

January 16, 2003

DAVID L. SOLOMON
VICE PRESIDENT, NEW YORK METRO AREA OPERATIONS

SUBJECT: Audit Report – Sexual Harassment Prevention Measures in the Long Island and Northern New Jersey Districts – New York Metro Area
(Report Number LH-AR-03-002)

This report presents the results of our audit of sexual harassment prevention measures in the Long Island and Northern New Jersey Districts, New York Metro Area (Project Number 02YG010LH005). Our overall objective was to determine if the districts had adequate policies and procedures in place to prevent sexual harassment in the workplace, and to effectively address sexual harassment complaints to mitigate liability. This report is based on a self-initiated review, and is the second in a series of ten reports we will be issuing regarding sexual harassment prevention measures Postal Service-wide.

We found that the Long Island and Northern New Jersey Districts' sexual harassment policies and procedures were adequate, employees found responsible for sexual harassment or inappropriate actions/comments were appropriately disciplined or corrective action was taken, and managers/supervisors were considered for exclusion from the Pay for Performance Program. In addition, although no Postal Service national policy existed regarding the retention time for informal complaint files, both districts retained files indefinitely and storage of files was adequate. We also found, all complaints in the Long Island District were effectively addressed, however, some sexual harassment complaints in the Northern New Jersey District were not.

The report includes two recommendations to help the Northern New Jersey District improve its sexual harassment prevention program. Management agreed with both recommendations and the actions taken or planned should correct the issues identified in this report. Management's comments and our evaluation of these comments are included in this report.

The Office of Inspector General (OIG) considers recommendations 1 and 2 significant and, therefore, requires OIG concurrence before closure. Consequently, the OIG requests written confirmation when corrective actions are completed. These recommendations should not be closed in the follow-up tracking system until the OIG provides written confirmation that the recommendations can be closed.

We appreciate the cooperation and courtesies provided by your staff during the audit. If you have any questions, please contact Chris Nicoloff, director, Labor Management, at 214-775-9114, or me at (703) 248-2300.

B. Wayne Goleski
Assistant Inspector General
for Core Operations

Attachment

cc: Suzanne F. Medvidovich
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EXECUTIVE SUMMARY

Introduction

This report presents the results of our audit of sexual harassment prevention measures in the Long Island and Northern New Jersey Districts, located in the New York Metro Area. This review was self-initiated to determine if the districts had adequate policies and procedures in place to prevent sexual harassment in the workplace, and to effectively address sexual harassment complaints to mitigate liability.

Results in Brief

The audit revealed that the Long Island and Northern New Jersey Districts' sexual harassment policies and procedures were adequate and that employees found responsible for sexual harassment or inappropriate actions/comments were appropriately disciplined or corrective action was taken. We also found that managers/supervisors responsible for sexual harassment or inappropriate actions/comments were considered for exclusion from the Pay for Performance Program. In addition, although no Postal Service national policy existed regarding the retention time for informal complaint files, both districts were retaining files indefinitely and storage of files was adequate. Finally, we found all sexual harassment complaints in the Long Island District were effectively addressed and some complaints in the Northern New Jersey District were not.

Summary of Recommendations

The report includes two recommendations to help the Northern New Jersey District improve its sexual harassment prevention program. We recommended management establish controls to ensure managers and supervisors effectively address all sexual harassment complaints and inappropriate actions/comments of a sexual nature and fully document detailed evidence of the actions taken to address complaints; and the Equal Employment Opportunity office notifies district management of all complaints of sexual harassment or inappropriate actions/comments of a sexual nature.

Summary of Management's Comments

Management agreed with the finding that all six complaints were effectively addressed in the Long Island District. Management also agreed with the recommendations and stated that as of December 15, 2002, the number of management investigation team members had been

increased and complainant contact protocols had been changed. Additionally, management has instructed the Equal Employment Opportunity office to notify the manager of Human Resources of sexual harassment complaints, where anonymity is not requested.

