

Guide to Judiciary Policy

Vol. 12: Human Resources

Ch. 2: Workplace Conduct and Protections

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§ 210 Overview

- (a) The federal judiciary is committed to:
 - (1) identifying, prohibiting, and correcting wrongful conduct (**see:** [§ 220](#)), which includes:
 - (A) providing all personnel with a workplace of respect, civility, fairness, tolerance, and dignity, free of discrimination and harassment;
 - (B) offering safe and accessible options for personnel to report wrongful conduct;
 - (C) taking appropriate action when wrongful conduct is reported; and
 - (D) removing any actual or perceived barriers to the reporting of such conduct, including fear of retaliation, concern about reputational harm, or belief that the reporting will be futile.
 - (2) promoting and facilitating diversity and inclusion in its workforce.

(b) This chapter provides policy guidance on the following:

(1) Wrongful Conduct ([§ 220](#))

- discrimination, discriminatory harassment, abusive conduct, and retaliation; and
- family and medical leave, uniformed services employment and reemployment, workforce adjustment, occupational safety, and polygraphs.

(2) Equal Employment Opportunity ([§ 230](#))

§ 210.10 Applicability

The policies in this chapter apply to all judiciary personnel and units within the federal judiciary other than the:

- United States Supreme Court,
- Administrative Office of the U.S. Courts (AO),
- Federal Judicial Center,
- United States Sentencing Commission, or
- Judicial Panel for Multidistrict Litigation.

Note: Each of the above judiciary organizations is responsible for identifying and implementing its own policies and practices on workplace conduct and protections.

§ 220 Wrongful Conduct

§ 220.10 Policies and Definitions

§ 220.10.10 Discrimination, Discriminatory Harassment, Abusive Conduct, and Retaliation

Judiciary employees have a right to a workplace free of discrimination, discriminatory harassment, abusive conduct, and retaliation as those terms are defined below:

(a) Discrimination

An adverse employment action that either:

(1) materially affects the terms, conditions, or privileges of employment (e.g. hiring, firing, failing to promote, significant change in benefits) based on one of the following protected categories:

- race,

- color,
- sex,
- gender,
- gender identity,
- pregnancy,
- sexual orientation,
- religion,
- national origin,
- age (40 years and over), or
- disability; **or**

(2) meets the definition of discrimination under one of the following statutes:

(A) Title VII, Civil Rights Act of 1964, as amended and codified in [42 U.S.C. §§ 2000e-2- 2000e-3, 2000e-16\(a\)](#) (prohibits retaliation and discrimination based on race, color, religion, sex, and national origin), including failure to provide a reasonable accommodation for a religious observance or practice.

(B) Age Discrimination in Employment Act of 1967 (ADEA), as codified in [29 U.S.C. §§ 623](#) and [633a](#) (prohibits discrimination based on age 40 and older).

(Note: The age discrimination provision does not apply to the initial hiring, retirement, or separation of probation and pretrial services officers under [5 U.S.C. chapters 83](#) and [84](#).)

(C) Americans with Disabilities Act of 1990 (ADA), [42 U.S.C. §§ 12102, 12111-12114](#), as amended by the Americans with Disabilities Act Amendments Act of 2008 (ADAA), including failure to provide a reasonable accommodation for a qualified disability.

(b) Discriminatory Harassment

A workplace permeated with discriminatory intimidation, ridicule, and insult that is sufficiently severe or pervasive to alter the conditions of the employment and create an abusive working environment.

Note: Discriminatory harassment includes sexual harassment.

(c) Abusive Conduct

A pattern of demonstrably egregious and hostile conduct not based on a protected category listed in § 220.10.10(a)(1) that unreasonably interferes with an employee's work and creates an abusive working environment.

Note: Abusive conduct is threatening, oppressive, or intimidating. Abusive conduct does not include communications and actions reasonably related to performance management.

(d) Retaliation

A materially adverse action taken against a judiciary employee:

- (1) for reporting wrongful conduct;
- (2) for assisting in the defense of rights protected by the Model EDR Plan; or
- (3) for opposing wrongful conduct.

