



RESPONSE TO FREEDOM OF INFORMATION ACT (FOIA) REQUEST

2018-000318 (Rev)

1

RESPONSE TYPE INTERIM FINAL

REQUESTER:

David Lochbaum

DATE:

06/27/2018

DESCRIPTION OF REQUESTED RECORDS:

"Digital copies of the 'Study of Reprisal and Chilling Effect for Raising Mission-Related Concerns and Differing Views at the NRC' (M17352A430), transmittal memo (ML17352A411), and all of documents in ADAMS package ML17352A434."

PART I. -- INFORMATION RELEASED

- The NRC has made some, or all, of the requested records publicly available through one or more of the following means: (1) <https://www.nrc.gov>; (2) public ADAMS, <https://www.nrc.gov/reading-rm/adams.html>; (3) microfiche available in the NRC Public Document Room; or FOIA Online, <https://foiaonline.regulations.gov/foia/action/public/home>.
- Agency records subject to the request are enclosed.
- Records subject to the request that contain information originated by or of interest to another Federal agency have been referred to that agency (See Part I.D -- Comments) for a disclosure determination and direct response to you.
- We are continuing to process your request.
- See Part I.D -- Comments.

PART I.A -- FEES

AMOUNT

- You will be billed by NRC for the amount indicated.
- You will receive a refund for the amount indicated.
- Fees waived.
- Since the minimum fee threshold was not met, you will not be charged fees.
- Due to our delayed response, you will not be charged fees.

PART I.B -- INFORMATION NOT LOCATED OR WITHHELD FROM DISCLOSURE

- We did not locate any agency records responsive to your request. *Note:* Agencies may treat three discrete categories of law enforcement and national security records as not subject to the FOIA ("exclusions"). See 5 U.S.C. 552(c). This is a standard notification given to all requesters; it should not be taken to mean that any excluded records do, or do not, exist.
- We have withheld certain information pursuant to the FOIA exemptions described, and for the reasons stated, in Part II.
- Because this is an interim response to your request, you may not appeal at this time. We will notify you of your right to appeal any of the responses we have issued in response to your request when we issue our final determination.
- You may appeal this final determination within 90 calendar days of the date of this response. If you submit an appeal by mail, address it to the FOIA Officer, at U.S. Nuclear Regulatory Commission, Mail Stop T-2 F43, Washington, D.C. 20555-0001. You may submit an appeal by e-mail to FOIA.resource@nrc.gov. You may fax an appeal to (301) 415-5130. Or you may submit an appeal through FOIA Online, <https://foiaonline.regulations.gov/foia/action/public/home>. Please be sure to include on your submission that it is a "FOIA Appeal."

PART I.C -- REFERENCES AND POINTS OF CONTACT

You have the right to seek assistance from the NRC's FOIA Public Liaison by submitting your inquiry at <https://www.nrc.gov/reading-rm/foia/contact-foia.html>, or by calling the FOIA Public Liaison at (301) 415-1276.

If we have denied your request, you have the right to seek dispute resolution services from the NRC's Public Liaison or the Office of Government Information Services (OGIS). To seek dispute resolution services from OGIS, you may e-mail OGIS at ogis@nara.gov, send a fax to (202) 741-5789, or send a letter to: Office of Government Information Services, National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740-6001. For additional information about OGIS, please visit the OGIS website at <https://www.archives.gov/ogis>.



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PART I.D -- COMMENTS

This is a revised response to your request in light of the Executive Director for Operations' issuance of his memorandum, dated June 19, 2018, in response to the assessment of the considerations identified in a "study of reprisal and chilling effect for raising mission-related concerns and differing views at the Nuclear Regulatory Commission." We note that copies of the Office of Enforcement Director's memorandum, transmitting the results of the working group's assessment to Mr. McCree, dated June 11, 2018, is available in public ADAMS as ML18143B710. You may also find Mr. McCree's tasking memorandum, including its enclosure, in public ADAMS in ML package ML18165A296.

Given these intervening events since the submission of your request, we are issuing this revised FOIA response to you. The transmittal memorandum is being released in its entirety; it is available in public ADAMS as ML17352A411. The reprisal study has modest redactions in reliance on exemptions 5 and 6 (see Part II). Because the number of DPO and/or NPO submitters (whose identities may be publicly known as a result of the release of their DPO/NPO submissions) who were asked to participate in a confidential survey was small, the statistics pertaining to their response rates, and the nature of their responses, have been redacted in order to preserve the submitters' anonymity. Finally, we note that Appendix A, found on pages 45-50 of the study, contain some of the questions and survey response results from the 2015 Safety Culture & Climate Survey that was conducted by Willis Towers Watson under contract to the Office of the Inspector General.

Signature - Freedom of Information Act Officer or Designee

Stephanie A. Blaney

Digitally signed by Stephanie A. Blaney

Date: 2018.06.27 08:29:54 -04'00'



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PART II.A -- APPLICABLE EXEMPTIONS


Records subject to the request are being withheld in their entirety or in part under the FOIA exemption(s) as indicated below (5 U.S.C. 552(b)).

- Exemption 1: The withheld information is properly classified pursuant to an Executive Order protecting national security information.
- Exemption 2: The withheld information relates solely to the internal personnel rules and practices of NRC.
- Exemption 3: The withheld information is specifically exempted from public disclosure by the statute indicated.
 - Sections 141-145 of the Atomic Energy Act, which prohibits the disclosure of Restricted Data or Formerly Restricted Data (42 U.S.C. 2161-2165).
 - Section 147 of the Atomic Energy Act, which prohibits the disclosure of Unclassified Safeguards Information (42 U.S.C. 2167).
 - 41 U.S.C. 4702(b), which prohibits the disclosure of contractor proposals, except when incorporated into the contract between the agency and the
 - Other:
- Exemption 4: The withheld information is a trade secret or confidential commercial or financial information that is being withheld for the reason(s) indicated.
 - The information is considered to be proprietary because it concerns a licensee's or applicant's physical protection or material control and accounting program for special nuclear material pursuant to 10 CFR 2.390(d)(1).
 - The information is considered to be another type of confidential business (proprietary) information.
 - The information was submitted by a foreign source and received in confidence pursuant to 10 CFR 2.390(d)(2).
- Exemption 5: The withheld information consists of interagency or intraagency records that are normally privileged in civil litigation.
 - Deliberative process privilege.
 - Attorney work product privilege.
 - Attorney-client privilege.
- Exemption 6: The withheld information from a personnel, medical, or similar file, is exempted from public disclosure because its disclosure would result in a clearly unwarranted invasion of personal privacy.
- Exemption 7: The withheld information consists of records compiled for law enforcement purposes and is being withheld for the reason(s) indicated.
 - (A) Disclosure could reasonably be expected to interfere with an open enforcement proceeding.
 - (C) Disclosure could reasonably be expected to constitute an unwarranted invasion of personal privacy.
 - (D) The information consists of names and other information the disclosure of which could reasonably be expected to reveal identities of confidential sources.
 - (E) Disclosure would reveal techniques and procedures for law enforcement investigations or prosecutions, or guidelines that could reasonably be expected to risk circumvention of the law.
 - (F) Disclosure could reasonably be expected to endanger the life or physical safety of any individual.
- Other:

PART II.B -- DENYING OFFICIALS

In accordance with 10 CFR 9.25(g) and 9.25(h) of the U.S. Nuclear Regulatory Commission regulations, the official(s) listed below have made the determination to withhold certain information responsive to your request.

