

Sexual Harassment & Misconduct

February 2022

The IACP Law Enforcement Policy Center creates four types of documents: Model Policies, Considerations Documents, Concepts & Issues Papers, and Need to Know one-page summaries. Typically, for each topic, either a Model Policy or a Considerations Document is created, supplemented with a Concepts & Issues Paper. This file contains the following documents:

- ***Model Policy***: Provides police agencies with concrete guidance and directives by describing in sequential format the manner in which actions, tasks, and operations are to be performed. Legal criteria draw a distinction between sexual harassment and sexual misconduct, but, in reality, this distinction is not always clear. Thus, separate model policies for [Sexual Harassment](#) and for [Sexual Misconduct](#) are both presented here, with a combined Concepts & Issues paper that discusses both sexual harassment and sexual misconduct and the similarities and differences between the two concepts.
- ***Concepts & Issues Paper***: Designed to provide context and background information to support a Model Policy for a deeper understanding of the topic.

Model Policy

Updated: February 2022

Sexual Harassment in the Workplace

I. PURPOSE

The purpose of this policy is to define, identify, and prohibit sexual harassment in the workplace.¹

II. POLICY

It is the policy of this law enforcement agency that employees shall not engage in any acts of sexual harassment.²

III. DEFINITIONS

Complainant: The person reported to be the victim of sexual harassment.

Office of Professional Standards (OPS): The designated employee(s) or unit, which may be external to the agency, with primary responsibility for monitoring adherence of employees to agency policy, procedures, and rules for investigating reports of employee misconduct, including sexual harassment.

Retaliatory Conduct: Harmful conduct or action designed to serve as retribution against an employee for engaging in legally protected activity, such as reporting or otherwise providing information regarding misconduct against another employee or testifying on behalf of another employee.³

Interference: Using intimidation, threat, or coercion to prevent or discourage an individual's right to make a complaint of sexual harassment.

Sexual Harassment: A form of gender discrimination, sexual harassment includes unwelcome sexual advances, requests for sexual favors, and other verbal or physical offensive conduct of a sexual nature that explicitly or implicitly affects employment; unreasonably interferes with work performance; or creates an intimidating, hostile, or offensive working environment.

¹ Sexual harassment of victims, witnesses, or others not employed by the agency will be covered under the Sexual Misconduct by Police policy and/or Standards of Conduct.

² Individuals covered under this policy are referred to as "employees" and include agency members defined as employees; applicants for employment with the agency, whether sworn, regular, reserve, or professional staff; all volunteers; interns; cadets; Police Explorers; contractors; or any individual engaged in agency-sponsored activities.

³ U.S. Equal Employment Opportunity Commission, *Enforcement Guidance on Retaliation and Related Issues* (2016), <https://www.eeoc.gov/laws/guidance/enforcement-guidance-retaliation-and-related-issues#II. ELEMENTS>.

Workplace: Anywhere the employee is performing job-related responsibilities, is in uniform, is acting as a representative of the agency, or is acting in such a way that leverages the power and privilege of their status as a law enforcement officer and the power the position affords them.⁴

IV. PROCEDURES

A. Prohibited Behavior

No employee shall:

1. Engage in sexual harassment. This includes prohibitions against
 - a. Unwelcome physical contact of a sexual nature, such as intentional touching, grabbing, pinching, brushing against another's body, and/or impeding or blocking movement;
 - b. Verbal or written comments that are perceived as sexually offensive;
 - c. Sexually offensive conduct that is severe or pervasive;
 - d. Explicit or implicit suggestions of sexual activity by a supervisor or manager in return for a favorable employment action;
 - e. Placing the complainant in an objectively disadvantageous work environment;
 - f. Creation of an environment that is
 - i. Objectively offensive such that a reasonable person would find it hostile, humiliating, or demeaning; and/or
 - ii. Subjectively offensive as perceived by the complainant.
2. Use blogs, social networking sites, telephone, text message, or other communication devices to sexually harass another employee. This prohibition includes the employee's use of communication methods or devices to sexually harass another individual or engage in sexual misconduct outside the workplace.
3. Interfere with reporting and investigating reports of sexual harassment.
4. Retaliate against any individual for engaging in any legally protected activities, such as reporting or supporting an individual who has reported sexual harassment or sexual misconduct.

B. Supervisory Responsibilities

1. Although all employees shall be responsible for preventing sexual harassment, supervisors are expected to be aware of subtle as well as overt aspects of internal agency culture and take proactive affirmative action to intervene. In addition, supervisors' responsibilities include:
 - a. Advising employees on the types of behavior prohibited and the agency procedures for reporting and resolving complaints of sexual harassment;
 - b. Monitoring the work environment on a daily basis for warning signs and patterns or indicators that sexual harassment may be occurring;
 - c. Using all reasonable means to prevent a prohibited act from occurring when they suspect that an employee will or may perform such an activity.
2. Supervisors shall immediately notify the appropriate authority, such as OPS, any supervisor higher in the chain of command, or the agency's human resources function, of any actual or potential sexual harassment that is observed or brought to their attention.⁵

⁴ The definition of workplace will vary by jurisdiction.

⁵ Agencies should determine the exact timeframe for supervisors to complete these notifications.

3. Once a supervisor observes or receives information regarding conduct that may violate this policy, they are responsible for taking immediate action to prevent further sexual harassment or misconduct, regardless of whether the complainant wants any action taken on the complainant's behalf. This includes reporting to and working with the human resources function to eliminate the hostile, humiliating, demeaning, or sexually offensive environment where there has been a complaint of sexual harassment.
4. Circumstances in which the victim is underage require immediate notification of the parents or legal guardian and, where necessary, the appropriate child protective services agency.
5. Supervisors shall take immediate action to prevent retaliatory conduct or interference toward the complainant and witnesses.
6. Any proscribed conduct covered by this policy that comes to the attention of a supervisor shall result in an investigation.
7. Each supervisor has the responsibility to assist any employee or member of the public in documenting and filing a complaint of sexual harassment with the appropriate authority, such as OPS.
8. If a situation requires separation of the parties, care should be taken to avoid action that punishes either party.
9. Any sexual harassment of a criminal nature or of a potential criminal nature shall be reported according to the agency policy on criminal behavior.

C. Employee Responsibilities

1. Each employee of this agency shall be responsible for assisting in the prevention of sexual harassment by:
 - a. Refraining from participation in or encouragement of action that could be perceived as sexual harassment;
 - b. Reporting observed acts of sexual harassment to a supervisor, OPS, or the human resources function;⁶
 - c. Encouraging any employee who confides that they are being sexually harassed to report these acts to a supervisor, OPS, or the human resources function;
 - d. Encouraging any employee who is aware of sexual harassment to report these acts to a supervisor, OPS, or the human resources function;
 - e. Undergoing training to identify when another employee is engaging in sexually harassing behavior and learn the skills necessary to intervene (see [Section F](#)).
2. Failure of any employee to carry out their responsibilities in good faith as defined in this policy may be considered in any performance evaluation or promotional decision and may be grounds for discipline.⁷

D. Agency Responsibilities

1. This agency shall thoroughly investigate all reports of sexual harassment, whether internally and/or by an outside agency.
2. Investigations shall be completed even if the accused employee leaves the agency or if a settlement is reached between the agency and the complainant.
3. Upon a finding of "founded," appropriate corrective action shall be taken.⁸

⁶ This does not apply to victims who do not report sexual harassment.

⁷ In some instances, collective bargaining agreements may dictate the actions to be taken in these circumstances.

⁸ Corrective action may include counseling, additional training, and/or disciplinary action.

4. Any transfer or reassignment of any of the parties involved should be voluntary, if possible, and should not be taken against the wishes of the complainant.
5. Any retaliatory or interfering conduct shall result in discipline.⁹
6. The chief executive officer or their designee should be provided with an annual summary of complaints related to sexual harassment. This summary should be reviewed to determine if any changes are necessary to agency policy, procedures, and/or training.

E. Complaint Procedures

If any employee believes that they have been subjected to sexual harassment, the employee has the right to file a complaint with the agency. This may be done in writing or orally. Further, this policy does not preclude any employee from filing a complaint or grievance with an appropriate outside agency or other authority.