Management did not agree, however, with the finding that complaints were not promptly addressed. They said the Office of Inspector General standard that an investigation should begin within 48-hours was not an appropriate measurement because there was no Postal Service or other policy that specified that timeframe. They acknowledged there were delays; however, they stated most of the delays were understandable.

Additionally, management did not agree with the finding that two complaints were not investigated and inappropriately handled under the rules applicable at the time. Management's comments, in their entirety, are included in Appendix B of this report.

**Overall Evaluation of
Management's
Comments**

Management's implemented and planned actions are responsive to the recommendations and should resolve the issues identified in the report.

INTRODUCTION

Background

Sexual harassment is defined by law as unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature that becomes a term or condition of employment. In fiscal years (FY) 2000 and 2001, the Postal Service paid approximately \$343,800¹ for sexual harassment judgments and settlements in the New York Metro Area.

Objective, Scope, and Methodology

Our overall objective was to determine if the districts had adequate policies and procedures in place to prevent sexual harassment in the workplace, and to effectively address sexual harassment complaints to mitigate liability. Our objective, scope, and methodology are discussed in Appendix A.

Prior Audit Coverage

We did not identify any prior audits or reviews related to the objective of this audit in these two districts.

¹ This amount represents six complaints. None of these complaints were within the scope of our review.

AUDIT RESULTS

Policies and Procedures Adequate

We found that the Long Island and Northern New Jersey Districts had adequate policies and procedures that should enable district management to identify and prevent sexual harassment or inappropriate actions/comments, and provide management with guidance to respond effectively to complaints, thus mitigating liability and costs.

We also found the districts:

- Established as district policies, Postal Service Publication 552, Manager's Guide to Understanding Sexual Harassment, and Publication 553, Employee's Guide to Understanding Sexual Harassment.
- Established investigative teams at the district level to investigate all complaints.
- Used Voice of the Employee surveys² to monitor the work environment and when necessary provided additional training to raise awareness.

² The Voice of the Employee survey was a data collection instrument that the Postal Service had established to help improve workplace relationships and to ensure all employees were treated with fairness, felt safe in their workplace, had opportunities to participate in improvements, and took pride in being Postal Service employees.

**Employees
Appropriately
Disciplined or
Corrective Action
Taken**

We found that employees responsible for sexual harassment or inappropriate actions/comments were appropriately disciplined, or corrective action was taken.

Equal Employment Opportunity Commission 1990 and 1999 guidelines recommended agencies take immediate and appropriate corrective action, including discipline, when sexual harassment occurred. Postal Service policy stated employees engaged in sexual harassment would be subject to disciplinary action, up to and including removal. The policy also stated that disciplinary action might result even if the conduct was not sexual harassment as defined by the law, but was inappropriate and of a sexual nature.

Our review of formal and informal³ complaints in the Long Island and Northern New Jersey Districts showed that:

- Of the six formal and informal sexual harassment complaints filed in the Long Island District, sexual harassment or inappropriate actions/comments were not substantiated in five, and substantiated in one.
 - In the one substantiated complaint, one employee was involved and was appropriately disciplined or corrective action was taken.

- Of the 34 formal and informal complaints filed in the Northern New Jersey District, sexual harassment or inappropriate actions/comments were not substantiated in 20, and substantiated in 12. For the remaining two complaints, management did not conduct an inquiry or investigation to determine whether sexual harassment or inappropriate actions/comments had occurred, and thus no discipline or corrective action was considered or taken.
 - In the 12 substantiated complaints, 10 employees⁴ were involved and all were appropriately disciplined or corrective action was taken.

³ The term “informal” complaint refers to those not filed using the Equal Employment Opportunity process.

⁴ Two of the ten employees were involved in two complaints each.

**Managers/
Supervisors
Considered for
Exclusion from Pay
for Performance**

We found that managers/supervisors found responsible for sexual harassment or inappropriate actions/comments were considered for exclusion from the Pay for Performance Program⁵ in the Long Island and Northern New Jersey Districts.