DENYING OFFICIAL	TITLE/OFFICE	RECORDS DENIED	APPELLATE OFFICIAL	
			EDO	SECY
Stephanie A. Blaney	FOIA Officer	third party personal information and predecisional deliberations	<input checked="" type="checkbox"/>	<input type="checkbox"/>
	Select Title/Office from drop-down list		<input type="checkbox"/>	<input type="checkbox"/>
	Select Title/Office from drop-down list		<input type="checkbox"/>	<input type="checkbox"/>
	Select Title/Office from drop-down list		<input type="checkbox"/>	<input type="checkbox"/>



Study of Reprisal and Chilling Effect for
Raising Mission-Related Concerns and
Differing Views at the NRC

Office of Enforcement



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I. EXECUTIVE SUMMARY

The United States (U.S.) Nuclear Regulatory Commission (NRC) recognizes that a free and open discussion of alternative approaches and differing professional views is essential to the development of sound regulatory policy and decisions. Over the years, the agency has adopted policies and practices to establish and maintain an environment that encourages all NRC employees and contractors to raise concerns and differing views promptly without fear of reprisal through various processes.

As a safety regulator, the NRC prides itself in being a learning organization. As such, we embrace the use of surveys, self-assessments, and benchmarking activities as tools to reveal useful insights into our organizational culture, including whether the agency has an organizational climate conducive to raising mission-related concerns and differing views without fear of reprisal.

This study was developed by the Office of Enforcement (OE) as part of an agency-level response to recent employee surveys. The focus of the study was to develop and enhance activities that address concerns of reprisal and chilling effect for raising mission-related concerns and differing views. The study does not assess the agency's existing differing views processes or any other agency processes. The goal was to gain a better understanding of the issues and maximize potential strategies for improvements. The comprehensive study reviews historical data for context, examines the existing environment (including agency processes and practices), and reflects a broad range of insights from a multi-office focus group as well as insights from a variety of sources and benchmarking activities.

The collected data indicate that perceptions of reprisal may inhibit employees from raising mission-related concerns and differing views and impact employee engagement. Although data does not conclusively identify that reprisal is pervasive at the agency or that there is a chilled work environment, it does indicate that there is room for improvement.

The study identifies 15 observations covering a range of issues, such as what we know and don't know about reprisal and chilling effect in general and at the agency. The nine considerations included in this study reflect a proactive, holistic approach to address the observations of concern. (A consolidated list of observations and considerations is included in Section VII.) The considerations aim to provide senior management with a range of opportunities that could be pursued to create effective, lasting improvements to the workplace that will foster a climate of trust; strengthen the positive environment for raising concerns; promote a culture of fairness,

empowerment, and respect across the agency; and establish clear expectations and accountability for NRC leaders. Used purposefully, the insights from this study can help identify strategies, refocus our attention, and reenergize our efforts to fulfill NRC's important safety and security mission, while continuing to nurture an environment that reflects the characteristics of a strong safety culture in which people feel free to speak up without fear of reprisal, knowing they will be heard, understood, and responded to in a respectful manner.

II. BACKGROUND

In 2015, the NRC Office of the Inspector General (OIG) conducted the periodic Safety Culture and Climate Survey (SCCS) and the U.S. Office of Personnel Management (OPM) conducted the annual Federal Employee Viewpoint Survey (FEVS). Based on an analysis of the data from the surveys, representatives from the Office of the Executive Director for Operations (OEDO), the Office Chief Human Capital Officer (OCHCO), OE, the Office of Small Business and Civil Rights (SBCR), the Project Aim team, the NRC's Business Process Improvement team, and the National Treasury Employees Union (NTEU), developed an agency action plan. On June 9, 2016, the EDO issued the [Agency Action Plan](#). The focus area of the plan is: "*Fostering a greater climate of trust at the NRC.*"

The plan includes three specific goals:

- Strengthen the positive environment for raising concerns
- Promote a culture of fairness, empowerment, and respect across the agency
- Establish clear expectations and accountability for NRC leaders

At the time it was issued, the Agency Action Plan contained six action items, each of which would contribute towards achieving all three goals. The third action item included:

Continue to develop and enhance activities that address concerns of retaliation and chilling effect for raising concerns, as well as support continuous improvement of the Open Door Policy (ODP), Non-Concurrence Process (NCP), and the Differing Professional Opinion (DPO) Program.

OE was tasked with leading activities for this action item in partnership with OCHCO and SBCR and support from the Office of the General Council (OGC), and OEDO. OE subsequently established a select group of employees from these offices as well as a representative from NTEU reflecting diversity of experience, expertise, and opinion to focus on the first part of activity three (reflected in bold text). As previously noted, the goal was not to assess the differing views processes or any other agency processes. The goal was to foster open and candid discussions and challenge the group to think outside the box to maximize potential strategies and activities for senior management's consideration. In other words, what could management do (i.e., considerations) as opposed to what should management do (i.e., recommendations) to address concerns of reprisal and chilling effect for raising mission-related concerns and differing views? As such, the study reflects all considerations from the group, but does not reflect a consensus view from the group on all considerations. This study was developed by OE based on the broad range of insights from this group as well as insights from a variety of sources, additional information, and benchmarking activities.

III. INTRODUCTION

Before delving deeper in this complex subject, it is important to address the importance of the subject, the relationship of perception versus reality, and the definitions of terms as they are used in the context of raising mission-related concerns and differing views and as they are specifically used in this study. It should be noted that many of the definitions are aligned with definitions in Management Directive (MD) 8.8, "Management of Allegations," MD 10.160, "Open Door Policy," MD 10.158, "NRC Non-Concurrence Process," and MD 10.159, "NRC Differing Professional Opinion (DPO) Program."

A. Safety Culture and Mission

Numerous events over the years have resulted in acknowledgement of the importance of safety culture and listening to employee concerns (e.g., 1986 accident at Chernobyl, 1986 explosion of the Challenger shuttle, 2005 explosion at the BP Texas City Refinery, 2010 explosion at Deepwater Horizon, and 2011 disaster at Fukushima).

Safety culture concerns at operating reactor facilities (including a large number of unresolved problems at the Millstone facility in the mid-1990s and the extensive corrosion of the reactor vessel head at Davis-Besse in 2002) lead to issuing the [NRC Safety Culture Policy Statement](#) in 2011. Environment for raising concerns is identified as one of the traits of a positive safety

culture in the NRC's Safety Culture Policy Statement and is described as, "A safety conscious work environment is maintained where personnel feel free to raise safety concerns without fear of retaliation, intimidation, harassment or discrimination."

Reprisal is an impediment to a healthy safety culture and can inhibit the free flow of information. Fear of raising concerns within the agency can result in: employees raising issues outside of the agency (Congress, interest groups, or media); employees engaging in disruptive behaviors; or employees declining to raise issues at all. (A presentation on this issue from the Office of Personnel Management (OPM), Federal Executive Institute (FEI), [Guerrillas in Our Midst: Managing Dissent in Public Service](#) was attended by several NRC employees and was shared with senior managers in an EDO Monthly Meeting.)

NRC needs to ensure that it has a positive environment for raising concerns without fear of reprisal to ensure sustained employee engagement and a strong safety culture. Employee engagement and a strong safety culture are necessary to support informed, safety-focused decisionmaking to help ensure we fulfill our mission.