1. Complaint procedures shall be made available to agency employees.
2. Any employee encountering sexual harassment is encouraged to:
 - a. Inform the person that their actions are unwelcome and offensive; and
 - b. Immediately document all incidents in order to provide the fullest basis for investigation.
3. Any employee who believes that they are being sexually harassed is encouraged to report the incident(s) as soon as possible so that steps may be taken to protect the employee from further actions that may be in violation of this policy and so that appropriate investigative and disciplinary measures may be initiated. Where the immediate supervisor is involved in the prohibited action, the employee may waive filing a complaint with that supervisor and may report to another entity, which may include a supervisor higher in the chain of command; an equal employment opportunity officer, if available; the agency's human resources function; or OPS.
4. Once a complaint is received, agency policy regarding reports of employee misconduct shall be followed, to include thorough documentation and follow-up investigation.¹⁰
5. Confidentiality shall be maintained throughout the investigatory process to the extent practical and appropriate under the circumstances and controlling law.
6. Agencies shall follow recommended practices for trauma-informed investigations focusing on sexual harassment.¹¹
7. After the receipt of a complaint of sexual harassment, agencies should make every reasonable effort to prevent retaliation and interference.¹²

⁹ See the IACP Law Enforcement Policy Center documents on Retaliatory Conduct by Employees available at <https://www.theiacp.org/resources/policy-center-resource/retaliatory-conduct>.

¹⁰ See the IACP Law Enforcement Policy Center documents on Investigations of Allegations of Employee Misconduct available at <https://www.theiacp.org/resources/policy-center-resource/employee-misconduct>.

¹¹ For more information, see the IACP Trauma Informed Sexual Assault Investigation Training resources at <https://www.theiacp.org/projects/trauma-informed-sexual-assault-investigation-training>.

¹² For more information, see the accompanying Concepts & Issues Paper and the IACP Law Enforcement Policy Center documents on Retaliatory Conduct by Employees available at <https://www.theiacp.org/resources/policy-center-resource/retaliatory-conduct>.

F. Training

Preventing sexual harassment, and reporting sexual harassment when it does occur, is everyone's responsibility. This agency shall provide regular and refresher training concerning:

- The nature of sexual harassment in the workplace;
- Prohibitions on such actions defined in the policy;
- How to intervene when witnessing sexual harassment amongst peers;
- How to support victims of sexual harassment (such as trauma-informed response);
- How, when, and where to report such behavior;
- The agency's definitions of retaliation and interference and the consequences of each.

All employees shall receive training on the agency's sexual harassment policy. However, additional training should be provided to supervisors and others in a leadership role, recognizing that middle- and first-line supervisors are of particular importance in preventing, identifying, and responding effectively to sexual harassment.

Every effort has been made by the IACP Law Enforcement Policy Center staff and advisory board to ensure that this document incorporates the most current information and contemporary professional judgment on this issue. However, law enforcement administrators should be cautioned that no model policy can meet all the needs of any given law enforcement agency. In addition, the formulation of specific agency policies must take into account local political and community perspectives and customs, prerogatives, and demands; often divergent law enforcement strategies and philosophies; and the impact of varied agency resource capabilities, among other factors. Readers outside of the United States should note that, while this document promotes procedures reflective of a democratic society, its legal basis follows United States Supreme Court rulings and other federal laws and statutes. Law enforcement administrators should be cautioned that each law enforcement agency operates in a unique environment of court rulings, state laws, local ordinances, regulations, judicial and administrative decisions, and collective bargaining agreements that must be considered and should therefore consult their agency's legal advisor before implementing any policy.

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Model Policy

Updated: February 2022

Sexual Misconduct

I. PURPOSE

The purpose of this policy is to define, identify, and prohibit sexual misconduct. Consent shall not be an affirmative defense for violations of this policy. While on duty; no sex acts are considered consensual.

II. POLICY

It is the policy of this law enforcement agency that employees shall not engage in sexual misconduct.¹

III. DEFINITIONS

Complainant: The person reported to be the victim of sexual misconduct.

Office of Professional Standards (OPS): The designated employee(s) or unit, which may be external to the agency, with primary responsibility for monitoring adherence of employees to agency policy, procedures, and rules and for investigating reports of employee misconduct.

Retaliatory Conduct: Harmful conduct or action designed to serve as retribution against an individual for engaging in legally protected activity, such as reporting or otherwise providing information regarding misconduct against an individual or testifying on behalf of another individual.

Sexual Misconduct: Any behavior by an employee that takes advantage of the employee's position in law enforcement to misuse authority and power (including force) in order to commit a sexual act, initiate sexual contact or conduct with another person, or respond to a perceived sexually motivated cue (from a subtle suggestion to an overt action) from another person. It also includes any communication or behavior by an employee that would likely be construed as lewd, lascivious, inappropriate, or conduct unbecoming an employee and violates general principles of acceptable conduct common to law enforcement.² Sexual misconduct includes a broad scope of behaviors and may include sexual harassment or criminal conduct such as sexual assault.

¹ Individuals covered under this policy include agency members defined as employees and applicants for employment with the agency, whether sworn, regular, reserve, or professional staff; all volunteers; interns; cadets; Police Explorers; or any individual engaged in agency-sponsored mentoring activities.

² International Association of Chiefs of Police, *Addressing Sexual Offenses and Misconduct by Law Enforcement: Executive Guide* (June 2011), <https://www.theiacp.org/sites/default/files/all/a/AddressingSexualOffensesandMisconductbyLawEnforcementExecutiveGuide.pdf>.

Workplace: Anywhere the employee is performing job-related responsibilities, is in uniform, is acting as a representative of the agency, or is acting in such a way that leverages the power and privilege of their status as a law enforcement officer and the power the position affords them.³

IV. PROCEDURES

A. Prohibited Behavior

No employee shall:

1. Engage in sexual misconduct. This includes prohibitions against:
 - a. Any sexual behavior or acts while on duty, consensual or otherwise (e.g., masturbation, viewing and/or distributing pornographic images, sexting while ‘on break’);
 - b. Sexual contact by force (e.g., sexual assault, rape);
 - c. Sexual contact with individuals in handcuffs or individuals who have been detained or arrested;
 - d. Sexual coercion or exploitation (e.g., extorting sexual favors in exchange for not ticketing or arresting a community member);
 - e. Gratuitous physical contact with suspects (e.g., inappropriate or unnecessary bodily searches, frisks, or pat-downs);
 - f. Unwanted employee-initiated sexual contacts directed toward community members, family members, peers, or any individual the employee encounters;
 - g. Engaging in community member-initiated sexual contact while on duty;
 - h. Voyeuristic actions that are sexually motivated (e.g., looking in windows of residences for sexually motivated reasons);
 - i. Unnecessary contacts/actions taken by employees for personally and/or sexually motivated reasons, including failing to respect classified information or client confidentiality (e.g., unwarranted call backs to crime victims, making a traffic stop to get a closer look at the driver for non-criminal justice purposes);
 - j. Inappropriate and unauthorized use of agency resources and/or information systems for other than legitimate law enforcement purposes.
2. Use blogs, social networking sites, telephone, text message, or other communication devices to engage in sexual misconduct. This prohibition includes the employee’s use of communication methods or devices to engage in sexual misconduct outside the workplace.
3. Retaliate against any individual for engaging in any legally protected activities, such as reporting or supporting an individual who has reported sexual misconduct.

B. Supervisory Responsibilities

1. Although all employees shall be responsible for preventing sexual misconduct, supervisors are expected to take proactive affirmative action. In addition, supervisors’ responsibilities include:
 - a. Advising employees on the types of behavior prohibited and the agency procedures for reporting and resolving complaints of sexual misconduct;
 - b. Monitoring the work environment on a daily basis for warning signs and patterns or indicators that sexual misconduct may be occurring, to include but not limited to traffic stops, arrests, activity

³ The definition of workplace will vary by jurisdiction.