Note: Retaliation against a person who reveals or reports wrongful conduct is itself wrongful conduct.

§ 220.10.20 Family and Medical Leave, Uniformed Services Employment, Workforce Adjustment, Whistleblower Protection, Occupational Safety, and Polygraph Protection

(a) Family and Medical Leave Act of 1993

Covered employees as defined in Guide, Vol. 12, § 920.45.20 are entitled to the rights and protections provided under the Family and Medical Leave Act of 1993 and as established under Guide, Vol. 12, §§ 920.45.20–920.45.70.

(b) Uniformed Services Employment and Reemployment Rights Act of 1994

- (1) Judiciary policy and law protect the reemployment rights of many employees who leave their position to serve in the military. Uniformed Services Employment and Reemployment Rights Act (USERRA), [38 U.S.C. §§ 4301-4319](#).
- (2) USERRA guarantees an employee returning from military service or training the right to be reemployed at his or her same job (or comparable job) with the same pay and benefits.
 - (A) The employee must timely request reemployment upon return from service in the uniformed services by reporting for

work the next day or submitting an application for reemployment with the employing office **within 14-90 days**, depending on how long the service lasted.

- (B) The court is not required to reemploy a service member if:
- (i) the court's circumstances have so changed that reemployment:
 - is unreasonable, or
 - would impose an undue hardship; **or**
 - (ii) there was no reasonable expectation of reemployment.

(c) Whistleblower Protection

Any judiciary personnel with authority to take, direct others to take, recommend, or approve any personnel action may not use such authority to take or threaten to take an adverse employment action against an employee (excluding applicants for employment) because of any disclosure of information:

- (1) by the employee to:
 - (A) the appropriate federal law enforcement authority,
 - (B) supervisor or managerial official of the employing office,
 - (C) a judge of the court, or
 - (D) the AO;
- (2) that the employee reasonably and in good faith believes:
 - (A) violates any law, rule, or regulation, or other conduct that constitutes gross mismanagement,
 - (B) represents a gross waste of funds, or
 - (C) poses a substantial and specific danger to public health or safety; **and**
- (3) where such disclosure:
 - (A) is not specifically prohibited by law,

- (B) does not reveal case-sensitive information, sealed material, or the deliberative processes of the federal judiciary, and
 - (C) does not reveal information that would endanger the security of any judge.
- (d) Workforce Adjustment
- (1) Employees who face certain types of office closings or reductions in force must be provided notice similar to what is required under the Worker Adjustment and Retraining Notification (WARN) Act, codified at [29 U.S.C. § 2101](#). [JCUS-MAR 97](#), p. 28.
 - (2) Unless caused by the absence of appropriated funds, no employing office closing or mass layoff may occur until the end of a 60-day period after the employing office serves affected employees with written notice of such prospective closing or layoff.
 - (3) “Employing office closing” refers to the permanent or temporary shutdown of a single site of employment, or facilities or units within a site, if the shutdown results in a loss of 50 or more full-time employees at the site during any 30-day period. **See:** [29 U.S.C. § 2101\(a\)\(2\)](#).
 - (4) “Mass layoff” refers to a reduction in force that:
 - (A) is not the result of an employing office closing; and
 - (B) results in an employment loss at the single site of employment during any 30-day period for:
 - (i) at least 33 percent of the employees (excluding any part-time employees); and at least 50 employees (excluding any part-time employees); or
 - (ii) at least 500 employees (excluding any part-time employees).
- See:** [29 U.S.C. § 2101\(a\)\(3\)](#).
- (e) Occupational Safety (Occupational Safety and Health Act)
- (1) It is the judiciary’s policy to promote safe workplace conditions, consistent with the principles of the Occupational Safety and Health Act of 1970, as amended. [JCUS -MAR 97](#), p. 28.