B. Perception Versus Reality

It is certainly possible that employees may believe they experienced reprisal for raising mission-related concerns or differing views, when, in fact, they did not. For example, an employee might *believe* that their training was cancelled because they repeatedly expressed a differing view even though the cancellation was unrelated. An employee might *believe* they received a lowered performance rating because they used the NCP even though the lowered rating was not directly related to the non-concurrence. An employee may *feel* harassed by coworkers for repeatedly raising a mission-related concern even though a reasonable person would not see the behaviors as harassing. Nonetheless, the employees' perceptions of having been subjected to reprisal in these cases may be enough to alter their opinions of and behaviors at their workplace and, if they become part of office lore, have the potential to impact the views and behaviors of many employees and potentially chill the work environment. That is why, in our view, *reprisal is a case in which perception is as important as reality*. The analysis, observations, and considerations in this study are grounded in this belief.

C. Definitions (in topical versus alphabetical order)

As previously noted, the following terms are defined as they are used in the context of raising mission-related concerns and differing views and as they are specifically used in this study. They do not represent agency approved definitions or definitions being recommended for adoption. They are provided to support the readers' understanding of the subject and the study. It should be noted that many of the definitions are aligned with definitions in MD 8.8, "Management of Allegations," MD 10.160, "Open Door Policy," MD 10.158, "NRC Non-Concurrence Process," and MD 10.159, "NRC Differing Professional Opinion (DPO) Program." The definitions are also consistent with definitions used within the community of professionals focused on protected activity and protected disclosure. It should be noted that the definitions may not be consistent with those understood or used within protected class or EEO activities.

Reprisal includes harassment, intimidation, retaliation, or discrimination by management or employees against those who raise a mission-related concern or express a mission-related differing view (i.e., engaged in protected activity or protected disclosure). (Based on definition in MD 10.158, MD 10.159, and MD 10.160.)

Harassment is any unwelcome verbal, visual, physical action or behavior toward a person based on that person raising a mission-related concern or differing view (i.e., protected activity or protected disclosure) that has the effect or perceived effect of causing a person to be uncomfortable, feel inhibited, or afraid of working in the employment environment. (Note that harassment is a subset of reprisal and can include actions or behaviors between employer and employee; employee and employee; and employee and employer. Harassment may or may not reach legal limits in applicable regulations.)

Intimidation is an action that has the objective or perceived objective of preventing or discouraging a person from engaging in protected activities.

Retaliation is adverse personnel action that is taken (or not taken in the case of a personnel benefit), recommended, or threatened because of raising a mission-related concern or expressing a mission-related differing view. (Note that retaliation is a subset of reprisal and is limited to actions and behaviors between employer and employee. Retaliation is against the applicable whistleblower laws.) (Based on definition in MD 10.158, MD 10.159, and MD 10.160.)

Discrimination is treating an employee differently for a prohibited or illegal reason because they raised a mission-related concern or engaged in protected activity or protected disclosure.

Chilling Effect is a condition that occurs when an event, interaction, inaction, decision, or policy change results in a perception that the raising of a mission-related concern or differing view to

management is being suppressed, is discouraged, or will result in reprisal (harassment, intimidation, retaliation, or discrimination). (Included in MD 8.8, MD 10.158, MD 10.159, and MD 10.160.)

Chilled Work Environment is a condition where the chilling effect is not isolated (e.g., multiple individuals, functional groups, shift crews, or levels of workers within the organization are affected). (Included in MD 8.8.)

Adverse Action is an action that may adversely impact the compensation, terms, conditions, or privileges of employment including, but not limited to, a failure to receive a routine annual pay increase or bonus, demotion or arbitrary downgrade of a position, transfer to a position that is recognized to have a lesser status or be less desirable (e.g., from a supervisory to a non-supervisory position), failure to promote, overall performance appraisal downgrade, verbal or written counselling, or other forms of constructive discipline, or termination. (Included in MD 8.8.)

Protected Activity is virtually any action that an employee takes to prevent harm under the Atomic Energy Act (AEA) or the Energy Reorganization Act (ERA), such as reporting alleged violations of the AEA or ERA, or raising mission-related concerns or differing views. Although the activity of raising a mission-related concern or differing view is protected even if the concern is not validated, the complaint must be reasonably connected to harm that the employee fears and cannot be a complete fabrication or total speculation.

Protected Disclosure is disclosure of information that is protected under Title 5 of the U.S. Code, Chapter 23. The disclosure is generally protected when made to any person and the employee reasonably believes that it is true. The disclosure need not be accurate or disclosed through chain of command. The disclosure can be made during the normal course of duties.

Protected Class is a group of people with a common characteristic who are legally protected from discrimination under federal anti-discrimination laws on the basis of that characteristic, such as race, color, religion, sex, national origin, age, disability, or sexual orientation.

Prima Facie Showing of Discrimination. Facts provided by an employee that create a reasonable inference that an employer took an adverse action against the employee for having engaged in protected activity. Specifically, the employee must provide facts indicating that (1) the employee engaged in protected activity (including raising mission-related concerns and differing views), (2) an adverse action was taken against the employee (e.g., having work reassigned, not being selected for a project or position, having training cancelled), (3) persons responsible for the adverse action had knowledge of the employee's protected activity, and (4) the protected activity was, at least in part, a reason for the adverse action. In such circumstances, further investigation and/or development of evidence is needed to establish whether discrimination actually occurred. (Included in MD 8.8.)

Whistleblower is a term of art used to refer to the broader category of “employee protection” provisions of various laws. Whistleblowing is the lawful disclosure of information an employee reasonably believes is evidence of a violation of any law, rule, or regulation, or gross mismanagement, gross waste of funds, abuse of authority, or a substantial and specific danger to public health or safety.

IV. METHODOLOGY

To obtain a well-informed understanding of the subject of reprisal and chilling effect for raising mission-related concerns and differing views at the NRC (i.e., issues related to the safety and security goals), staff analyzed data from a wide range of sources. The study does not focus on concerns or differing views relating to issues such as conditions of employment, personal issues, or issues outside the NRC’s jurisdiction. Although the focus of the study is on reprisal and chilling effect for raising mission-related concerns and differing views (i.e., protected activity and protected disclosure), staff examined information related to protected class and EEO-based concerns for insights. The observations and considerations in this study are OE opinions based on insights from a series of data-gathering activities and multiple sources of information.

A. Multi-Office Focus Group

Based on tasking in the Agency Action Plan, OE established a select group of employees from OCHCO, SBCR, OGC, OEDO, and NTEU reflecting diversity of experience, expertise, and opinion to address the first part of activity three, “Continue to develop and enhance activities that address concerns of retaliation and chilling effect for raising concerns...” To support the activity, OE provided background information (e.g., relevant surveys questions, procedures, training materials) and the following focus statement:

“NRC needs to ensure that it has a positive environment for raising concerns without fear of reprisal to ensure sustained employee engagement. Employee engagement is necessary to support informed decision-making to help ensure we fulfill our mission. What can we do to reduce the fear of reprisal for raising concerns and differing views?”

The strategic approach was to examine “where we’ve been,” “where we are,” and “where we want to go.” The group met multiple times and engaged in open and candid discussions examining a variety of information and current policies and practices in an effort to maximize

potential strategies and activities for senior management's consideration. As previously noted, the study captures the essence of all considerations that were identified by the group. It does not reflect a consensus view from the group on all considerations. In fact, several considerations were deemed unnecessary and/or inappropriate by several members of the group, such as the establishment of an anti-reprisal policy and procedure to address protected activity and protected disclosure, creation of an advisory review panel, and development of additional training. The considerations are offered, nonetheless, as strategies that *could* be considered for potential improvements within the goals of the Agency Action Plan.