- reports, radio logs, body-worn cameras, narrative reports, case dispositions, locations of activities, and categories of subjects;
- c. Utilizing all reasonable means to prevent a prohibited act from occurring when they know or should know that an employee will or may perform such an activity;
 - d. Taking immediate action to prevent retaliatory conduct toward the complainant and witnesses and to eliminate the hostile, humiliating, demeaning, or sexually offensive environment where there has been a complaint of sexual misconduct.
2. Supervisors shall immediately notify the appropriate authority, such as OPS, any supervisor higher in the chain of command, or the agency's human resources function, of any actual or potential sexual misconduct that is observed or brought to their attention.⁴
 3. Once a supervisor observes or receives information regarding conduct that may violate this policy, they are responsible for taking immediate action to prevent further sexual misconduct, regardless of whether the complainant wants any action taken on the complainant's behalf.
 4. Circumstances in which the victim is underage require immediate notification of the parents or legal guardian and, where necessary, the appropriate child protective services agency.
 5. Each supervisor has the responsibility to assist any employee or member of the public in documenting and filing a complaint of sexual misconduct with appropriate authority, such as OPS.
 6. Any violation of proscribed conduct covered by this policy – whether criminal or administrative – that comes to the attention of a supervisor shall result in an investigation.
 7. Any sexual misconduct of a criminal nature or of a potential criminal nature shall be reported according to agency policy on criminal behavior.

C. Employee Responsibilities

1. Each employee of this agency shall be responsible for assisting in the prevention of sexual misconduct by:
 - a. Refraining from participation in or encouragement of action that could be perceived as sexual misconduct;
 - b. Reporting observed acts of sexual misconduct to a supervisor, OPS, or the human resources function;⁵
 - c. Encouraging any employee who confides that they are a victim of sexual misconduct to report these acts to a supervisor, OPS, or the human resources function;
 - d. Encouraging any employee who is aware of someone else involved in sexual misconduct to report these acts to a supervisor, OPS, or the human resources function;
 - e. Undergoing peer intervention training to learn the skills necessary to intervene when another employee is engaging in sexual misconduct.
2. Failure of any employee to carry out their responsibilities in good faith as defined in this policy may be considered in any performance evaluation or promotional decision and may be grounds for discipline.⁶

⁴ Agencies should determine the exact timeframe for supervisors to complete these notifications.

⁵ This does not apply to victims who do not report sexual harassment or sexual misconduct.

⁶ In some instances, collective bargaining agreements may dictate the actions to be taken in these circumstances.

D. Agency Responsibilities

1. This agency shall thoroughly investigate all reports of sexual misconduct (criminal or non-criminal), whether internally and/or by an outside agency.
2. If there are both criminal and administrative violations, the investigations should be conducted concurrently, while ensuring due process rights of employees reported to have committed an offense are upheld during the separate administrative and criminal investigations. Concurrent investigations ensure any necessary administrative actions are taken in accordance with the investigation findings as soon as practically possible and independent of any potentially lengthy criminal proceedings.
3. Investigations shall be completed even if the accused employee leaves the agency or if a settlement is reached between the agency and the complainant.
4. Upon a finding of “founded,” appropriate corrective action shall be taken, up to and including termination and state decertification.⁷
5. Any transfer or reassignment of any of the parties involved should be voluntary, if possible and should not be taken against the wishes of the complainant.
6. Any retaliatory conduct shall result in discipline, up to and including termination and state decertification.⁸
7. All victims shall be provided with the opportunity to connect with victim services.
8. The chief executive officer or their designee should be provided with an annual summary of complaints related to sexual misconduct. This summary should be reviewed to determine if any changes are necessary to agency policy, procedures, and/or training.
9. Train all employees, especially supervisors, on early warning signs and patterns or indicators of possible sexual misconduct.

E. Complaint Procedures

Agency complaint procedures shall apply and be made available to members of the community as well as agency employees. Complaints of sexual misconduct may be made to the agency and/or to an appropriate outside agency or authority.⁹

1. Any individual encountering sexual misconduct is encouraged to:
 - a. Inform the person that their actions are inappropriate, in violation of policy.
 - b. Immediately document all incidents in order to provide the fullest basis for investigation.
2. Any individual who is a victim of sexual misconduct is encouraged to report the incident(s) as soon as possible so that steps may be taken to protect the individual from further actions that may be in violation of this policy and so that appropriate investigative and disciplinary measures may be initiated.
3. Once a complaint is received, agency policy regarding reports of misconduct shall be followed, to include thorough documentation and follow-up investigation.¹⁰

⁷ Corrective action may include counseling, additional training, and/or disciplinary action.

⁸ See the IACP Policy Center documents on Retaliatory Conduct by Employees, <https://www.theiacp.org/resources/policy-center-resource/retaliatory-conduct>.

⁹ This may include the city/local government that governs the department or federal resources. For more information on reporting police misconduct in the United States, see U.S. Department of Justice, “Addressing Police Misconduct Laws Enforced by the Department of Justice,” <https://www.justice.gov/crt/addressing-police-misconduct-laws-enforced-department-justice>.

¹⁰ See the IACP Law Enforcement Policy Center documents on Investigation of Allegations of Employee Misconduct, <https://www.theiacp.org/resources/policy-center-resource/employee-misconduct>.

4. Confidentiality shall be maintained throughout the investigatory process to the extent practicable and appropriate under the circumstances and controlling law.
5. This policy does not preclude any employee from filing a complaint or grievance with an appropriate outside agency.
6. Agencies shall follow recommended practices for and train all officers on how to conduct trauma-informed investigations focusing on sexual misconduct.¹¹
7. After the receipt of a complaint of sexual misconduct, agencies should make every reasonable effort to prevent retaliation and interference.¹²

F. Training

Preventing sexual misconduct and/or reporting sexual misconduct when it does occur, is everyone's responsibility. This agency shall provide regular and refresher training concerning:

- The nature of sexual misconduct in the workplace, to include warning signs and patterns or indicators that sexual misconduct may be occurring;
- Prohibitions on such actions defined in the policy;
- How to intervene when witnessing sexual misconduct;
- How to support victims of sexual misconduct (such as trauma-informed response);
- How and where to report such behavior;
- The agency's definitions of retaliation and interference, and the consequences of each.

All employees shall receive training on the agency's sexual misconduct policy. However, additional training should be provided to supervisors and others in a leadership role, recognizing that middle- and first-line supervisors are of particular importance in preventing, identifying, and responding effectively to sexual misconduct.

¹¹ For more information, see the IACP Trauma Informed Sexual Assault Investigation Training resources at <https://www.theiacp.org/projects/trauma-informed-sexual-assault-investigation-training>.

¹² For more information, see the accompanying Concepts & Issues Paper and the IACP Law Enforcement Policy Center documents on Retaliatory Conduct by Employees, <https://www.theiacp.org/resources/policy-center-resource/retaliatory-conduct>.

Every effort has been made by the IACP Law Enforcement Policy Center staff and advisory board to ensure that this document incorporates the most current information and contemporary professional judgment on this issue. However, law enforcement administrators should be cautioned that no model policy can meet all the needs of any given law enforcement agency. In addition, the formulation of specific agency policies must take into account local political and community perspectives and customs, prerogatives, and demands; often divergent law enforcement strategies and philosophies; and the impact of varied agency resource capabilities, among other factors. Readers outside of the United States should note that, while this document promotes procedures reflective of a democratic society, its legal basis follows United States Supreme Court rulings and other federal laws and statutes. Law enforcement administrators should be cautioned that each law enforcement agency operates in a unique environment of court rulings, state laws, local ordinances, regulations, judicial and administrative decisions, and collective bargaining agreements that must be considered and should therefore consult their agency's legal advisor before implementing any policy.

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Concepts & Issues Paper

Updated: July 2021

Sexual Harassment & Misconduct

I. INTRODUCTION

A. Purpose of Document

This document addresses illegal and unwanted sexual behavior. This paper is designed to accompany the Model Policies on Sexual Harassment and Sexual Misconduct established by the IACP Law Enforcement Policy Center. This paper provides essential background material and supporting documentation to provide greater understanding of the developmental philosophy and implementation requirements for the model policies. This material will be of value to law enforcement executives in their efforts to tailor the models to the requirements and circumstances of their community and their law enforcement agency.