Equal Employment Opportunity Commission guidelines included a reduction in wages as an effective corrective measure to stop harassment and ensure it does not reoccur. Postal Service policy stated an employee whose conduct was clearly unacceptable may be excluded from the Pay for Performance Program. The Postal Service described unacceptable behavior as “notoriously disgraceful or immoral conduct, or other conduct prejudicial to the Postal Service.”

We found:

- One employee in the Long Island District was found responsible for sexual harassment or inappropriate actions/comments, and was not eligible for the Pay for Performance Program.
- Ten employees in the Northern New Jersey District were found responsible for sexual harassment or inappropriate actions/comments. Three were managers/supervisors who were eligible for the Pay for Performance Program. One was excluded, and the remaining two were considered for exclusion.
 - One manager/supervisor received \$1,472 in FY 2001. District officials stated the manager/supervisor was not excluded because he had a spotless record prior to the incident and management believed a letter of warning was sufficient.

⁵ The Pay for Performance Program, formerly referred to as the Economic Value Added Program, was an incentive award program for nonbargaining employees. The amount of money received by each employee was based on a group achievement of performance targets and financial measurements.

- One manager/supervisor received \$3,711 in FY 2000, and was demoted from an Executive and Administrative Schedule to a craft employee. District management stated that payment of pay for performance was part of the settlement with him.

**Some Complaints
Not Effectively
Addressed**

Our audit disclosed that all six complaints in the Long Island District were effectively addressed. However, 8 of the 34 complaints in the Northern New Jersey District were not. Equal Employment Opportunity Commission guidelines defined an “effective” investigation as a prompt, thorough, and impartial review with documented evidence. Postal Service policy required managers to conduct sexual harassment inquiries promptly and investigate all complaints, and document “serious” complaints with detailed evidence.⁶

We found that:

- Postal Service national policy did not require that “all” complaints be documented—only those that managers believed were “serious.”
- Of the 34 informal and formal complaints filed in the Northern New Jersey District, 26 were effectively addressed and 8 were not.
 - Of the eight not effectively addressed, six were not prompt and two were not investigated.
 - District management provided several reasons why complaints were not effectively addressed. For example, they said for the two complaints that were not investigated, the complaints were filed directly with the Equal Employment Opportunity office and that office did not notify district management of the complaints. This precluded them from conducting their own investigation.

Complaints not effectively addressed could result in liability because the Postal Service cannot demonstrate it exercised reasonable care to prevent and promptly correct harassing behavior. We believe the lack of a Postal Service policy requiring documentation of all complaints and the

⁶ Publication 552 was revised effective September 2001, and replaced the term “serious” with the statement “some complaints can be resolved simply and directly between the parties without the need for a formal written record.” The revised policy also provided that managers/supervisors needed to decide early in the process whether formal documentation was warranted, and that a good rule of thumb was when in doubt, document.

lack of communication between the Equal Employment Opportunity office and district management may have been factors. We will address these issues in a separate report.⁷

Recommendation

We recommend the vice president, New York Metro Area Operations, instruct the Northern New Jersey District manager to establish controls to ensure:

1. Managers and supervisors effectively address all sexual harassment complaints and inappropriate actions/comments of a sexual nature and fully document detailed evidence of the actions taken to address complaints.

**Management's
Comments**

Management agreed with the finding that all six complaints were effectively addressed in the Long Island District. Management also agreed with the recommendation and stated that as of December 15, 2002, the number of management investigation team members had been increased and complainant contact protocols had been changed. They said the protocol changes included an emphasis on documenting contact attempts and making telephone calls to their home, offering an opportunity for an immediate interview. They said they hope this will address the difficulties they had experienced in following up with complainants. Management also said the New York Metro Area office would issue a policy letter covering this protocol, by January 6, 2003, and would provide the Office of Inspector General (OIG) a copy.