B. NRC Employee Surveys

The NRC has conducted voluntary surveys over the years to determine whether the agency has an organizational climate that is conducive to raising concerns or expressing differing viewpoints without fear of reprisal.

For example, in a 1994 survey of all employees to assess the DPO process, when asked whether the organizational climate for using the DPO process at the NRC was favorable, 25% of respondents answered positively, 40% did not find the climate favorable, and 33% had no opinion. ([1994 Special Review Panel](#).) The report also noted, "They also believe there is a culture within the NRC that does not want to expose any weakness or error in previous NRC decisions or positions. Employees responding to the survey aired beliefs that submitting a DPV or DPO was "suicidal to your career" and that a filer would be "considered a troublemaker or non-team player.""

Starting in 1998, the OIG began conducting periodic SCCSs. Over the years, the agency has seen significant improvement in perceptions about the safety of speaking up at the NRC and whether employees believe the agency has a climate where truth can be spoken up the chain of command without fear of reprisal. For example, in 1998, only 45% of employees believed it was safe to speak up at the NRC compared to 77% in 2015. In 2002, only 37% of employees believed the agency has a climate where truth can be spoken up the chain of command without fear of reprisal compared to 64% in 2015. This question is identified as a key driver influencing sustained employee engagement. Although the increases are significant, it is important to note there has been no significant change on either of these questions since 2009. Additional results from the 2015 survey indicate an opportunity for improvement. For example, 20% of employees indicated that they heard of someone within the last year who experienced a negative reaction for having raised a mission-related differing view. Forty-nine percent of

employees believe that management actively seeks to detect and prevent retaliation for raising concerns, a significant decline from 57% in 2012. Thirty-six percent of employees indicated that they did not know, which is reasonable given the nature of the question. About a third of employees believe that the NCP and DPO Program have a negative effect on career development and about half of employees don't know. The large "?" response is understandable given the infrequent use of the processes. Although approximately 62% of employees would be willing to use the NCP or DPO Program, of those employees who indicated that they would not be willing to use the processes (approximately 15%), 82% indicated that it was because of concerns of negative consequences. The survey did not query employees indicating uncertainty (i.e., "?") why they might not be willing to use the NCP or DPO Program. Appendix A includes the agency-level results for the applicable questions in the 2015 SCCS.

OPM conducts the annual FEVs. Of the employees who responded to the 2017 survey, 75% responded that they can disclose a suspected violation of any law, rule or regulation without fear of reprisal. This represents a 2% improvement from 2016 and a return to 75% favorable scores in 2015 and 2014. OPM allows agencies to include individualized questions. In 2015, 2016, and 2017, the NRC included multiple questions focused on an environment that encourages different viewpoints and opinions and whether employees can raise concerns and differing views without fear of negative consequences. Results from the 2017 survey indicate that 69% of employees believe they can raise concerns or different opinions without fear of negative consequences, 17% answered unfavorably, and 14% didn't know. This represents an improvement from the 2016 survey that indicated that 65% of employees believe they can raise concerns or different opinions without fear of negative consequences, 20% answered unfavorably, and 15% didn't know. The 2017 FEVS results are similar to the 2015 SCCS results on similar questions. Appendix B includes agency-level results for the applicable questions in the FEVS.

The NRC also surveys all employees leaving the agency. From January 1, 2014, through March 31, 2017, 7% of separating employees who responded to the survey identified fear of reprisal as a factor influencing their decision to leave the agency.

C. Open Collaborative Work Environment (OCWE) Assessment

In October 2014, the agency issued an assessment of the agency's environment for raising concerns without fear of retaliation (a.k.a. OCWE). The OCWE Assessment (ML14290A273) was responsive to a commitment included in and tasking associated with the 2009 Report of the

Task Force on Internal Safety Culture (ML090990117) and a July 3, 2014, tasking memorandum signed by the Chairman (ML14192A920).

The OCWE Assessment focused on three areas: (1) an environment that promotes raising concerns and differing views, (2) avenues to raise mission related concerns and differing views, and (3) raising concerns without fear of retaliation. The assessment included five recommendations, including two that addressed retaliation. (The assessment was silent on the issue of harassment for raising mission-related concerns and differing views, which could be from supervisors or coworkers and could be below legal limits.) Appendix C includes the complete findings and recommendations.

Recommendation 2 – Reinforce the commitment from senior leadership to model behaviors that encourage employees to raise differing views, provide appropriate feedback, and promptly address claims of retaliation.

Recommendation 5 – Improve education, outreach, and support to reduce actual and perceived instances of retaliation and assist employees who believe they are the victim of retaliation for raising concerns and differing views.

In a memorandum to the Chairman dated December 22, 2014 (ML1434A289), the staff communicated a project plan to implement the recommendations from the assessment (ML14346A300). Both recommendations 2 and 5 included, among other activities, plans to, “Establish a process for responding to claims of retaliation and communicate the process to supervisors and employees.” The timeframe in the original plan to complete this activity was June 30, 2015. Both recommendations 2 and 5 also included the commitment to coordinate whistleblower training and outreach with the OIG Whistleblower Protection Ombudsman. OE believes that the activities in the project plan have evolved and that activities were intended to be subsumed in the Agency Action Plan. In addition, although the OCWE Assessment addressed the need to address chilling effect concerns for raising concerns and differing views, neither the recommendations nor planned actions in the original project plan specifically addressed this.

D. NCP and DPO Feedback from Submitters

Since the NCP was first established in 2006, and the DPO Program MD was revised in 2004, OE has been exercising a formative evaluation approach in obtaining ongoing feedback on the processes from submitters to support process improvement. Feedback from some submitters included claims of negative consequences, such as lowered performance appraisals, reassignments, and being shunned by co-workers.

To supplement this data, OE administered two anonymous voluntary surveys to employees who submitted non-concurrences and DPOs. It is important to note that the size of the survey pools is small because the processes are infrequently used. However, the size of the survey pools and the response rates are not critical issues because the purpose of targeted surveys was to solicit feedback on the processes and personal experiences rather than representing a psychological construct, generalizing to a larger population, or performing statistical analyses. Information on the size of the survey pools and response rates are included in Appendix D. Data from the targeted surveys indicate that many of the submitters believed that they experienced some type of negative consequence as a result of participating in the processes. It is also important to note that data from the surveys regarding reprisal are the respondents' *perceptions* of reprisal rather than actual reported claims of reprisal or substantiated cases of reprisal.

The first surveys were sent to submitters with closed NCP cases from 2007 (when the NCP was established) through the end of 2013 and to submitters with closed DPO cases from 2005 (when the DPO MD was revised) through the end of 2013. Of the NCP submitters that responded, (b)(6) believed that their performance evaluations were adversely affected, (b)(6) felt they were excluded from work activities, and (b)(6) thought they were passed over for career development. Of the DPO submitters that responded, (b)(6) believed that they were relocated or reassigned to a different job, (b)(6) believed that they were excluded from work activities, and (b)(6) believed that their performance evaluations were adversely affected. Complete results are included in Appendix D.