B. Definitions

While sexual harassment and sexual misconduct are related concepts, they are not synonymous. *Sexual harassment* is a legal term with a specific definition (see [Appendix A](#) for further explanation of the legal basis of sexual harassment), whereas *sexual misconduct* is a broader term that does not necessarily have the same legal criteria as sexual harassment (although sexual misconduct may include sexual harassment). Sexual harassment involves an employee, while sexual misconduct can be directed toward anyone; this may include victims of crime, arrestees, community members, or any individuals an officer encounters through the course of their duties on the job or while off-duty by virtue of their status as a police officer. In the United States, sexual harassment is a civil offense, whereas certain types of sexual misconduct can be criminal offenses. Nonetheless, both should be prohibited and treated seriously when they do occur. Because of the legal distinctions between the two topics, a separate policy is warranted for each. However, it is also possible that certain behavior may constitute both sexual harassment and sexual misconduct; the distinction is not always clear.

Sexual harassment is a form of gender discrimination defined as unwelcome sexual advances, requests for sexual favors, and other verbal or physical offensive conduct of a sexual nature that explicitly or implicitly affects employment; unreasonably interferes with work performance; or creates an intimidating, hostile, or offensive working environment. For the purposes of this discussion, sexual harassment is distinguished from general employment-related harassment, discrimination, and otherwise unprofessional conduct.¹

¹ For an in-depth discussion of these topics, please see the IACP Law Enforcement Policy Center documents on Harassment, Discrimination, and Unprofessional Conduct, <https://www.theiacp.org/resources/policy-center-resource/harassment-discrimination-and-unprofessional-conduct>.

Sexual harassment includes unwelcome sexual advances, requests for sexual favors, or other verbal or physical offensive conduct of a sexual nature when:

1. Submission to or rejection of such advances, requests, or conduct is made either explicitly or implicitly a term or condition of employment or as a basis for employment decisions; or
2. Such advances, requests, or conduct have the purpose or effect of unreasonably interfering with an individual's work performance by creating an intimidating, hostile, humiliating, or sexually offensive work environment.

Under these definitions, direct or implied requests by a supervisor or co-worker for sexual favors in exchange for actual or promised job benefits such as favorable reviews, salary increases, promotions, increased benefits, or continued employment constitutes sexual harassment. The legal definition of sexual harassment² is broad, and, in addition to the above examples, other sexually oriented conduct, whether it is intended as such or not, that is unwelcome and has the effect of creating a workplace environment that is hostile, offensive, intimidating, or humiliating to employees of any gender identity may also constitute sexual harassment.

Sexual misconduct includes any behavior by an agency employee that takes advantage of the employee's position in law enforcement to misuse authority and power (including force) in order to commit a sexual act, initiate sexual contact with another person, or respond to a perceived sexually motivated cue (from a subtle suggestion to an overt action) from another person. It also includes any communication or behavior by an employee that would likely be construed as lewd, inappropriate, or conduct unbecoming an employee that violates general principles of acceptable conduct common to law enforcement.³ Sexual misconduct includes a broad scope of behaviors and may include sexual harassment or more severe criminal conduct such as sexual assault.⁴

It is also recognized that the law enforcement profession is unique in that employees perform work-related duties in a variety of settings outside the traditional office environment. For law enforcement, *workplace* is defined as anywhere the employee, whether sworn or civilian, is performing job-related responsibilities, is in uniform, is acting as a representative of the agency, or holds a position of implied authority because of their law enforcement status. This applies to both on-duty and off-duty conduct.⁵

Agency leaders are encouraged to consult a legal advisor regarding this distinction and the applicable laws and statutes within their jurisdictions.

II. BACKGROUND

Members of law enforcement are in a unique and visible position in the communities they serve. They are entrusted with the authority to enforce laws and protect the civil rights of community members. Sexual offenses and misconduct implicating law enforcement represent abuse of this authority. It is imperative that executives proactively address and work to prevent such incidents, establishing and maintaining a healthy culture through agency mission, policy, and training.

² Sexual harassment is considered discrimination in violation of the Civil Rights Act of 1964. For more information, see U.S. Equal Employment Opportunity Commission, *Facts About Sexual Harassment*, <https://www.eeoc.gov/publications/facts-about-sexual-harassment#:~:text=Sexual%20harassment%20is%20a%20form,as%20to%20the%20federal%20government>.

³ International Association of Chiefs of Police (IACP), *Addressing Sexual Offenses and Misconduct by Law Enforcement: Executive Guide* (2011), <https://www.theiacp.org/sites/default/files/all/a/AddressingSexualOffensesandMisconductbyLawEnforcementExecutiveGuide.pdf>.

⁴ IACP, *Addressing Sexual Offenses and Misconduct by Law Enforcement*, <https://www.theiacp.org/sites/default/files/all/a/AddressingSexualOffensesandMisconductbyLawEnforcementExecutiveGuide.pdf>.

⁵ The definition of workplace will vary by jurisdiction.

For ethical, liability, and economic reasons, law enforcement executives have a vested interest in prohibiting sexual harassment and misconduct. The following statistics reveal the widespread nature of these behaviors.

Sexual Harassment:

- Twenty-seven percent of respondents in a study who reported gender discrimination within the last five years identified sexual harassment as the most recent type of discrimination they experienced.⁶
- In a survey of 23 countries, a reported 15–30 percent of women worldwide experience sexual harassment in the workplace.⁷
- In 2018, the Human Rights Tribunal of Ontario awarded \$200,000 to an employee who endured sexual harassment for injury to her dignity, feelings, and self-respect.⁸
- Monetary benefits of sexual harassment claims to the U.S. Equal Employment Opportunity Commission (EEOC) in 2019 were \$139.6 million.⁹ In some cases, these costs fall to the employer. In addition to monetary costs of a claim, the employer in a sexual harassment case can also suffer from decreased employee productivity, increased turnover, and damage to the agency's reputation.¹⁰

Sexual Misconduct:

- After excessive use of force complaints, sexual misconduct was the second most reported type of police complaint.¹¹
- Officers who commit sexual violence are likely to have done so before; 41 percent of police sexual violence cases are committed by 'recidivist officers' who averaged four victims over a three-year span of offending.¹²

Sexual harassment and misconduct, in addition to being morally objectionable administrative violations, may be criminal. Law enforcement employees who engage in these behaviors invite public scrutiny and potential legal repercussions and threaten the integrity, community trust, legitimacy, and professionalism of the agency and its members. Failure to effectively address sexual harassment and misconduct enables further toxic behavior. Additional impacts to agencies that do not create and enforce sexual misconduct policies may include:

- Lack of trust among employees, decreased morale, and reduced productivity.
- Erosion of public trust of the agency, reinforced by negative media coverage.
- Difficulty recruiting and retaining employees.
- Impact to the health of harassed employees to include physical illnesses, mental health degradation, and symptoms of post-traumatic stress disorder,¹³ leading to increased medical care costs and work absences.
- Lawsuits and corresponding legal fees.

⁶ Department of Justice Office of the Inspector General, *Review of Gender Equity in the Department's Law Enforcement Components* (June 2018), <https://oig.justice.gov/reports/2018/e1803.pdf>.

⁷ Trishala Singh, "Prevention of Sexual Harassment of Women in the Workplace: Seeking Gender Equality at Work in India," *Journal of International Women's Studies* 18, no. 1 (2016): 104–113.

⁸ A.B. v. Joe Singer Shoes Ltd., 2018 HRT0 107.

⁹ U.S. Equal Employment Opportunity Commission (EEOC), "All Charges Alleging Harassment (Charges filed with EEOC) FY 2010–FY 2019," <https://www.eeoc.gov/statistics/all-charges-alleging-harassment-charges-filed-eeoc-fy-2010-fy-2019>.

¹⁰ Chai R. Feldblum and Victoria A. Lipnic, *Select Task Force on the Study of Harassment in the Workplace* (Washington, DC: U.S. EEOC, 2016), <https://www.eeoc.gov/select-task-force-study-harassment-workplace>.

¹¹ Cato Institute, *The Cato Institute's National Police Misconduct Reporting Project: 2010 Annual Report*, 1, https://ftp.leg.state.nv.us/App/NELIS/REL/77th2013/ExhibitDocument/OpenExhibitDocument?exhibitId=1240&fileDownloadName=o0220ab146_reejb.pdf.

