ✓ Genetic Information
- ✓ Protected EEO Activity (retaliation)

Who Can Commit Harassment?

A Management Official

A Co-Worker

A Non-employee



Elements of a Harassment Claim

Conduct must be unwelcome

Conduct based on a protected basis

Conduct results in a tangible employment action or creates a hostile work environment



Unwelcome Conduct

"Unwelcome" conduct is where the employee did not solicit or invite the conduct and regarded it as undesirable.

Critical Inquiry: Did the complainant explicitly or implicitly communicate that the conduct was unwelcome?

- < Submission does not mean the conduct was welcome
- < Active participation may defeat the claim

Scenario #1

Deborah's male co-workers frequently engage in bawdy sexual banter and horseplay in the office. They trade stories about their sexual exploits and kid each other about each other's sexual prowess. Deborah sometimes has conversations of a sexual nature with one of her male co-workers, but she has let the others know that she is offended by their banter and horseplay. Deborah has complained to her supervisor, but he has taken no action.



Scenario #2

During Marcus' probationary period, he developed a friendship with Frances, a Senior Analyst who serves as his mentor. They often share things that are going on in their personal lives. Marcus has informed Frances that his relationship with his girlfriend is not going well. Frances begins to stop by Marcus' cubicle more and more often and starts asking him out for lunch. He goes out with her a couple of times and then declines the next three lunch offers. Frances asks him out for dinner and he declines by saying: "I don't date people I work with." Frances responds: "Well there is an exception to every rule." Over the next month Frances visits Marcus daily. He continues to be polite to Frances but he says less and less during the conversations. One evening Frances calls Marcus at home to ask him out for dinner. Marcus turns her down. The next morning Marcus complains to his supervisor. Is Frances' conduct unwelcome?

Scenario #3

Joseph is a rude and offensive individual. He constantly makes disrespectful statements to his co-workers about their appearance, knowledge, and job performance. Alex is particularly offended by Joseph's inappropriate behavior. Joseph daily reminds Alex that he is not on the "best team" and that he did not attend the "right university." Additionally, Joseph frequently tells Alex that he will never be as good as the employees with "military backgrounds." Fed up with Joseph's behavior, Alex initiates the EEO process.

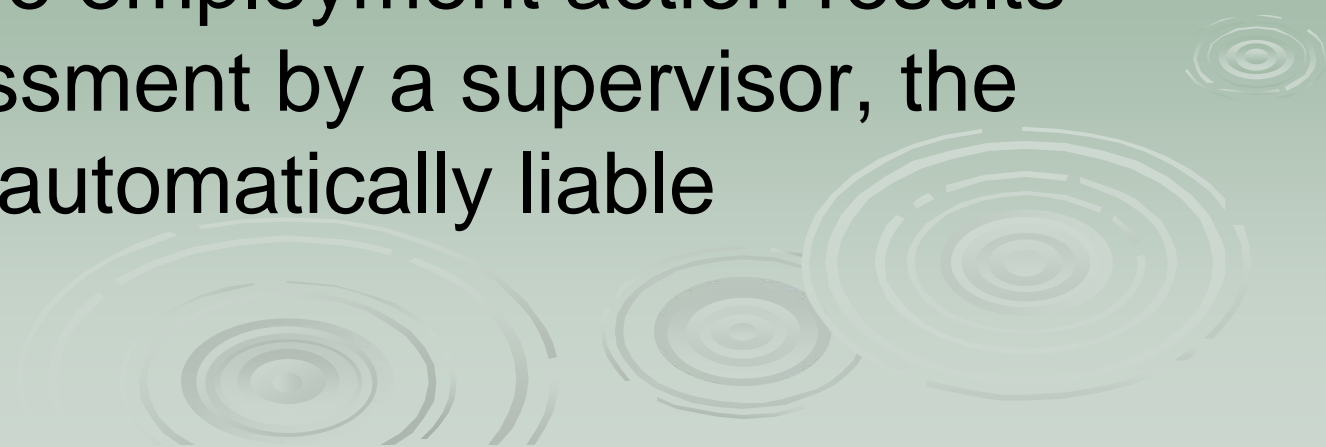
Harassment: Tangible Employment Action

A tangible employment action is one that significantly changes the employment status, such as:

Demotion, termination, failure to promote, reassignment, benefits, compensation, work assignments, etc.