Management did not agree, however, with the finding that six complaints were not promptly addressed. They said the OIG standard that an investigation should begin within 48-hours was not an appropriate measurement because there was no Postal Service or other policy that specified that timeframe. They acknowledged there were delays in addressing the complaints; however, they stated most of the delays were understandable given the difficulty in contacting the complainants, and the time needed in one case for the local postmaster to investigate the involvement of an external customer. They also said in two cases the

⁷ We will issue a capping report on the audit results for the nine areas we visited, including the New York Metro Area, where recommendations regarding national policy will be made to the senior vice president, Human Resources.

employees involved were working in separate locations or were timely separated in accordance with policy.

**Evaluation of
Management's
Comments**

Management's implemented and planned actions are responsive to the recommendation and should resolve the issues identified in the report.

We do not agree, however, with management's statement that the 48-hour standard of measurement for determining promptness, was not appropriate. This standard was based on Equal Employment Opportunity Commission and Postal Service guidelines, the definitions of "prompt" and "immediate" (used in guidelines and policy), and discussions with Postal Service Headquarters officials. In addition, the standard was discussed with, and agreed to, by headquarters officials prior to audit work. One vice president told us he expected his managers or supervisors to respond to a complaint within 24 hours.

We also do not agree with management's statement that the delays in addressing the six complaints were understandable. Neither management's comments nor the complaint files reviewed in June 2002, contained the information necessary to ascertain promptness. Specifically, there were no details regarding when (date and time) the complaint was responded to; who responded; and when the actions were taken, and by whom.

Recommendation

We recommend the vice president, New York Metro Area Operations, instruct the Northern New Jersey District manager to establish controls to ensure:

2. The Equal Employment Opportunity office notifies district management of all complaints of sexual harassment or inappropriate actions/comments of a sexual nature.

**Management's
Comments**

Management agreed with our recommendation and stated as of December 18, 2002, the Equal Employment Opportunity office was instructed to notify the manager of Human Resources of sexual harassment complaints, where anonymity is not requested.

Management did not agree, however, that two complaints were not investigated and inappropriately handled under the rules applicable at the time. They said the Equal Employment Opportunity office never notified district management of the complaints and the Equal Employment Opportunity manager believed she had investigated both complaints by taking the complainants' request for pre-complaint counseling. They also stated that both complainants withdrew their complaints during the pre-complaint process.

**Evaluation of
Management's
Comments**

Management's implemented and planned actions are responsive to the recommendation and should resolve the issues identified in the report. We do not agree, however, with management that the two complaints were investigated and appropriately handled. Postal Service policy required district management to conduct an investigation even when a complaint has been filed with the Equal Employment Opportunity office. Our report acknowledged the Equal Employment Opportunity office did not notify district management, thus precluding them from conducting their own investigation. However, the lack of policy requiring the district be notified does not change that the district should have been notified. This was the basis for our recommendation.

**File Retention and
Storage Adequate**

Our audit found there was no Postal Service policy regarding the retention time for informal complaint files. However, both districts retained informal complaint files indefinitely and storage of files was also adequate.

Equal Employment Opportunity Commission guidance stated formal sexual harassment complaint files should be retained for at least 4 years after resolution of the complaint. Postal Service policy stated once an inquiry/investigation was conducted, files should be forwarded for storage, to the district Human Resources manager. According to a headquarters senior Postal Service manager, the intent of this policy was to centrally locate the files with the Human Resources manager.

Retaining and storing informal complaint files in a central location ensures file availability if needed to mitigate liability. We will address the need for a national retention policy in a separate report.⁸

⁸ See footnote 7.

APPENDIX A. OBJECTIVE, SCOPE, AND METHODOLOGY

Our objective was to determine if the Long Island and Northern New Jersey Districts, in the New York Metro Area, implemented adequate policies and procedures to prevent sexual harassment⁹ in the workplace and to effectively address sexual harassment complaints to mitigate liability. Our district selections were based on interviews with the senior vice president, Human Resources; vice president, Diversity Development; and vice president, New York Metro Area Operations. We also considered the number of closed formal sexual harassment complaints in each of the seven New York Metro Area districts.