¹² Cara E. Rabe-Hemp and Jeremy Braithwaite, "An Exploration of Recidivism and the Officer Shuffle in Police Sexual Violence," *Police Quarterly* 16, no. 2 (June 2012): 127–147, <https://journals.sagepub.com/doi/abs/10.1177/1098611112464964>.

¹³ Robin N. Haarr Robin N. and Merry Morash, "The Effect of Rank on Police Women Coping With Discrimination and Harassment," *Police Quarterly* (Vol 14, Issue 4) (2013), 396.

- Reinforcement of implicit and explicit biases.
- Increased city/government oversight.

Law enforcement executives may also be directly impacted by sexual misconduct occurring within their agencies. For instance, they may face individual lawsuits or be named in a larger lawsuit, have reduced time for normal duties, experience a degradation in their ability to effectively lead the agency due to decreased trust from staff and community leadership to enforce standards, and confront direct negative impacts related to future job prospects.

A. Sexual Harassment

Individuals of all sexual orientations and gender identities can be the victims or perpetrators of sexual harassment. While the majority of sexual harassment reports are brought forth by women,¹⁴ all individuals should be encouraged to report instances of sexual harassment. Women have a greater risk of sexual harassment in work situations where men outnumber women, which often includes law enforcement.¹⁵ Globally, the representation of women in policing varies from as high as 29.8 percent¹⁶ in England and Wales to as low as 11.8 percent in the United States.¹⁷ Transgender individuals may also be at an elevated risk of victimization.¹⁸

Victims of harassment may experience negative job-related, physical health, and psychological effects. The negative outcomes may also impact the organization in costs, lower morale, reduced output, increased absenteeism, turnover, and legal costs. Sexual harassment may also impact the future of the policing profession by creating barriers to expanding gender diversity.¹⁹ Studies have shown that women in law enforcement feel that they must work harder and better to prove their ability to do the job.²⁰ When individuals in law enforcement experience sexual harassment, they may feel that their hard work and efforts are being undermined and devalued.

B. Sexual Misconduct

Sexual misconduct by law enforcement personnel, both sworn and professional staff, is under-reported, most likely due in part to the reluctance of victims to report to authorities.²¹ In addition to experiencing the trauma of the violation, victims may struggle with feelings of humiliation and fear of retaliation, of not being believed, or they may

¹⁴ United States Equal Employment Opportunity Commission (EEOC), *Charges Alleging Sex-Based Harassment (Charges filed with EEOC) FY 2010 – FY 2018*, Enforcement & Litigation Statistics, https://www.eeoc.gov/eeoc/statistics/enforcement/sexual_harassment_new.cfm.

¹⁵ Stans de Haas and Greetje Timmerman, "Sexual Harassment in the Context of Double Male Dominance," *European Journal of Work and Organizational Psychology* 19, no. 6 (2010): 717–734, <https://www.tandfonline.com/doi/abs/10.1080/09541440903160492>.

¹⁶ Jodie Hargreaves, Hannah Husband, and Chris Linehan, *Police Workforce, England and Wales, 31 March 2018* (London, UK: Home Office National Statistics, July 2018), 33, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/726401/hosb1118-police-workforce.pdf.

¹⁷ Federal Bureau of Investigation, *Crime in the United States 2014*, table 74, Full-time Law Enforcement Employees by Population Group (2015), <https://ucr.fbi.gov/crime-in-the-u.s/2014/crime-in-the-u.s.-2014/tables/table-74>.

¹⁸ Annelise Mennicke et al., "Workplace Experiences of Gay and Lesbian Criminal Justice Officers in the United States: A Qualitative investigation of Officers Attending a LGBT Law Enforcement Conference," *Policing and Society*, 28:6, 712–729, <https://doi.org/10.1080/10439463.2016.1238918>.

¹⁹ Mennicke et al., "Workplace Experiences of Gay and Lesbian Criminal Justice Officers in the United States."

²⁰ Paula McDonald and Michael G Flood, *Encourage. Support. Act! Bystander Approaches to Sexual Harassment in the Workplace* (Sydney, NSW: Human Rights Commission, 2012), https://humanrights.gov.au/sites/default/files/content/sexualharassment/bystander/bystander_june2012.pdf.

²¹ Linda B. Cottler et al., "Breaking the Blue Wall of Silence: Risk Factors for Experiencing Police Sexual Misconduct Among Female Offenders," *American Journal of Public Health* 104, no. 2 (February 2014): 338–344; Philip Matthew Stinson Sr. et al., "Police Sexual Misconduct: Arrested Officers and Their Victims," *Victims & Offenders* 2, no. 2 (2015): 117–151.

be unsure as to whether their experience qualifies as sexual misconduct. It is also difficult to gauge the extent of the problem because accused employees may resign, expecting to avoid a complete administrative investigation.

Agency policy should be comprehensive enough to include protection for all populations. For example, studies indicate that most reported victims of sexual misconduct are minors.²² One study found almost 40 percent of cases of sexual abuse by officers over a 12-year period involved teenagers. The same study found that more than 40 percent of the cases with teenage victims involved Police Explorers programs. Five of the thirty-two Explorer-related cases involved sexual molestation of boys.²³ Risk of victimization may also be elevated based on real or perceived gender identity or sexual orientation.²⁴

By maintaining an awareness of populations that are statistically more likely to be victims of sexual misconduct, agencies are aided in their attempts to prevent and respond to instances of misconduct.

C. Sexual Harassment and Misconduct in the Age of Technology

Technology may be used to commit sexual misconduct. Employees might use technology to view or distribute pornography, send inappropriate and/or unsolicited texts and images to community members or colleagues, or create and publish sexually harassing web content to be viewed by community members or colleagues. Technology and agency resources may also be inappropriately used to learn more, stalk, or come in closer contact with a victim. Agencies should establish and keep current policies related to technology and social media use.²⁵

Agency executives must be aware of and understand how technology and electronic media, including social media sites, can be used to commit sexual misconduct against individuals, including other agency employees as well as members of the public. These technologies provide individuals with an opportunity for misconduct without the need for face-to-face interactions.

Sexual harassment and misconduct can be committed on a blog, webpage, social media site, or through various messaging apps—and agencies may be held liable. In addition, the exact definition of what legally constitutes the workplace is now expanded. This means that if a sufficient connection between the sexually harassing conduct and the employment relationship can be made, the agency may be liable. In fact, sexually harassing blog or web entries regarding co-workers may be considered as if those comments were made verbally in the workplace. Even with personal webpages, blogs, and social media sites, although employers might not face liability, the employee may face personal liability. However, if it is shown that the employer was aware of the sexual harassment and did nothing to stop it, a court may find the employer should have done more to stop the behavior.

Conversely, agencies can utilize technology to combat sexual misconduct, enhance community-police relations, and promote strong leadership messages and transparency. Press releases, social media, and agency websites may be used to inform the public and employees of complaint procedures and the results of investigations.²⁶

²² Cato Institute, *The Cato Institute's National Police Misconduct Reporting Project: 2010 Annual Report*, 1; A.B. v. Joe Singer Shoes Ltd., 2018 HRT0 107; see also Philip Matthew Stinson Sr. et al., "Police Sexual Misconduct: A National Scale Study of Arrested Officers," *Criminal Justice Policy Review* 26, no. 7 (2014): 665–690.

²³ Walker, Samuel and Dawn Irlbeck, *Police Sexual Abuse of Teenage Girls: A 2003 Update on "Driving While Female"* (Omaha, NE: Police Professionalism Initiative, 2003), 4–5, <https://samuelwalker.net/wp-content/uploads/2010/06/dwf2003.pdf>.

²⁴ Amnesty International, USA, *Stonewalled: Police Abuse and Misconduct against Lesbian, Gay, Bisexual, and Transgender People in the U.S.* (New York, NY: Amnesty International, 2005), <https://www.amnesty.org/en/documents/AMR51/122/2005/en>.

²⁵ For more information, see IACP Policy Center documents on Social Media, <https://www.theiacp.org/resources/policy-center-resource/social-media>.

²⁶ For more information, see IACP Policy Center documents on Police-Media Relations, <https://www.theiacp.org/resources/policy-center-resource/police-media-relations>.