The second surveys were sent to NCP and DPO submitters with closed cases from 2014 through the end of 2016. Although (b)(6) of the NCP submitters that responded believed that their performance evaluations were adversely affected (an improvement from (b)(6) from the previous survey), (b)(6) believed they experienced some type of negative consequence, (b)(6) felt they were excluded from work activities, and (b)(6) felt they were passed over for career development opportunities. Only (b)(6) DPO submitters responded to the survey and (b)(6)

(b)(6) felt they were excluded from work activities, their work activities were revised, and they were passed over for career development opportunities. Complete results are included in Appendix D.

As previously noted, the results provide insight on use of and experiences with the processes. The data should not be used to draw generalized conclusions on the state of the agency's environment for raising concerns or extent of reprisal. Similarly, the results should not be used to dismiss employee feedback on the perceptions of reprisal. The impact of reprisal (real or perceived) can be detrimental to an employee's work performance, professional advancement, and/or mental health. Further, if it becomes part of office lore, it has the potential to impact the views of many employees and potentially cause a chilled work environment.

The submitter response rates for the 2016 NCP survey was (b)(6) down from (b)(6) for 2013. The submitter response rates for the 2016 DPO survey was (b)(6), down from (b)(6) for 2013. We could not definitively identify a reason (or reasons) for the decreased 2016 survey response rates. However, we note that there also has been a decline in survey response rates for the latest SCCS and FEVS. This could indicate dissatisfaction with management's response to previous surveys and, if not corrected, could also be a precursor to a decline in employee engagement.

E. **OIG NCP Audit**

On October 7, 2010, the OIG issued an [audit report of the NCP](#). The OIG followed up on claims from some employees that their performance evaluations were lowered because they filed non-concurrences. OIG substantiated that in several instances, the filer received a lower score for the rating period immediately following submittal of a non-concurrence. Although OIG could not substantiate a direct correlation between the lower rating and the submittal of a non-concurrence, the OIG noted that these instances support some agency staff's belief that there is a negative stigma attached to the NCP. The OIG also noted that without improvement, the negative stigma may become more widespread and staff will be reluctant to use the NCP.

F. **Reprisal Data**

In an effort to better understand the extent of *concerns* of reprisal (which could be informally expressed or reflected in surveys) versus *reported* allegations of reprisal, OE requested data and insights from OIG, OCHCO, OGC, SBCR, and NTEU. The data request focused on the number of

allegations of reprisal (harassment, intimidation, retaliation, discrimination) that were received from an employee for raising mission-related concerns or differing views, the number of cases referred to the employee's management or OCHCO, the number that were investigated, and the number of cases that were substantiated. The request also asked how many of the cases were associated with an employee using a differing views process (as opposed to raising a concern or view outside one of the processes). The data request did not seek detail on the specifics of a case or the nature of the reprisal (e.g., failure to be selected for a promotion, harassment from coworkers for expressing a differing view). Concerns of reprisal for raising mission-related concerns and differing views could be reported as allegations to OIG, complaints/grievances made to OCHCO, complaints filed with other federal agencies (which OGC would likely be aware of), and grievances discussed with NTEU. They could also be communicated to an employee's management or even SBCR. Reprisal (including retaliation and harassment) could be from a supervisor, a peer, or a subordinate. Reports of reprisal for raising mission-related concerns and differing views could also be included with other allegations, such as gender or age discrimination.

Based on the response to OE's request, it appears that five reports of reprisal may have occurred in the last three years. Because the data request focused on numbers and not individuals, OE was unable to determine more about the number or nature of complaints or the outcomes. NTEU believes that grievance activity based on reprisal may be on the increase and the April 24, 2017, edition of NTEU's newsletter stated, "We continue to hear about employees being afraid to raise issues for fear of retaliation as well as from employees who feel they have been retaliated against for raising concerns, including safety concerns."

G. Regulations, Policies, Procedures, and Practices

The following section includes a discussion of existing regulations, policies, procedures, and practices as they relate to reprisal and chilling effect for raising mission-related concerns and differing views at the NRC.

No FEAR Act: The Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002 (No FEAR Act) requires that Federal agencies be accountable for violations of antidiscrimination and whistleblower protection laws. Whistleblower protection is addressed in the Whistleblower Protection Act of 1989 (WPA), the Whistleblower Protection Enhancement Act of 2012 (WPEA), the Inspector General Act of 1978, and the Energy Reorganization Act (ERA) of 1974, as amended. (b)(5)

(b)(5)

(b)(5) . The Department of Labor (DOL), Occupational Safety and Health Administration (OSHA) oversees a variety of [Whistleblower Protection Programs](#). The [“Your Rights under the Energy Reorganization Act”](#) poster posted on OSHA’s Web site identifies the NRC as an employer. OSHA’s [Whistleblower Statutes Desk Aid](#) indicates federal sovereign immunity likely bars investigation of ERA complaints filed against the NRC.

U.S. Office of Special Counsel (OSC): OSC is an independent federal investigative and prosecutorial agency. OSC's primary mission is to safeguard the merit system by protecting federal employees from prohibited personnel practices, especially retaliation for whistleblowing, and to serve as a safe channel for allegations of wrongdoing. ([5 U.S. Code § 2302 - Prohibited personnel practices](#)).

Collective Bargaining Agreement (CBA): The negotiated grievance procedure described in the CBA between the NRC and NTEU (Article 46) may be used by bargaining unit employees to address any matter relating to the employment of the employee or any claim that asserts a violation of the CBA or agency policy. Article 2.2 states, “The parties are mutually committed to the NRC Values of Integrity, Service, Openness, Commitment, Cooperation, Excellence, and Respect. Relationships in the workplace should be conducted in a civil, businesslike manner.” Article 2.10 states, “No employee will be subject to retaliation for participating in the Open Door Program, the Non-concurrence Process or the Differing Professional Opinions Program.” Article 46.2.4 specifically highlights that the negotiated grievance procedure also may be used if bargaining unit employees believe the agency has taken, or failed to take, an action that violates executive orders which specifically prohibit discrimination and harassment based on Equal Employment Opportunity (EEO) and civil rights, sexual orientation, status as a parent, or genetic information.

MD 10.101, “Employee Grievances”: The administrative grievance procedure may be used by non-bargaining unit employees to address grievable matters, including allegations of retaliatory actions taken for having expressed a differing view or alternative position, working conditions and work environment, and working relationships with supervisors and other NRC employees.

MD 10.99, “Discipline, Adverse Actions, and Separations”: The MD includes guidance on taking appropriate employment actions, including those based on conduct or combined conduct and

performance reasons. It provides that disciplinary and adverse actions are not taken for legitimate whistleblowing activity or differing professional opinions.

MD 7.4, "Reporting Suspected Wrongdoing and Processing OIG Referrals": The MD includes roles and responsibilities associated with suspected wrongdoing, including that all employees are responsible for reporting allegations of suspected wrongdoing to the OIG. The MD also provides guidance on how to report suspected wrongdoing, including guidance on what to report. The MD includes guidance addressing allegation analysis, investigative responsibility and authority, referral options, and distribution of investigative reports.

Whistleblower Protection Ombudsman (WPO): The WPEA required the OIG to designate a WPO to educate agency employees about prohibitions on retaliation for protected disclosures and rights and remedies against such retaliation. The NRC OIG is certified under OSC's Certification Program. The Certification Program verifies that federal agencies have met statutory obligations to inform their workforces about the rights and remedies available under the Civil Service Reform Act (CSRA), the WPA, the WPEA), and related laws. The WPO is limited (by statute) to educating employees on prohibition, rights, and remedies under OSC. The WPO does not educate on alternatives, such as employee rights under Section 211 of the ERA, or filing claims through OSHA or the CBA.