To accomplish our objective, we reviewed applicable laws, policies, procedures, and other documents including Equal Employment Opportunity Commission guidelines; Postal Service national policies; the New York Metro Area, and Long Island and Northern New Jersey District policies for preventing sexual harassment in the workplace. We also reviewed Postal Service national policy regarding the Pay for Performance Program. In addition, we reviewed previously issued OIG reports related to sexual harassment issues. Further, we interviewed Postal Service Headquarters, New York Metro Area, and Long Island and Northern New Jersey District officials.

To determine if adequate policies and procedures were in place to prevent sexual harassment from occurring in the workplace, we identified Equal Employment Opportunity Commission key recommendations to agencies regarding policies and procedures that should be in place to prevent sexual harassment and reduce the risk of agency liability. We then reviewed the Postal Service national, New York Metro Area, and Long Island and Northern New Jersey Districts' policies and procedures to determine if the recommendations were included.

To determine whether district managers effectively addressed informal sexual harassment complaints to mitigate liability, we analyzed the documentation contained in formal and informal complaint files that were filed and closed¹⁰ in FYs 2000 and 2001,¹¹ for the two districts we selected. We recorded information related to promptness, thoroughness, impartiality and the level of documentation. These fiscal years were chosen because they were the most recent and complete fiscal years at the time of our fieldwork. The number of formal and informal closed complaints was obtained from the Postal Service Equal Employment Opportunity case file database and district management, respectively. We then excluded those complaints where the employees filed their complaints directly with the Equal Employment Opportunity office and requested confidentiality. These were excluded because honoring the request for

⁹ For the purpose of this report, we used the legal definition of sexual harassment as unwelcome sexual conduct that is a term or a condition of employment (29 C.F.R. § 1604.11(a)). In addition, we included the Postal Service policy regarding inappropriate actions/comments of a sexual nature when reviewing sexual harassment complaint files.

¹⁰ Sexual harassment complaints may be considered closed for a number of reasons including: (1) the inquiry/investigation was completed, (2) a settlement had been reached, (3) the complaint was withdrawn, or (4) discipline or corrective action was taken.

¹¹ We used Postal Service fiscal years that started September 11, 1999, and ended September 7, 2001.

confidentiality precluded the Equal Employment Opportunity office from notifying district management that a complaint had been made. This in turn precluded management from conducting an investigation. We then determined there were 40 closed complaint files as follows:

District	Complaints		Total Complaints Per District
	Formal	Informal	
Long Island	3	3	6
Northern New Jersey	9	25	34
Total	12	28	40

We also determined if the retention and storage of informal files were adequate using Postal Service national, area, and district policies as well as Equal Employment Opportunity Commission guidelines.

In addition, we determined whether employees found responsible for sexual harassment received appropriate discipline using Equal Employment Opportunity Commission guidelines, Postal Service policies and procedures, and some elements of the Douglas Factors.¹² We included in this determination whether or not managers or supervisors found responsible for sexual harassment or inappropriate actions/comments were considered for exclusion from the Pay for Performance Program.

This audit was conducted from February 2002 through January 2003 in accordance with generally accepted government auditing standards and included such tests of internal controls as were considered necessary under the circumstances. We discussed our conclusions and observations with appropriate management officials and included their comments, where appropriate.

¹² The Douglas Factors were developed as a result of case law (*Douglas v. Veterans' Administration*) where the Merit Systems Protection Board ruled that management must document certain factors to be considered in making a determination of appropriate disciplinary action.

APPENDIX B. MANAGEMENT'S COMMENTS

VICE PRESIDENT, AREA OPERATIONS
NEW YORK METRO AREA



December 24, 2002

B. Wayne Goleski
Assistant Inspector General for Core Operations
Office of Inspector General
1735 North Lynn Street
Arlington, VA 22209-2020

SUBJECT Draft Audit Report (Report Number LH-AR-03-DRAFT)
Sexual Harassment Prevention Measures in the Long Island and Northern
New Jersey Districts – New York Metro Area

This responds to your request for comments on the above draft audit report. I am pleased that you found that, with the exception of one area in one of the two districts you visited, we are appropriately addressing complaints of sexual harassment in the New York Metro Area.