III. POLICY RECOMMENDATIONS

Law enforcement executives should review all laws and regulations regarding sexual harassment and misconduct and ensure they are reflected in agency policies, procedures, and training. However, agencies should not limit restricted behavior to those actions that are addressed by law but should instead be proactive in identifying and prohibiting any behavior regarding sexual misconduct that could negatively impact the agency, its employees, or members of the community.

Agencies should develop policies that clearly define and prohibit sexual harassment and sexual misconduct and should be clear that consent shall not be an affirmative defense for violations of policy. Law enforcement authority provides opportunities for employees to engage in improper conduct. By developing comprehensive policies, law enforcement executives take a critical step in displaying the necessary leadership and holding the agency and its employees accountable. Similarly, agencies should establish clear technology use policies to prevent, detect, and mitigate sexual misconduct. The technology use policy should describe the employee's rights and obligations when related to both the professional and personal use of technology and include a clear statement regarding sexual misconduct. Agency policies must be clearly and consistently communicated and enforced.²⁷

In addition to policy implementation, law enforcement executives must review their hiring selection process, training, and procedures related to reporting, investigating complaints, and providing services to victims²⁸ of sexual misconduct to ensure the safety and comfort of employees and the community. Agencies should also take preventive measures (such as proactive training or monitoring the use of internal technology systems), react to occurrences swiftly to protect victims, and hold perpetrators accountable in order to restore internal and external trust.

A. Training and Accountability

Agencies should provide regular and ongoing training, at least annually, concerning the nature of sexual misconduct as well as prohibitions on such actions as defined in agency policy. The training should recognize that even actions that are not necessarily criminal may still be violations of agency policy and, thereby, subject to disciplinary action. A successful training program should instill and reinforce the agency's philosophy against sexual misconduct; for this purpose, training should be conducted via a top-down approach. Whenever possible, training should be conducted in person (as opposed to virtual videos) and allow participants the opportunity to ask questions and discuss issues surrounding sexual misconduct; this will help foster an organizational culture of accountability and responsibility.

Agencies should ensure that employees are aware of behaviors that constitute sexual misconduct, how to recognize indications that sexual misconduct may be occurring, and how to respond to complaints of sexual misconduct. It should also be made clear that any sex acts on duty are prohibited. Additionally, employees should receive guidance regarding the importance of responding to sexual misconduct for community-police relations, positive police-media relations, and for employee and leadership retention.

²⁷ Research from other disciplines indicates that policies are only effective at changing behavior when those policies are communicated, enforced, and monitored through consistent data collection. See Billie-Jo Grant and Walter Heinecke, "K-12 School Employee Sexual Abuse and Misconduct: An Examination of Policy Effectiveness," *Journal of Child Sexual Abuse* 28, no. 2 (2019): 200–221.

²⁸ See the IACP Policy Center documents on Response to Victims of Crime, <https://www.theiacp.org/resources/policy-center-resource/victims>.

B. Prohibited Behavior

1. Sexual Harassment

Agencies should ensure no employee engages in sexual harassment of fellow employees. Agencies have a duty to protect all employees and applicants for employment, whether they are sworn, regular, reserve, or civilian; all volunteers; interns; cadets; Police Explorers; or any individual engaged in agency-sponsored mentoring activities.

Many courts and anti-discrimination agencies refer to two categories of unlawful sexual harassment—*quid pro quo* and hostile work environment. The term *quid pro quo* means “something for something.” Situations that fall under the category of *quid pro quo* occur when submission to, or rejection of, unwelcome sexual conduct is used as the basis for employment decisions affecting the individual or when some term of employment is either expressly or implicitly conditioned on participation in unwelcome sexual conduct. This action generally arises when employers use their position of authority to force an employee to submit to sexual harassment in return for tangible job benefits. It is also applicable when an employment decision is made based on whether or not the employee agreed to submit to such actions. Examples of employment decisions are promotions, demotions, pay raises, performance evaluations, and disciplinary measures.

Employer liability results when the *quid pro quo* exchange is suggested by the main employer or any agents or supervisors who have the authority to make employment decisions that affect the employee. The *quid pro quo* suggestion may be either explicit or implicit to be actionable. Employer liability that is based on a supervisor’s acts includes those supervisors with the actual authority to make such decisions. Employer liability may be based on single or multiple acts of pressured submission.

In a sexual harassment claim, inquiries often lead to the issue of the credibility of the parties and whether the victim consented to sexual advances. The harasser may assert that the reported acts were misunderstood, actions were consensual, or that a romantic relationship existed between the parties. Because victims of sexual harassment may submit to sexual advances out of fear of losing their jobs or other job benefits, the mere fact that an employee permitted the behavior is not by itself considered voluntary consent. Even if the parties had a romantic relationship at one time, a viable claim of sexual harassment can be made if one party no longer welcomes the interaction and/or advances. It is essential for agency employees to receive training that includes discussion of consent, including factors that affect or negate it, such as power imbalances.

The other category of sexual harassment is the creation of a *hostile work environment*.²⁹ This is when harassing conduct is “severe or pervasive enough to create an environment that a reasonable person would consider intimidating, hostile, abusive,”³⁰ or offensive. If the harassment creates an environment a reasonable person would find offensive and that the victim perceived as offensive, then that environment is hostile.

Unwelcome touching that goes beyond socially acceptable boundaries can be considered sexual harassment. A key factor is whether the touching was unwelcome or unsolicited. Touching includes not only placing of the hands on the body of another, but also brushing up against the individual, especially when done in a suggestive manner. The measure is whether a reasonable person would have found the touching offensive. While touching genitals or caressing a person is considered inappropriate workplace touching, other acts that are less overt can also be considered sexual harassment. For example, where a supervisor does not normally touch employees, but one day rests his hand on the employee’s shoulder to emphasize a point, it may be considered an act within the

²⁹ For additional information regarding hostile work environment in the United States, see the IACP Policy Center Concepts & Issues Paper on Harassment, Discrimination, and Unprofessional Conduct available at <https://www.theiacp.org/resources/policy-center-resource/harassment-discrimination-and-unprofessional-conduct>.

³⁰ EEOC, <https://www.eeoc.gov/laws/types/harassment.cfm>.

normal bounds of what a reasonable person would consider inoffensive, depending on the context and totality of the circumstances.

Sexual harassment can also include sexually suggestive jokes, gestures, and innuendoes. The display of sexual devices or material or other items that are sexually suggestive may also be considered harassment.

Sexual harassment does not have to be expressly directed at the intended target in order to be actionable. Moreover, there need not be any identifiable target present for the behavior to be punishable.³¹ A common example of this is where the sexual harasser is talking to one person but makes offensive comments loud enough that the target knows it was meant for them. Sexually harassing content may also include displaying pictures, cartoons, posters, or other picture material that offends, intimidates, or degrades the viewer, such as materials containing sexual content.

Overall, agencies should ensure that employees are not engaging in sexually harassing behaviors. For example, they should expressly forbid behaviors such as:

- Physical contact of a sexual nature, including intentional touching, grabbing, pinching, massaging, brushing against another's body, and/or impeding or blocking movement;
- Verbal or written comments that are perceived as sexually offensive;
- Sexually offensive conduct that is severe or pervasive;
- Explicit or implicit suggestions of sex:
 - By a supervisor or manager in return for a favorable employment action;
 - By a peer equivalent or other colleague;
- Creation of an environment that is objectively offensive such that a reasonable person would find it hostile, humiliating, or demeaning;
- Creation of an environment that is subjectively offensive such that the accuser perceived it to be so.

2. Sexual Misconduct

Agencies should prohibit employees from engaging in actions defined as sexual misconduct. Sexual misconduct may be directed at members of the community, detainees, youth, and crime victims or witnesses and may take place on- or off-duty.³² Prohibitions on sexual misconduct also apply to officers in undercover roles. Forms may include, but are not limited to:

- Sexual contact by force (e.g., sexual assault, rape);
- Sexual contact with individuals in handcuffs or individuals who have been detained or arrested;
- Sexual coercion or exploitation (e.g., extorting sexual favors in exchange for not ticketing or arresting a community member);
- Sexual contact with a victim or witness;
- Gratuitous physical contact with suspects (e.g., inappropriate or unnecessary searches, frisks, or pat-downs);
- Employee-initiated sexual contacts with the public while on duty;
- Engaging in community member-initiated sexual contact while on duty;

³¹ Battaglia v. United Parcel Service, Inc., 214 N.J. 518 (N.J. 2013) 70 A.3d 602.