MD 10.160, "Open Door Policy", MD 10.158, "NRC Non-Concurrence Process", MD 10.159, "NRC Differing Professional Opinion (DPO) Program": All three MDs include the policy statement:

The NRC strives to establish and maintain an environment that encourages all NRC employees and contractors to raise concerns and differing views promptly without fear of reprisal through various mechanisms.

All three MDs include organizational responsibilities to all employees that reprisal against individuals who engage in the ODP, NCP, and DPO Programs is specifically prohibited. The MDs include that supervisors and managers take action in response to an allegation of reprisal and ensure that a proposed personnel action against an employee is not in retaliation for use of a differing views process. All three MDs include a list of resources to address concerns of reprisal. The MDs do not cover the authority to investigate or take action to address allegations of reprisal.

We identify the [NRC Policy and Procedure for Preventing and Eliminating Harassing Conduct in the Workplace \(Anti-Harassment Policy\)](#) —not because it applies to this area—but because the agency’s existing Anti-Harassment Policy DOES NOT cover harassment for raising mission-related concerns, differing views, or engaging in a differing view process because of the limited definition of harassing conduct. Anecdotal feedback over the years indicates that this is a source of much staff confusion.

The Commission approved an updated and expanded version of its policy statement on harassment in the workplace in 2007. The Anti-Harassment Policy included a broadened definition of harassing conduct beyond sexual harassment.

Harassing conduct is defined as any unwelcome verbal, visual, physical or other conduct based on race, color, religion, sex (whether or not of a sexual nature), national origin, age, disability, sexual orientation, or retaliation for participation in protected EEO activities.

The Anti-Harassment Policy provides explicit roles and responsibilities and procedures for reporting, investigating, and resolving allegations of harassment based on protected class-based definition of harassment.

H. Training

The following section includes a discussion of existing training as it relates to the topic of reprisal and chilling effect for raising mission-related concerns and differing views at the NRC.

No Fear Act: The agency requires biennial training to all employees. In 2015, training materials identified that NRC employees receive whistleblower protection from various sources, including the ERA. The training was also revised in 2015 to highlight that raising nuclear concerns and using ODP, NCP, and DPO Program is considered protected activity. Scenario 4 in the training was revised to address potential retaliation concerns for using the NCP. The knowledge check question identified that employees may report retaliation complaints to OIG and file whistleblower protection complaints with OSHA and OSC. The training was subsequently revised in 2017 to remove all references to employee whistleblower protections under the ERA

and OSHA (including the knowledge check question) because of the unsettled nature of protection under this statute. (See additional discussion in Section V.)

OIG Whistleblower Protection: The OIG routinely conducts educational presentations on the Whistleblower Protection Program and distributes pamphlets to new NRC employees and a wide range of Headquarters and Regional NRC staff on [employee rights](#), protections, and reporting [rights](#) procedures under OSC.

NCP & DPO Program: NCP and DPO Program training is available online in iLearn. The training includes a video introduction from the EDO emphasizing the agency's policy on differing views and the training includes the policy, "The NRC strives to establish and maintain an environment that encourages all NRC employees and contractors to raise concerns and differing views promptly, without fear of reprisal, through various mechanisms." The training is required for reactor inspector certification and voluntary for all employees.

Organizational Culture & Values: The instructor lead course is required training for new supervisors and voluntary for all employees. OE currently provides a one hour segment on NRC's policy and processes for differing views. The course addresses that culture is everybody's responsibility, that reprisal is not tolerated, provides limited advice to address potential reprisal, and notes multiple ways to pursue allegations of reprisal. This course is scheduled to be revised and OE has requested additional time to include an expanded segment (including interactive role-play and participation) on reprisal and chilling effect for using these processes.

New Employee Orientation: The pre-arrival guide includes the agency's policy on differing views, "We support an environment that encourages all employees to raise concerns and differing views promptly, without fear of reprisal," and includes references and web links to the ODP, NCP, and DPO Program. NCP and DPO Program training are identified as recommended training.

I. Communications

The following section includes a discussion of existing communication and outreach activities and initiatives as they relate to the topic of reprisal and chilling effect for raising mission-related concerns and differing views at the NRC.

Web Sites: Employee information regarding whistleblower protection, anti-discrimination and retaliation is available on the [OCHCO Web site](#), including a poster, "[Your Rights under the Energy Reorganization Act](#)." Whistleblower protection information is also available on the [OIG Web site](#). Since 2007, the [NRC public Web site](#) has included the agency's policy to establish and maintain an environment that encourages all employees and contractors to promptly speak up and share concerns and differing views without fear of negative consequences on the Values Web page. The public Web site also includes the expected behaviors to maintain such an environment ([NRC Team Player poster](#)), and describes the ODP, NCP, and DPO Program and includes links to the respective MDs. The [NRC internal Web site](#) includes similar information, in addition to a list of ways to raise mission-related concerns.

Periodic Announcements: The agency issued a [Yellow Announcement in 2014](#) on whistleblower protection and prohibited personnel practices. The announcement includes links to materials from OSC and the poster, "[Your Rights under the Energy Reorganization Act](#)." Both NCP and DPO Program MDs require the EDO and office directors and regional administrators to periodically communicate the value of the NCP and DPO Program. The EDO uses EDO Updates and Yellow Announcements (such as the recent announcement including the EDO video on the agency's differing views policy) and office directors and regional administrators use newsletters, all-hands meetings, brown-bag lunches to communicate the value of differing views and to showcase success stories. These communications may or may not emphasize that the agency does not tolerate reprisal for raising mission-related concerns and differing views.

Recognition and Success Stories: Both NCP and DPO Program MDs require that managers consider recognizing employees whose use of the process resulted in an improved outcome or made a valuable contribution to the agency.

NRC Team Player Award/MVP Award: The NRC Team Player award was established in 2008 to emphasize the value of diverse views in the decisionmaking process and was based on the behaviors identified on the [NRC Team Player poster](#) to support a positive environment for raising concerns. The award evolved into the MVP award in 2016 to re-focus and broaden the nomination criteria on the NRC Mission, Values, and Principles of Good Regulation. Employees can nominate employees or supervisors and the award is presented by the EDO and a story is included in the *NRC Reporter*.

J. Additional Information Sources/Benchmarking

OE identified and reviewed a variety of additional information and conducted benchmarking research to identify insights and best practices to maximize the potential strategies and activities for senior management's consideration.