Harassment: Tangible Employment Action

- Only individuals with supervisory or managerial responsibility can commit this type of harassment
 - If a tangible employment action results from harassment by a supervisor, the agency is automatically liable
- 

Scenario #4

Kim believes that her supervisor, Ted, subjected her to unwelcome sexual conduct. For example, on one occasion, he gazed at her from head to toe and stated that she looked fantastic. Kim informed Ted that while she appreciated his comment, she did not consider his behavior appropriate for the workplace. Ted replied that Kim needed to loosen up and accept favorable comments. On other occasions, Kim would notice Ted suggestively looking at her body as she walked by his office area. When Ted interviewed Kim for a promotion, he expressed reservations because Kim was not flexible or loose enough for the position. Kim was denied the promotion. Believing that Ted was punishing her for rejecting his advances, she resigned one month later.

Hostile Environment Harassment

Unwelcome comments or conduct based on a protected basis that unreasonably interferes with an employee's work performance or creates an intimidating, hostile or offensive work environment



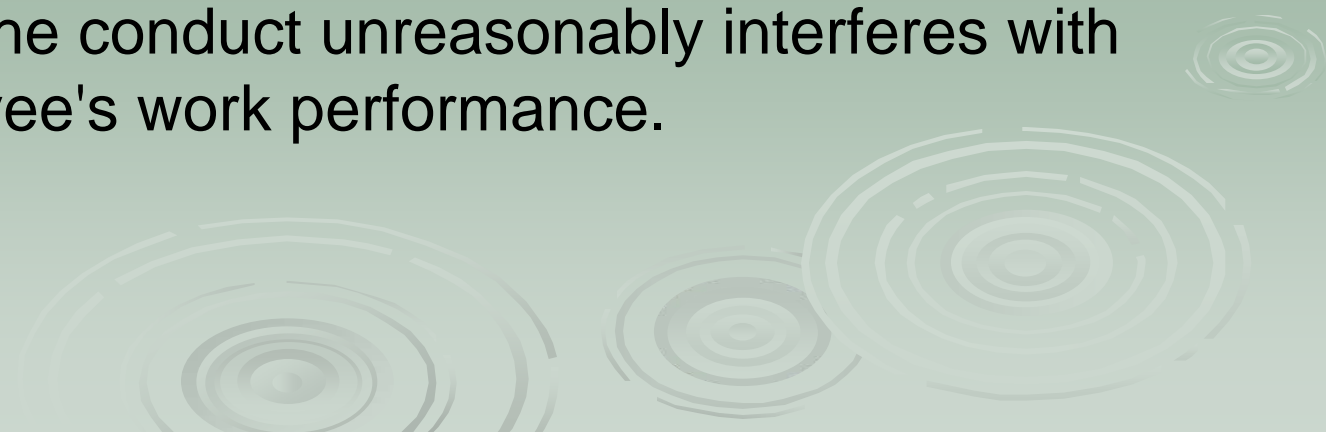
Hostile Environment Harassment

Anyone can commit this type of harassment:

- ✓ management official
- ✓ co-worker
- ✓ non- employee



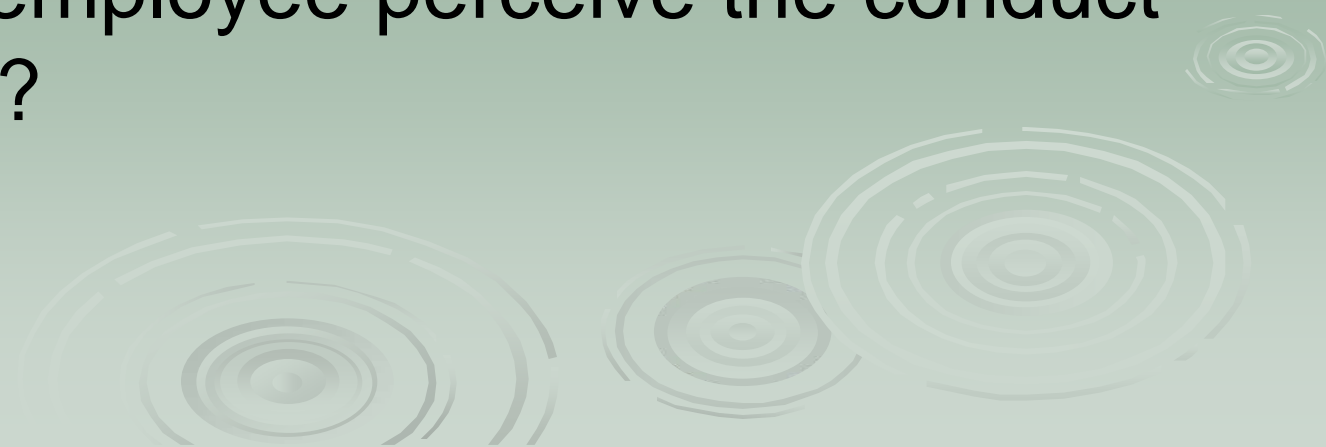
Hostile Environment Harassment Factors To Assess

- ✓ frequency of the discriminatory conduct;
 - ✓ severity of the conduct;
 - ✓ whether the conduct is physically threatening or humiliating, or a mere offensive utterance;
 - ✓ whether the conduct unreasonably interferes with an employee's work performance.
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Reasonable Person Standard

Is the conduct severe or pervasive enough to create an environment that a reasonable person would find hostile, intimidating or abusive? and

Does the employee perceive the conduct as such?




Single Incident May Constitute A Hostile Work Environment

- Physical contact
 - Intimate touching
 - Hostile physical contact
- Symbols
 - Noose
 - KKK
 - Swastika
- Speech
 - Slur
 - Derogatory/disparaging comment

Pervasiveness

Each incident less severe, but events occurred:

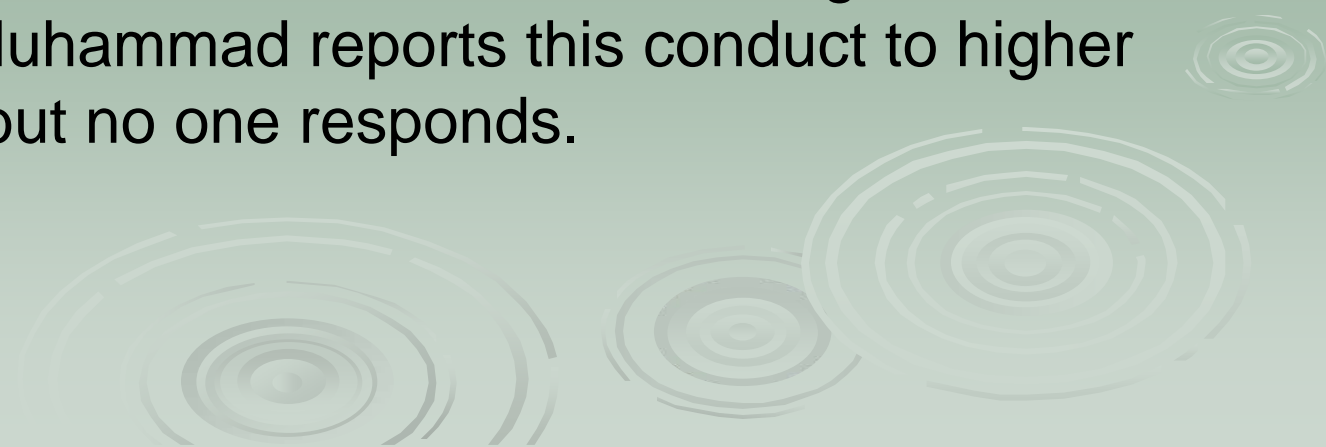
- Repeatedly
 - On multiple occasions
 - Over time
 - Persistently
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Scenario # 5

Charles believes that his co-worker, Bob, engages in behavior that is offensive to Charles based on his race. For example, Bob sent an e-mail to the employees in their unit attaching a series of jokes beginning with the phrase, "You know you're in the ghetto when" Charles told Bob that the jokes were racially offensive. Bob expressed surprise that Charles took offense and stated that he did not believe that the word "ghetto" implied something offensive. On another occasion, Bob sent another e-mail to his co-workers attaching jokes about funny accents. Charles complained to their supervisor, but the supervisor took no action.