³² In 1994, researcher Allen Sapp developed seven individual categories of police sexual offenses (Allen D. Sapp, "Sexual Misconduct by Police Officers," in *Police Deviance*, eds. Thomas Barker and David L. Carter (Cincinnati, OH: Anderson Publishing, 1994), and Timothy Maher added an eighth based on his research (Timothy M. Maher, "Police Sexual Misconduct," in *Contemporary Policing: Controversies, Challenges and Solutions*, eds. Quint C. Thurman and Jihong Zhao (Los Angeles, CA: Roxbury Publishing Company, 2004) 327–338.

- Voyeuristic actions that are sexually motivated (e.g., looking in windows of residences for sexually motivated reasons);
- Unnecessary contacts/actions taken by employees for conduct unbecoming policy and/or sexually motivated reasons, including failing to respect classified information or client confidentiality (e.g., unwarranted call backs to crime victims, making a traffic stop to get a closer look at the driver for non-professional reasons);
- Inappropriate and unauthorized use of department resources and/or information systems for other than legitimate law enforcement purposes;
- Any sexual behavior or acts while on duty, consensual or otherwise (e.g., masturbation, viewing and/or distributing pornographic images, sexting, while “on break”).

Additionally, certain behaviors or patterns of behavior may indicate security concerns.³³ These may include:

- Sexual behavior of a criminal nature, whether or not the individual has been prosecuted;
- A pattern of compulsive, self-destructive, or high-risk sexual behavior that the person is unable to stop or that may be symptomatic of a personality disorder;
- Sexual behavior that causes an individual to be vulnerable to coercion, exploitation, or duress;
- Sexual behavior of a public nature and/or that reflects lack of discretion or judgment;³⁴
- A history of intimate partner violence and/or stalking, whether or not the individual has been prosecuted;
- Violations of protective orders.³⁵

3. Retaliation and Interference

In some cases, accused parties or other employees may discourage individuals from reporting sexual misconduct – known as interference – or may retaliate against individuals who do. Reporting or otherwise providing information regarding misconduct as well as testifying on behalf of another employee are legally protected activities. While interference does not carry the same legal protections, agencies should prohibit and strive to prevent both interference and retaliatory behavior and should intervene if such behavior occurs.³⁶

Employees should receive specific guidance on identifying the types of behavior that constitute retaliation and interference, avenues for reporting such behavior, and potential consequences for participating. A particularly important issue to address is that of caring for the victim. Preventing additional harm to the victim can go a long way toward reducing retaliation. In cases of sexual harassment, holding the accused accountable and showing employee victims that the organization is concerned about their welfare may help improve victim healing and provide them with a sense of justice, prevent lawsuits, and limit potential liability.

Agencies may consider implementing protective measures for victims who are particularly vulnerable to retaliation. Such measures may include developing a network with local social service providers to alert them to the fact that the agency is implementing a new sexual misconduct policy and will consistently pursue reports of sexual harassment and misconduct, including incidents perpetrated of sexual misconduct by employees against members of the public. The development of this type of network and communication may help ensure that social service providers can work with the law enforcement agency to provide extra protections for reported victims.

³³ See also the IACP Policy Center documents on Early Identification Systems, <https://www.theiacp.org/resources/policy-center-resource/early-identification-system>.

³⁴ Army Publishing Directorate, “Personnel Security Program,” Army Regulation 380-67 (January 24, 2014), 63-64, https://armypubs.army.mil/epubs/DR_pubs/DR_a/pdf/web/r380_67.pdf.

³⁵ See IACP Policy Center documents on Stalking, <https://www.theiacp.org/resources/policy-center-resource/stalking>.

³⁶ For more information, see the IACP Policy Center documents on Retaliatory Conduct by Employees, <https://www.theiacp.org/resources/policy-center-resource/retaliatory-conduct>.

C. Roles and Responsibilities

Although all employees are responsible for preventing sexual misconduct, agencies should make efforts to prevent, identify, and respond to these behaviors by clearly defining staff roles and responsibilities.

1. Agency Responsibilities

Agencies should establish policies prohibiting sexual harassment and misconduct. These policies should be clearly communicated to employees and monitored and enforced through data collection and regular training. Appropriate safeguards such as establishing and communicating a policy prohibiting sexual harassment and misconduct can reduce agency liability in any such claims.³⁷

Agencies should be aware they have the legal and moral duty to thoroughly investigate claims of sexual misconduct.³⁸ Where there are both criminal and administrative violations, the investigations should be conducted concurrently, while ensuring due process rights of employees reported to have committed an offense are upheld during the separate administrative and criminal investigations. Concurrent investigations ensure any necessary administrative actions are taken in accordance with the investigation findings as soon as practically possible and independent of any potentially lengthy criminal proceedings. Even if the accused employee leaves the agency or a settlement is reached between the agency and the reporting party, the investigation should still be completed. Sometimes, employees facing accusations might then be hired by another agency where they may continue to commit offenses against others. Therefore, it is imperative that a complete investigation is carried out whether or not the accused employee resigns.³⁹

If a complaint is made anonymously, the agency should investigate to whatever degree possible as patterns of behavior may be established should more complaints occur. Upon a finding of “founded,” appropriate corrective action should be taken. This action may include counseling, additional training, and/or disciplinary action as appropriate.

In order to ensure that sexual misconduct is appropriately addressed, the chief executive officer or their designee should receive annual summaries of complaints related to sexual misconduct. These summaries should be reviewed to determine if any changes are necessary to agency policy, procedures, and/or training.

In cases involving sexual harassment, any employee transfers or reassignments should be voluntary, if possible. The victim’s desire to transfer or reassign should take priority over the accused whenever feasible. Agencies should also ensure that retaliatory conduct results in discipline.⁴⁰

Law enforcement agencies should also explore programs that have been shown to help victims of sexual harassment to overcome resulting workplace challenges. One example of a program is an optional mentorship

³⁷ See *Pennsylvania State Police v. Suders*, 542 U.S. 129 (2004); *Burlington Industries Inc. v. Ellerth*, 524 U.S. 742 (1998); *Faragher v. City of Boca Raton*, 524 U.S. 775 (1998).

³⁸ For example, in the United States case *Malik v. Carrier Corp.*, 202 F.3d 97 (2d Cir. 2000), the plaintiff reported his employer was negligent in its decision to investigate retracted allegations of sexual harassment that had been brought against him by a female colleague. The court held that the employer’s decision to pursue the investigation was warranted, given that an employer’s investigation of a sexual harassment complaint was not a “gratuitous or optional undertaking.” The court stated that under federal law, an employer’s failure to investigate “may allow a jury to impose liability on the employer.”

³⁹ International Association of Chiefs of Police, *Addressing Sexual Offenses and Misconduct by Law Enforcement: Executive Guide*, (June 2011), <https://www.theiacp.org/resources/document/addressing-sexual-offenses-and-misconduct-by-law-enforcement-executive-guide>.

⁴⁰ See the IACP Policy Center documents on Retaliatory Conduct by Employees, <https://www.theiacp.org/resources/policy-center-resource/retaliatory-conduct>.

program. Mentors may be a good programmatic tool to help victims overcome challenges resulting from sexual harassment in the workplace.⁴¹

2. Supervisory Responsibilities

No law enforcement agency can fulfill its duty to maintain a workplace free of sexual misconduct without the assistance and support of its supervisors – especially first-line supervisors. Apathetic or hostile supervisors can quickly undermine an otherwise effective and meaningful policy against sexual misconduct through their actions or inaction in implementing the policy. By contrast, through their daily supervision of employees, supervisors can assist the agency in identifying, stopping, and preventing prohibited behavior.⁴² Monitoring the work environment on a daily basis for warning signs and patterns or indicators that sexual misconduct may be occurring is a critical responsibility for supervisors. The work environment may include but is not limited to traffic stops, arrests, activity reports, radio logs, body-worn camera footage, narrative reports, case dispositions, locations of activities, and subject demographics.