- OSHA, [Recommended Practices for Anti-Retaliation Programs](#)
- GAO-16-618, [Department of Energy Whistleblower Protections Need Strengthening](#)
- EEO Commission (EEOC), [Select Task Force on the Study of Harassment in the Workplace](#)
- OCHCO, [NRC Change Management Listening Sessions Report](#)
- NRC Regulatory Issue Summary (RIS) 2005-18, [Guidance For Establishing And Maintaining A Safety Conscious Work Environment](#)
- [NRC Allegation Manual](#), Section 5.2 ARB Consideration of Discrimination Concerns and Chilling Effect/Chilled Work Environment Issues
- [NRC Safety Culture Policy Statement](#)
- [ELI](#)[®], (Stephen Paskoff, Esq. President and CEO) [Safely Speaking for Managers](#)[®] and [Safely Speaking](#)[®] for Employees; [Creating a Culture of Speaking Up](#) (ebook); [6 Ways to Make Civility Rule!](#) (ebook)
- LinkVisum Consulting Group, [Safety Culture Continuous Learning and Improvement, Differing Views Processing Benchmark Report](#), March 2013
- Office of Personnel Management, Federal Executive Institute, [Guerrillas in Our Midst: Managing Dissent in Public Service](#)
- Union of Concerned Scientists (UCS), [The Nuclear Regulatory Commission and Safety Culture: Do As I Say, Not As I Do](#)
- [Ethics Resource Center: 2009 National Business Ethics Survey, Retaliation: The Cost to Your Company and its Employees](#)
- Clifford & Garde, LLP, [Investigator Training Retaliation in the Workplace: Methods to Detect, Investigate and Prevent](#)
- Morgan Lewis, [INPO Management Actions for Detection of and Response to Retaliation: One Element in Maintaining a Safety Culture](#)
- [The Speed of Trust](#), Stephen M. R. Covey

V. OBSERVATIONS

The collected data identified the following observations.

There is much we do not know about the prevalence of reprisal and chilling effect or chilled work environment at the NRC for raising mission-related concerns and differing views.

There is no specific policy or procedure that requires employees to promptly report any incident of reprisal (including harassment from a co-worker) for raising mission-related concerns or differing views. Although all-employee surveys have addressed the environment for raising concerns without fear of reprisal, they have not asked employees whether they believe they have experienced reprisal for raising mission-related concerns or differing views. There is also insufficient data on whether specific events, interactions, inactions, decisions, or policy changes have resulted in a chilling effect or chilled work environment.

The staff is unaware of how many complaints of reprisal for raising mission-related concerns or differing views or for using the ODP, NCP, or DPO Program are reported per year; whether (and how) they are reviewed; how many cases are substantiated; and what (if any) corrective actions are taken.

Although the [No FEAR Act requires that the NRC post summary statistical data pertaining to complaints of employment discrimination filed by employees](#), it does not address discrimination complaints based on raising mission-related concerns or differing views. Moreover, there is no centralized point of contact or source to collect reprisal data based on raising mission-related concerns or differing views. Reprisal covers a range of behaviors, (which may or may not reach legal thresholds), such as harassment of an employee by another employee and retaliation of an employee by his or her supervisor. Attempts to gather reprisal data were challenging because as previously noted, an allegation of reprisal can be made to multiple sources (e.g., OIG, OCHCO, OSC, and OSHA). Further, because the data request was focused on numbers and not individuals, the results have limitations. In particular, one allegation could be counted multiple times. For example, an allegation could be made to OIG, then referred to the employee's office, and subsequently referred to OCHCO for action. A concern could be raised to SBCR and subsequently referred to OCHCO, then subsequently discussed with the employee's management for action. We are also aware that concerns of reprisal could be included with other concerns, such as gender or age discrimination. Not having data on the extent of reported reprisal claims makes managing the dynamics and

psychology associated with actual and perceived reprisal challenging. If data was available to the staff, it could potentially reduce the barrier and fear associated with speaking up and could dispel the perception that speaking up will result in reprisal.

Employees may not be willing to report allegations of reprisal.

Anecdotal data indicates that many employees have voiced concerns of reprisal for raising mission-related concerns and differing views. (As previously noted, agency-level survey data does not exist on claims of reprisal.) Data from targeted surveys indicate that a large number of employees who used the NCP or DPO process believed that they experienced some form of negative consequence. However, only a few complaints of reprisal have been reported for raising mission-related concerns or differing views or for using the differing views processes. Why? We have no empirical data, however, anecdotal data and our benchmarking analysis indicates that an employee who experiences reprisal may fail to report the behavior or file a complaint because they fear disbelief of their claim, inaction on their claim, blame, or social or professional retaliation. The fear of retaliation (e.g., exclusion from work activities, failure to be selected, lowered performance rating) for reporting a reprisal concern may be particularly inhibiting in light of the agency's future, the impact of Project Aim, and emphasis on organizational effectiveness. Employees may also be concerned that our current processes for addressing reprisal may not be sufficiently independent to be considered credible (e.g., the grievance process may involve the supervisor and management chain involved in the claim of reprisal, OIG may choose not to investigate an allegation and choose to refer the concern to the same management chain involved in the claim of reprisal, and OCHCO and OGC may be viewed as supporting management.) As a final note, notwithstanding implementing any new policies or initiatives, employees may still be unwilling to formally report allegations of reprisal.

The NRC does not have a specific formal policy that addresses the issue of reprisal for raising mission-related concerns or differing views.

Although the Commission and EDO have issued numerous communications to support differing views, these communications do not equate to a policy statement and the policy statements and guidance on reprisal included in the ODP, NCP, and DPO Program MDs are limited to those processes. The current Anti-Harassment Policy includes a robust, proactive statement of policy addressing harassing conduct, however, as previously noted, it does not cover reprisal for raising mission-related concerns, differing views, or engaging in a differing view process because of the protected class, EEO-based definition of harassing conduct. Anecdotal feedback over the years

indicates that many employees do not appreciate the specific scope of the Anti-Harassment Policy (i.e., protected class, EEO-based) and that this has caused confusion.

The NRC does not have a specific process or procedure to prevent, identify, investigate, and address reprisal for raising mission-related concerns or differing views.

NRC practices and processes exist that have been and could be used to address reprisal or chilling effect concerns, however, practices have been ad hoc and existing processes were not developed to specifically address these issues, and, as such, may have limitations. For example, existing procedures may not address roles and responsibilities (including coordination and communication), cover peer-to-peer harassment, provide detailed guidance on conducting inquiries and investigations, address avoiding and responding to chilling effect, and may not be understood by employees.

For example, although MD 7.4 identifies “management/supervisory retaliation” in a list of issues that should be reported, it does not specifically identify reprisal for raising a mission-related concern or differing view which could include harassment from a co-worker, supervisor, or manager. Although “misconduct” is included in the list, employees may not understand or equate reprisal or harassment for raising mission-related concerns or differing views as misconduct. In addition, the focus of the allegation analysis guidance in the MD may not be well suited to address the spectrum of concerns related to reprisal for raising mission-related concerns or differing views or chilling effect (e.g., focus on violation of a statute or regulation, focus on level of position of individuals against whom the allegations are made). The MD provides that allegations may be referred to management if they are viewed as performance versus misconduct issues. This may be problematic if the concerns are judged as performance issues or if management is the source of the reprisal allegation. The guidance provides that OIG notify the Designated Official (DO) in OCHCO of harassment allegations if it determines prompt action is warranted. The current guidance does not provide that the OIG notify the Senior Differing Views Program Manager of allegations related to the NCP or DPO Program or OCHCO of allegations related to raising mission-related concerns or differing views nor provide reports of investigation. The MD requires that the OIG provide the EDO with reports of investigations with substantiated claims. The EDO can choose to share the reports with appropriate management. The MD does not require that the OIG provide the EDO with data on the number of allegations that it receives (in this, or any other area) and how they were dispositioned, e.g., closed administratively, investigated, substantiated, or unsubstantiated.