Scenario # 6

Muhammad, an Arab-American, works as a Security Specialist. While performing his duties, Muhammad would frequently overhear his co-workers refer to Middle Easterners by names like “the local terrorist,” and “the ayatollah.” Muhammad stated that these comments were not directed to him. When he confronted his co-workers, they told him they were sorry if he was offended, but he is an American and needed to be able to distinguish “us” from “them.” Muhammad reports this conduct to higher management, but no one responds.



Agency Liability: Hostile Work Environment

Harassment By a Management Official

Agency is liable even if management did not know, unless both elements of an affirmative defense are met:

<If the agency exercised reasonable care to prevent and promptly correct any harassment, and

<The employee unreasonably failed to take advantage of any preventative or corrective opportunities offered by the agency or to avoid harm otherwise.

Harassment by high ranking officials, agency is directly liable - no affirmative defense available.

Agency Liability: Hostile Work Environment

Harassment By Co-Worker or Non-Employee

Agency is liable if it knew or should have known of the harassment and failed to take immediate and appropriate corrective action.

Agency knowledge is assumed if:

- The victim complains about the harassment, or
- The conduct occurred in the presence of a supervisor, or
- The conduct is widespread

Scenario #7

Cookie loves rap music and plays it regularly, and sometimes loudly, in her office cubicle. Some of her co-workers secretly complain to one another about what they characterize as the “racially offensive lyrics” of some of Cookie’s music. No one complains to management because their supervisor often walks by Cookie’s desk and never addresses this.

Scenario # 8

Anna's supervisor frequently made remarks that were offensive to her and other Hispanic employees. He also made crudely demeaning references to women.

Anna did not complain to higher management about the supervisor's conduct. One month before Anna resigned, a former employee wrote a letter to the head of Anna's department complaining about the supervisor's harassment. The agency conducted an investigation, and the supervisor was reprimanded and disciplined.

Scenario # 9

Jack joins his new secretary, Nancy, at a farewell gathering for an agency employee. During the gathering, he rubs his hands on her shoulder and back and states that he would like to take her out to dinner. Nancy declines the invitation and demands that Jack remove his hands. Jack immediately apologizes and states that he had misread the signals between the two of them.

This was the first time that Jack made an advance toward Nancy, and he never again makes other sexual advances toward her. Nancy considers filing a complaint, but she assumes that no one will believe her since there were no eye witnesses.

Scenario # 10

Joan dreads each time her photocopier breaks down because the repair person assigned to her office always leers at her and makes sexually suggestive remarks. Joan has complained to her supervisor, but the supervisor says he does not have any control over the repair person because that individual is an employee of the photocopier service company and not an employee of the agency. The supervisor does relay Joan's complaints to the service company, but no action is taken.

How Harassment Affects the Workplace

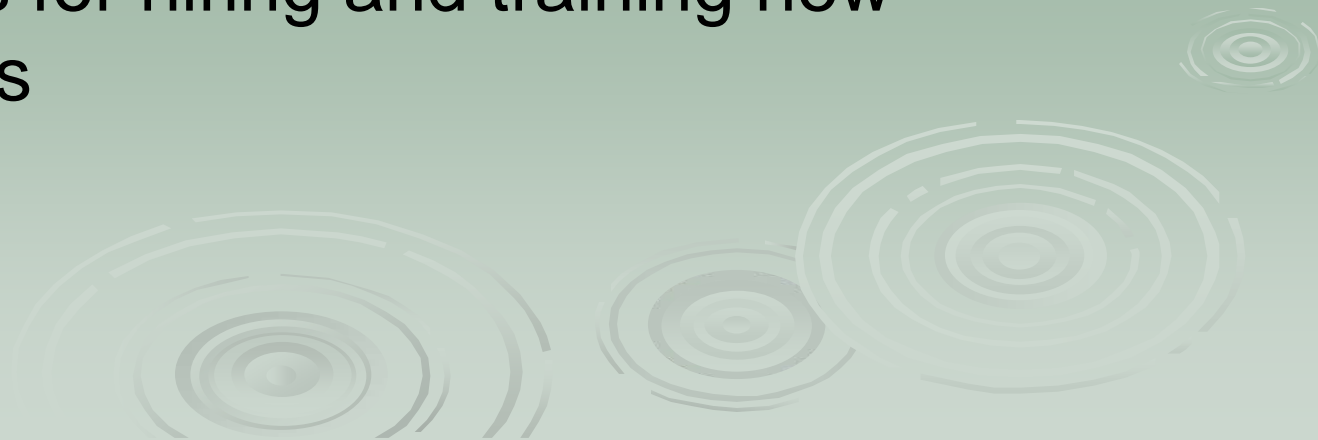
For agencies:

High legal costs and damage awards

Poor public image

Lower productivity and morale

Higher costs for hiring and training new employees



How Harassment Affects the Workplace

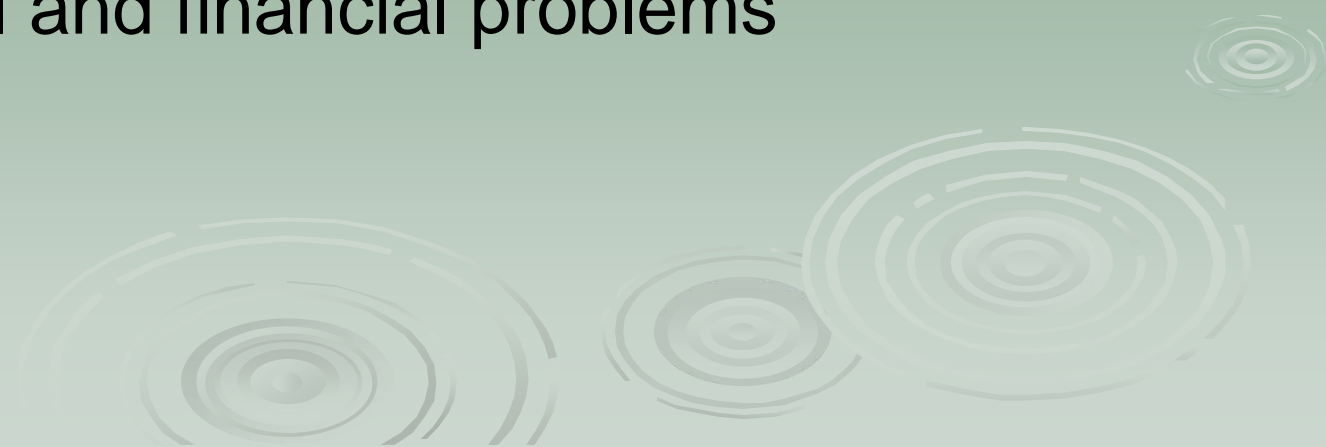
For employees:

Emotional and physical pain

Less effective job performance

Poor employee morale

Personal and financial problems



Appropriate Preventative Actions

All Management Officials and Employees should:

Know the agency's anti-harassment policy

Set a positive example by treating others with respect

Don't make assumptions about practical jokes

Think before speaking and consider others' feelings
and perceptions

Never go along with the crowd if behavior is offensive



Preventative and Corrective Actions for Agencies

Establishing Effective Anti-Harassment Policy

Policy should be written and well disseminated

Protect against retaliation

Explain the conduct that is prohibited

Create multiple paths to complain about harassment

Provide for prompt investigations of complaints

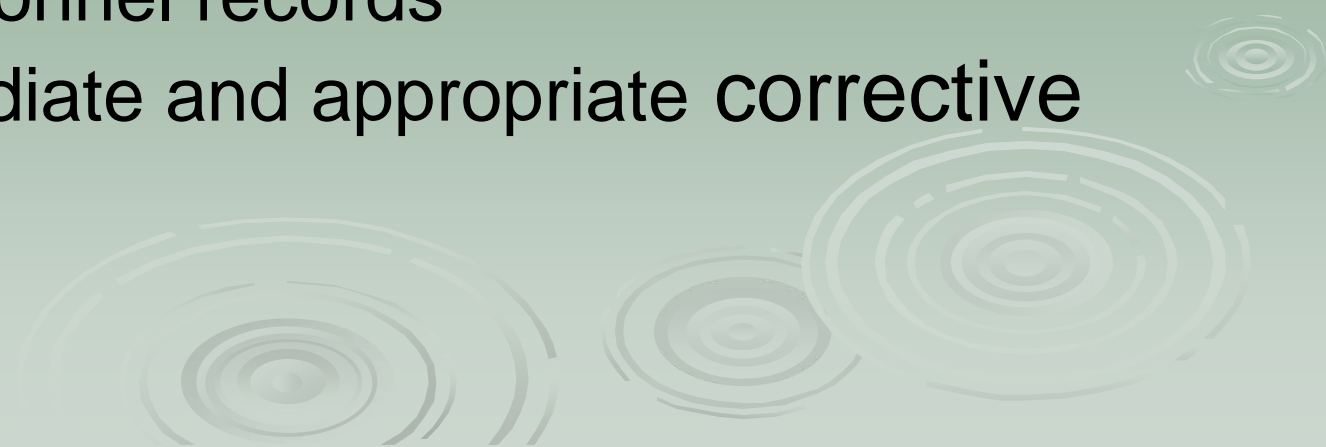
Set time frames in which the agency will act

Assure that immediate and appropriate corrective action, including discipline, will be taken

Ensure confidentiality to the extent possible

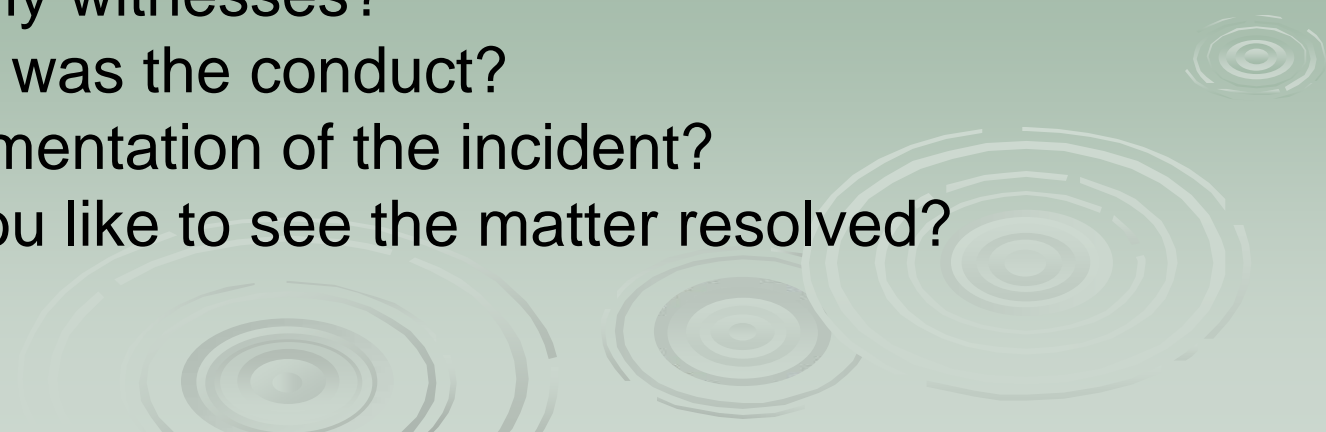
Preventative and Corrective Actions For Agencies

Investigate Allegations of Harassment

- Ensure prompt, thorough and impartial investigations
 - Be objective, don't make assumptions
 - Ensure confidentiality to the extent possible
 - Make credibility determinations
 - Check personnel records
 - Take immediate and appropriate corrective actions
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Initial Steps for the Manager

Gather Relevant Information from the Aggrieved/Alleged Victim

- What happened
 - When did it happen?
 - Where did it happen?
 - How did the alleged victim respond?
 - Were there any witnesses?
 - How frequent was the conduct?
 - Is there documentation of the incident?
 - How would you like to see the matter resolved?
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Other Preventive Measures

Provide anti-harassment training to all management officials and employees

Provide for periodic updates on agency's anti-harassment policy and complaint procedures

Monitor enforcement of anti-harassment policy

