

# Guide to Judiciary Policy

Vol. 12: Human Resources

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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 a workplace of respect, civility, fairness, tolerance, and dignity, free of discrimination and harassment;
    - (B) offering safe and accessible options 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](#))
  - (2) Employment Dispute Resolution (EDR) Plans ([§ 225](#))
  - (3) Equal Employment Opportunity ([§ 230](#))

### **§ 210.10 Applicability**

- (a) The policies in this chapter apply to:
  - (1) all judges, current and former employees (including all law clerks; chambers employees; paid and unpaid interns, externs, and other volunteers; federal public defender employees; and probation and pretrial services employees); and
  - (2) all applicants for employment who have been interviewed.
- (b) The policies in this chapter do not apply to the following judiciary agencies and entities, as each of these organizations are independently responsible for developing and implementing their own policies and practices regarding workplace protections and wrongful conduct:
  - United States Supreme Court,
  - Administrative Office of the U.S. Courts (AO),
  - Federal Judicial Center,
  - United States Sentencing Commission, or
  - Judicial Panel on Multidistrict Litigation.

### **§ 220 Wrongful Conduct**

- (a) Judiciary employees have a right to a workplace free of discrimination, discriminatory harassment, abusive conduct, and retaliation.
- (b) The Model EDR Plans prohibit wrongful conduct that occurs:
  - for an employee, during the period of employment; or
  - for an applicant, during or after the interview process.

### **§ 220.10 Definition of Wrongful Conduct**

Wrongful conduct includes the following:

- (a) Discrimination

Discrimination is 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), and the Rehabilitation Act of 1973, including failure to provide a reasonable accommodation for a qualified disability.
- (b) Discriminatory Harassment
- (1) Discriminatory harassment occurs when a workplace is permeated with discriminatory intimidation, ridicule, and insult that is sufficiently severe or pervasive to alter the conditions of employment and create an abusive working environment.

- (2) Discriminatory harassment includes sexual harassment.
- (c) Abusive Conduct
  - (1) Abusive conduct is 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.
  - (2) Abusive conduct is threatening, oppressive, or intimidating. Abusive conduct does not include communications and actions reasonably related to performance management.
- (d) Retaliation
  - (1) Retaliation is a materially adverse action taken against an employee:
    - (A) for reporting wrongful conduct;
    - (B) for assisting in the defense of rights protected by the Model EDR Plan(s); or
    - (C) for opposing wrongful conduct.
  - (2) Retaliation against a person who reveals or reports wrongful conduct is itself wrongful conduct.
- (e) Violation of one of the additional workplace protections described below in § 220.10.10.

### **§ 220.10.10 Additional Workplace Protections**

Wrongful conduct also includes conduct that would violate the following employment laws and policies as applied to the judiciary by the Judicial Conference:

- (a) [Family and Medical Leave Act of 1993 \(FMLA\)](#)

Covered employees as defined in Guide, Vol. 12, § 920.45.20 are entitled to the rights and protections provided under the FMLA as amended and as established under Guide, Vol. 12, §§ 920.45.20-920.45.70.
- (b) Uniformed Services Employment and Reemployment Rights Act of 1994
  - (1) The reemployment rights of many employees who leave their position to serve in the military are protected under the 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 or employing office is not required to reemploy a service member if:
    - (i) the court's or employing office'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

No judge or judiciary employee with the authority to take, direct others to take, recommend, or approve any personnel action may use such authority to take or threaten to take an adverse personnel 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 1997](#), 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.
    - (A) “Employing office closing” as defined in [29 U.S.C. § 2101\(a\)\(2\)](#) 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.
    - (B) “Mass layoff” as defined in [29 U.S.C. § 2101\(a\)\(3\)](#) refers to a reduction in force that:
      - (i) is not the result of an employing office closing; and
      - (ii) results in an employment loss at the single site of employment during any 30-day period for:
        - (a) at least 33 percent of the employees (excluding any part-time employees); and at least 50 employees (excluding any part-time employees); or
        - (b) at least 500 employees (excluding any part-time employees).

**(Note:** The phrase “part-time employee” as defined in [§ 2101\(a\)\(8\)](#) refers to “an employee who is employed for an average of fewer than 20 hours per week or who has been employed for fewer than 6 of the 12 months preceding the date on which notice is required.”)

(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 1997](#), 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 1997](#), p. 28.