Finding in LI District: All six complaints were effectively addressed.

NYMA Response: We agree with the finding that all of the Long Island District's complaints were effectively addressed.

Finding in NNJ District: Of the 34 informal and formal complaints filed in the Northern New Jersey District, 26 were effectively addressed and 8 were not.

Recommendation: That the Vice President, Area Operations, New York Metro Area, instruct the Northern New Jersey District Manager to establish controls to ensure that:

1. Managers and supervisors effectively address all sexual harassment complaints and fully document detailed evidence of the actions to be taken to address complaints
2. The Equal Employment Opportunity office notify district management of all complaints of sexual harassment or inappropriate actions/comments

NYMA Response to #1: In your audit of the Northern New Jersey Performance Cluster, you highlighted eight cases as ineffectively addressed. Your report identified two cases as not investigated and six cases classified as not prompt. We do not agree with these conclusions.

As to the six cases that you described as not being addressed promptly, we understand that this is based on an OIG "standard" that the investigation of any sexual harassment complaint should normally begin within 48 hours of management's receiving the allegation. To date, there is no 48-hour standard contained in Publication 552, *Manager's Guide to Understanding Sexual Harassment* (September 2001 revision), nor, to the best of our knowledge, in any other published policies regarding investigation of sexual harassment complaints.

Upon review of the eight cases, we found that in two of the cases, the employees were either working in separate locations or were timely separated as per Publication 552 guidelines. We believe the complaints were investigated as promptly as possible. In three of the cases, there was difficulty in contacting the complainants, including one complaint in which the alleged harassment occurred a year earlier. In one unusual case, an external customer was involved, and the local postmaster took time to investigate the complaint before bringing it to the district's attention. This "delay" has been remedied.

We believe that most of the delays were understandable given the difficulty of contacting the complainants. We agree with Recommendation #1 that all complaints of sexual harassment should be effectively addressed and documented. We agree that this includes addressing complaints timely. As of December 15, 2002, we have increased the number of management investigation team members who are available to do this work. We have also addressed the difficulty of following up with certain complainants by reexamining and changing our protocols for attempting contact. These protocols shall include emphasis on documentation of contact attempts, which may include multiple follow-up letters and/or telephone calls as necessary. This may include telephone calls at home offering an opportunity for an immediate interview. The New York Metro Area Office will issue a policy letter by January 6, 2003, covering this protocol, including annotation to the file when telephone call attempts are made. We will provide your office with a copy of the memorandum.

As to the two remaining cases identified as not being investigated, they were, in fact, never identified to district management and, therefore, could not be investigated by the Northern New Jersey District. The manager of EEOC at the district felt she had investigated both cases by taking their request for pre-complaint counseling. Both complainants withdrew their complaints during that process. We disagree with the report's suggestion that the two complaints were inappropriately handled under the rules applicable at the time.

NYMA Response to #2: We agree with Recommendation #2. As of December 18, 2002, our EEO office will notify the Manager of Human Resources of all EEOC sexual harassment complaints where anonymity is not requested. The Manager of Human Resources will assess the complaint and, in turn, determine whether or not to activate a district sexual harassment investigation team as per the provisions of Publication 552. In cases where anonymity has been requested, such complaints will not be forwarded to the districts as per EEO law and as noted in the Appendix Section of your Draft report. This protocol will be reemphasized in our New York Metro Area policy letter that will be issued as outlined above.

Thank you for the opportunity to comment on your report. If you have any questions regarding this response you may contact Patricia Richter, Area Manager of Human Resources, at 718-321-5840.



David L. Solomon

cc: Suzanne Medvidovich
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