3. Employee Responsibilities

Employees should abstain from engaging in any prohibited behaviors and should also refrain from participating in or encouraging any action that could be perceived as sexual misconduct. If any employee sees such actions, they should report the misconduct to a supervisor, OPS, or the human resources function.⁴³ Peer intervention training can be helpful in advocating for and fostering this behavior. Members of the public who experience sexual misconduct by agency employees should be encouraged to file an official complaint. It is the responsibility of every employee to promote a safe work environment, and failure to carry out these responsibilities may be considered in a performance evaluation or promotional decision and may be grounds for discipline. In some instances, collective bargaining agreements may dictate the actions to be taken in these circumstances.

D. Complaint Procedures

Development of effective, accessible, and timely complaint procedures, both for internal and external complaints, is an important action that an agency can take to stop sexual misconduct and minimize liability. All employees should be aware of the agency complaint procedures to be followed in the event of sexual misconduct. If any employee encounters prohibited behavior, they should know the appropriate actions to take. In cases of sexual harassment, action should include informing the perpetrator that those actions are unwelcome and offensive and immediately documenting all incidents in order to provide the fullest basis for investigation. For sexual misconduct toward community members, agencies should review agency procedures and ensure potential victims are provided with easily understood instructions for filing a complaint, and employees and the public are updated regarding the results of investigations.⁴⁴

When the agency receives a complaint, internally or externally, the reported event should be investigated in a fair and expeditious manner. The investigation will be conducted in such a way as to maintain confidentiality to the extent practicable under the circumstances and will include private interviews with the person filing the complaint and

⁴¹ Paula McDonald and Michael G Flood, *Encourage. Support. Act! Bystander Approaches to Sexual Harassment in the Workplace* (Sydney, NSW: Human Rights Commission, 2012).

⁴² For more detailed information regarding supervisor responsibilities in preventing and responding to harassment, including sexual harassment, see the Policy Center documents on Investigation of Allegations of Employee Misconduct, <https://www.theiacp.org/resources/policy-center-resource/employee-misconduct>.

⁴³ This does not apply to victims who do not report sexual harassment or sexual misconduct.

⁴⁴ For detailed information regarding suggested complaint procedures for sexual misconduct, please see the Policy Center documents on Investigations of Allegations of Employee Misconduct, <https://www.theiacp.org/resources/policy-center-resource/employee-misconduct>.

separately with any witnesses. An interview will also be conducted with the person reported to have committed misconduct. If it is determined that inappropriate conduct has occurred, the agency will act promptly to eliminate the offending conduct, and, where appropriate, impose disciplinary action.

When the investigation is complete, the agency should, to the extent appropriate, inform the person filing the complaint and the person reported to have committed the conduct of the results of that investigation.

In addition to filing a complaint with the agency, formal reports can also be filed with the appropriate government agencies. For reports of criminal misconduct, criminal charges should be filed.⁴⁵

⁴⁵ See the IACP Policy Center Concepts & Issues paper on Investigation of Allegations of Employee Misconduct, <https://www.theiacp.org/resources/policy-center-resource/employee-misconduct>.

APPENDIX A: UNITED STATES LEGAL PRECEDENT

Police agencies in the United States must maneuver around local, state, and federal rules and regulations that are constantly evolving. The following information is intended to provide readers with an overview of the evolution of the current topic in the United States.

A.1 Sexual Harassment

The Civil Rights Act of 1964 makes it unlawful to discriminate against others because of race, color, sex, religion, or national origin. The applicable employment portion of the law is commonly referred to as Title VII, because this is the section of the Act that addresses employment discrimination. Title VII provides federal protection to employees from employment discrimination practices. It provides protection to women from workplace and employment discriminatory practices. The title also establishes the Equal Employment Opportunity Commission (EEOC). Law Enforcement executives should be familiar with the content of Title VII of the Federal Civil Rights Act of 1964.⁴⁶

In 1980, the EEOC provided guidelines that further define the types of acts that are deemed to be workplace sexual harassment and discrimination. The guidelines followed came after U.S. Supreme Court case holdings against employers who were sexually discriminating against female employees. Law enforcement executives should be familiar with all types of sex-based discriminations, as defined by EEOC.⁴⁷ In 1986, a U.S. Supreme Court decision recognized sexual harassment as an act that violates Title VII of the Civil Rights Act of 1964.⁴⁸ In 1991, Congress passed the Civil Rights Act of 1991. The new federal law strengthened the 1964 act, by making employers liable for workplace discrimination and allowing federal juries to hear such cases.⁴⁹ Further, the Violence Against Women Act, part of the Violent Crime Control and Law Enforcement Act of 1994,⁵⁰ recognizes sexual assaults at the federal level and provides remedies for intentional discrimination and unlawful harassment in the workplace. In 1995, Congress passed the Government Accountability Act, which applies all of the previous workplace harassment laws to Congress's own workplace.⁵¹

A.2 Sexual Misconduct

The public trusts that when they are in the custody of law enforcement officials, they will be kept physically and psychologically safe from harm. When the very person entrusted with that care is the person who commits a harmful act, trust in law enforcement fades. Law enforcement sexual misconduct is an extremely serious act against victims whose trust in law enforcement was betrayed. There are federal, state, and local laws that prohibit an employee from sexually assaulting a person in their care. The United States Department of Justice's Civil Rights Division can investigate and prosecute law enforcement officials for coercion or violence carried out against a victim's right to bodily integrity.⁵²

⁴⁶ Title VII of the Civil Rights Act of 1964, Pub. L. No. 88-352, <https://www.eeoc.gov/laws/statutes/titlevii.cfm>.

⁴⁷ U.S. Equal Opportunity Employment Commission, "Sex-Based Discrimination," <https://www.eeoc.gov/laws/types/sex.cfm>.

⁴⁸ Meritor Savings Bank v. Vinson, 477 U.S. 57 (1986).

⁴⁹ The Civil Rights Act of 1991, Pub. L. No. 102-166, <https://www.eeoc.gov/statutes/civil-rights-act-1991>.

⁵⁰ Violent Crime Control and Law Enforcement Act of 1994, Pub. L. No. 103-322, <https://www.congress.gov/bill/103rd-congress/house-bill/3355/text>.

⁵¹ Congressional Accountability Act of 1995, Pub. L. No. 104-1, https://www.ocr.gov/sites/default/files/CAA_508v2.pdf.

⁵² United States Department of Justice, "Law Enforcement Misconduct," s.v. "Sexual Misconduct," <https://www.justice.gov/crt/law-enforcement-misconduct#sex>.

APPENDIX B: ADDITIONAL RESOURCES

- End Violence Against Women International. (2020). Law Enforcement Sexual Misconduct: Introducing a Model Policy Resource for Prevention and Accountability (recorded webinar). Available at <https://evawintl.org/courses/law-enforcement-sexual-misconduct-introducing-a-model-policy-resource-for-prevention-and-accountability/>.
- IACP. (2011). *Addressing Sexual Offenses and Misconduct by Law Enforcement: Executive Guide*. Available at <https://www.theiacp.org/resources/document/addressing-sexual-offenses-and-misconduct-by-law-enforcement-executive-guide>.
- Lonsway, K.A., Patrick, W., (2018). *Sexual Harassment and Sexual Assault: Understanding the Distinctions and Intersections*. End Violence Against Women International. Available at https://evawintl.org/wp-content/uploads/2018-05_TB-Sexual-Harassment-and-Sexual-Assault.pdf.
- Tremblay, T., Archambault, J., & Lonsway, K. (2020). *Model Policy Resource: Law Enforcement Sexual Misconduct Prevention and Accountability*. End Violence Against Women International. Available at https://evawintl.org/wp-content/uploads/2020-02_TB-Model-Policy-Resource-LESM-Prevention-and-Accountability.pdf.
- U.S. Equal Employment Opportunity Commission (EEOC) website. Available at <https://www.eeoc.gov/>.
- Virtual Knowledge Centre to End Violence against Women and Girls. (2011). Sources of International Law Related to Sexual Harassment. Available at <https://www.endvawnow.org/en/articles/492-sources-of-international-law-related-to-sexual-harassment.html>.

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