**§ 220.10.20 [Reserved; Provision Moved Above to § 220.10.10]**

**§ 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,
- a human resources professional,
- a unit executive,
- an Employment Dispute Resolution (EDR) Coordinator,
- a chief judge,
- a chief circuit judge,
- a Circuit Director of Workplace Relations, or

- the national Office of Judicial Integrity.

## § 225 Employment Dispute Resolution Plans

- (a) The Judicial Conference has adopted the Federal Judiciary Model Employment Dispute Resolution Plan (Model EDR Plan) as amended (Appx. 2A), applicable to court employees, and the Model Federal Public Defender Organization EDR Plan (Model FPDO EDR Plan) (Appx. 2B), applicable to FPDO employees, which establish processes and procedures for addressing wrongful conduct ([JCUS-SEP 2019](#), pp. 21-22; [JCUS-SEP 2021](#), pp. 23-24).
- (b) Judicial Conference policy requires (**see:** Appx. 2A, p. 12; Appx. 2B, p. 12):
  - (1) each court to adopt and implement the Model EDR Plan, either as it is written or with modifications as permitted under paragraph (c), below; and
  - (2) each FPDO to adopt and implement the Model FPDO EDR Plan if authorized by its court of appeals, either as it is written or with modifications as permitted under paragraph (c), below, or to be covered by their court of appeals' EDR plan.
- (c) Under Judicial Conference policy (**see:** Appx. 2A, p. 12; Appx. 2B, p. 12), modifications to the Model EDR Plan or Model FPDO EDR Plan:
  - (1) may expand but should not diminish or curtail the rights and protections provided under either model plan or this chapter; and
  - (2) must be approved by the judicial council of the relevant circuit.
- (d) Every court and FPDO must:
  - (1) file a copy of its local EDR plan with the AO (for FPDOs, also with its court of appeals);
  - (2) designate a primary EDR Coordinator and at least one alternate EDR Coordinator, and ensure that they are trained and certified, as provided in the EDR Interpretive Guide and Handbook;
  - (3) ensure that, at the conclusion of informal or formal proceedings under the EDR Plan, all papers, files, and reports are filed with the EDR Coordinator;

- (4) ensure that all final decisions under the EDR Plan are made available to the public, appropriately redacted according to procedures established by the judicial council of its circuit;
- (5) post the following prominently on the homepage of both its internal and external websites under a link labeled “Your Employee Rights and How to Report Wrongful Conduct”:
  - (A) the entire EDR Plan, with all appendices and relevant contact information,
  - (B) Judicial Conduct and Disability Act,
  - (C) Rules for Judicial-Conduct and Judicial-Disability Proceedings,
  - (D) Judicial Conduct and Disability Complaint form; and
  - (E) contact information for all EDR Coordinators, the circuit Director of Workplace Relations, and the national Office of Judicial Integrity;
- (6) display the following prominently in the workplace:
  - (A) the posters provided in Appendix 5 of the Model Plan; and
  - (B) an Anti-Discrimination and Harassment Notice that:
    - (i) states that discrimination or harassment based on race, color, sex, gender, gender identity, pregnancy, sexual orientation, religion, national origin, age (40 years and over), or disability is prohibited;
    - (ii) explains that employees can report, resolve, and seek remedies for discrimination, harassment, or other wrongful conduct under the EDR Plan by contacting any of the court’s or FPDO’s EDR Coordinators and/or the circuit Director of Workplace Relations, and/or the national Office of Judicial Integrity;
    - (iii) provides the names and contact information of all EDR Coordinators, the circuit Director of Workplace Relations, and the national Office of Judicial Integrity; and
    - (iv) states where the EDR Plan can be located on its website;

- (7) ensure that each new employee receives an electronic or paper copy of the EDR Plan and acknowledges in writing that he or she has read the Plan;
- (8) conduct training annually for all judges and employees, including chambers staff, to ensure that they are aware of the rights and obligations under the EDR Plan and the options available for reporting wrongful conduct and seeking relief; and
- (9) provide data annually to the AO (for FPDOs, also to its court of appeals) on the following:
  - (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, equity, and inclusion in its workforce. In its Strategic Plan, the judiciary emphasizes the importance of these principles in the workforce and highlights the federal judiciary's commitment to fair employment practices through expansion of appropriate recruitment, education, and training. **See:** [Strategic Plan for the Federal Judiciary, Goal 4.1b](#).
- (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 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).