- (2) Each employing office will implement a program to provide to its employees a place of employment free from recognized hazards that cause or are likely to cause death or serious physical harm to employees.
 - (3) This chapter's policies do not apply to claims seeking a remedy exclusively within the jurisdiction of the General Services Administration (GSA) or the United States Postal Service (USPS) to provide, which should instead be filed directly with GSA or USPS, as appropriate.
- (f) Polygraph Protection

Unless required for access to classified information, or otherwise required by law, no employee may be required to take a polygraph test. **See:** Employee Polygraph Protection Act of 1988 (EPPA), codified at [29 U.S.C. §§ 2001-2009](#); [JCUS-MAR 97](#), p. 28.

§ 220.20 Reporting Wrongful Conduct

The Judiciary encourages early reporting and action on wrongful conduct. Employees who experience, observe, or learn of reliable evidence of sexual, racial, or other discriminatory harassment or abusive conduct are strongly encouraged to take appropriate action, including reporting it to:

- a supervisor,
- human resources professional,
- Unit Executive,
- Employment Dispute Resolution (“EDR”) Coordinator,
- Chief Judge,
- Chief Circuit Judge,
- Circuit Director of Workplace Relations, or
- national Office of Judicial Integrity.

§ 220.30 Employment Dispute Resolution Plans

- (a) The Judicial Conference has adopted the Federal Judiciary Model Employment Dispute Resolution Plan (Model EDR Plan) as amended (Guide, Vol. 12, Appx. 2A), which establishes a process for addressing wrongful conduct.
- (b) Judicial Conference policy requires each court to adopt the Model EDR Plan either as written or with modifications, provided that any such modifications:

- (1) may expand but should not diminish or curtail the rights and protections provided under either the Model EDR Plan or this chapter; and
 - (2) are approved by the judicial council of the relevant circuit.
- (c) Every court must:
- (1) prominently post its local EDR plan, with all appendices and relevant contact information, on the homepage of both its internal and external websites under a link labeled “Your Employee Rights and How to Report Wrongful Conduct”;
 - (2) file a copy of its local EDR plan with the AO; and
 - (3) provide the AO with data on:
 - (A) the number and types of alleged violations for which Resolution was requested, and for each matter, whether it was resolved or was also the subject of a Complaint under the local EDR Plan or other complaint;
 - (B) the number and type of alleged violations for which Complaints under the local EDR Plan were filed;
 - (C) the resolution of each Complaint under the local EDR Plan (dismissed or settled prior to a decision, or decided with or without a hearing); and
 - (D) the rights under the local EDR Plan that were found by decision to have been violated.

§ 230 Equal Employment Opportunity

- (a) It is the policy of the judiciary to provide equal employment opportunity (EEO) and to promote and facilitate diversity and inclusion in its workforce. In its Strategic Plan, the judiciary emphasizes the importance of diversity in the workforce and highlights the federal judiciary’s commitment to fair employment practices through expansion of appropriate recruitment, education, and training. The goal is to “[a]ttract, recruit, develop and retain the most qualified people to serve the public” in its workforce, “emphasizing a commitment to nondiscrimination both in hiring and in grooming the next generation of judiciary executives and senior leaders.” [Strategic Plan for the Federal Judiciary, Sept. 2015](#), p.10.

- (b) Across the judiciary, unit executives must ensure that:
 - (1) all appropriate vacancies (excluding chambers law clerks and judicial assistants) are publicly announced to attract candidates who reflect the make-up of persons available in the relevant labor market, and
 - (2) all hiring, promotion, and other employment decisions are based solely on job-related factors and an evaluation of a person's qualifications and ability to perform the job duties.
- (c) Unit executives should also make reasonable efforts to:
 - (1) identify and develop the skills, abilities, and potential of each judiciary employee, and
 - (2) provide each employee with:
 - (A) equal opportunities for promotions based solely on their experience, training, and demonstrated ability to perform the higher-level duties, and
 - (B) when the work of the court permits and within the limits of available resources, equal advancement opportunities to improve their skills and abilities (e.g., cross-training, reassignments, special work assignments, outside job-related training).