Although the CBA includes the statement that no employee will be subject to “retaliation” for participating in the ODP, NCP, or DPO Program, the CBA does not address harassment for participating in the ODP, NCP, or DPO Program. In addition, the CBA does not specifically address reprisal (including retaliation and harassment) for raising mission-related concerns or differing views outside one of the differing views processes. An employee could file a grievance against a supervisor under Article 2.2 for failure to exhibit behaviors consistent with NRC values (i.e., lack of respect for “viewpoints”). However, the broad definitions and potentially subjective nature of the values may limit the perceived viability of this path. Further, employees may not be aware of this possible approach. Finally, the CBA is limited because it only applies to bargaining unit employees. Further, the grievance procedures do not address bargaining unit employee-to-bargaining unit employee reprisal or bargaining unit employee-to-supervisor reprisal based on raising mission-related concerns or differing views.

The ODP, NCP, and DPO Program MDs include requirements that all employees treat respectfully an employee who uses one of the differing views processes, and do not harass, intimidate, retaliate, or discriminate against an employee for using one of the differing views processes. The MDs also require supervisors and managers take action in response to an allegation of reprisal and ensure that a proposed personnel action against an employee is not in retaliation for use of a differing views process. However, the MDs do not include detailed guidance or procedures to address reprisal and chilling effect. As previously noted, the MDs do not include responsibility nor authority to investigate or take action to address allegations of reprisal. It is not clear how offices ensure compliance with these expectations. Anecdotal feedback over the years indicates that employees may believe that the MDs include authority to address reprisal and chilling effect concerns associated with use of the differing views processes.

Part III, section F of the handbook for MD 10.99 includes guidance that “management should evaluate each situation on the basis of its own factual circumstances to assure that the action proposed and taken is reasonable under those circumstances.” The illustrative factors tend to focus more on processing the appropriate action rather than guidance and criteria to determine if action is appropriate, such as steps for conducting an inquiry or criteria to support a prima facie showing of discrimination. Although the guidance notes that supervisors should consult with a labor relations employee before taking action, the guidance does not address whether employees should be interviewed before action is proposed or taken.

Finally, although the current Anti-Harassment Policy is a good example of a structured process (e.g., it includes detailed procedures including guidance such as roles and responsibilities and reporting harassing conduct, conducting an inquiry, and actions to be taken upon completion of the inquiry),

as previously noted, the policy covers harassing conduct based on protected class/EEO-based issues and does not cover harassment for raising mission-related concerns, differing views, or engaging in a differing view process (i.e., protected activity or protected disclosure). The scope of the Anti-Harassment Policy continues to be a point of potential confusion for staff seeking an appropriate avenue to address harassment for raising a mission-related concern or differing view.

(b)(5)



Previous communications to NRC employees have identified that NRC employees have whistleblower protection under the ERA ([Yellow Announcement 2014-153](#), No FEAR Act training materials, and the "[Your Rights under the Energy Reorganization Act](#)" poster posted on the NRC's Web site). The "[Your Rights under the Energy Reorganization Act](#)" poster is also posted on OSHA's Web site.

(b)(5)



(b)(5)

Reprisal concerns may negatively impact employee engagement.

A synthesis of the SCCS and FEVS data indicates that approximately 20% of employees believe that speaking up at the agency could result in reprisal. The question addressing whether the agency has established a climate where truth can be taken up the chain of command without fear of reprisal is identified in the SCCS as a key driver influencing sustained employee engagement. Of the employees who indicated that they would not use the NCP or DPO process (approximately 15% of all employees), approximately 80% indicated reprisal as the reason. As previously noted, real or perceived reprisal may be a barrier to employees identifying concerns that could impact our ability to fulfill our mission.

The clarity of the agency's future, the impact of Project Aim, and emphasis on organizational effectiveness could potentially impact the willingness of employees to raise mission-related concerns and differing views.

The NRC Change Management Listening Sessions Report identified multiple themes, including concerns with the agency's future, Project Aim, and organizational effectiveness. The Ethics Resource Center's report on retaliation in the workplace noted the fear of retaliation increased when employees were stressed in the workplace and concerned with meeting schedules, saving

one's job, or advancing one's career. The 2015 SCCS results indicated a significant decline (-5%) in the number of employees who believe that they can raise any concern without fear of retaliation.

Reprisal for raising mission-related concerns and differing views and reprisal for EEO-based issues have similar themes and concerns.

Retaliation for raising mission-related concerns and differing views and retaliation for EEO-based issues are both against the law. The NRC must not retaliate against an employee for engaging in activities that are protected under the applicable whistleblower laws or applicable EEO laws. Harassing conduct may also be unlawful. Either type of workplace reprisal (whether or not unlawful) affects *all* workers, and may lead to decreased productivity, increased turnover, reputable harm, and the ability to ensure we fulfil our mission. Both types of reprisal are particularly challenging to address because they involve changing and sustaining individual as well as organizational attitudes and behaviors. Appendix E includes the executive summary from the EEOC's Select Task Force Study of Harassment in the Workplace and a summary of the study's recommendations.

The NRC has robust Civil Rights and Affirmative Action and Diversity Programs, including policies, procedures, training, and resources to support diversity and inclusion (including EEO-based reprisal). These programs also address prevention and resolution at the lowest level.

The agency has an extensive framework, including: [EEO Policy](#), [Anti-Harassment Policy](#), MD 10.161, "[Civil Rights Program and Affirmative Employment and Diversity Management Program](#)," eight EEO and five Diversity Management Advisory Committees, [28 EEO counselors](#), a [Comprehensive Diversity Management Plan \(CDMP\)](#), a Diversity Management Inclusion Council, and a diversity dialogue project ([DIALOGUE](#)) to support diversity management goals, promote a discrimination-free work environment, and provide opportunities for all employees to use their diverse talents to support the agency's mission. The agency also provides multiple training opportunities (some mandatory) for supervisors and EEO counselors, as well as conducting a variety of events supporting diversity and inclusion. The agency issues periodic announcements, including multiple Yellow Announcements (an average of three per year) that reiterate the policy, highlight the complaint process and emphasize alternative dispute resolution. Management demonstrates a commitment to diversity and inclusion by issuing an annual Meritorious Service Award for EEO Excellence.

SBCR, OCHCO, OGC, and OIG routinely communicate and coordinate activities in this area. Over the last three years (fiscal years 2014 – 2016), the agency has received an average of 19 formal EEO-based discrimination complaints per year. Complaints are investigated by an independent contractor or through an interagency agreement with the Postal Service. The agency receives approximately 30 EEO-based harassment complaints per year through the Anti-Harassment Policy and all are subject to inquiry. Overall, the agency has a relatively low EEO complaint activity as a percentage of our workforce and in comparison to the remainder of the federal government.

The NRC has expertise in addressing discrimination complaints for raising safety concerns at licensed facilities. The NRC also has expertise in addressing chilling effect and chilled work environment allegations.

The agency has developed guidance on discrimination and chilling effect in [MD 8.8](#), the [Allegation Manual](#) and the [Enforcement Manual](#). Over the last three years, the agency has received an average of 150 allegations of discrimination per year. The majority of allegations come from licensees' employees and contractors and some, rather than being raised directly to the NRC by the concerned individual, are shared with the NRC by DOL (A Memorandum of Understanding exists between the NRC and DOL to address discrimination). Allegations are screened by an Allegation Review Board. Some are closed because they lacked a prima facie showing, some are addressed through Alternative Dispute Resolution (ADR), and some are investigated by the Office of Investigations (OI). OI conducts about 40 investigations involving discrimination per year. The staff reviews all OI reports to determine whether discrimination occurred. The NRC has issued Notices of Violation, Civil Penalties, and Orders to address discrimination and safety culture concerns.

The NRC has also issued numerous chilling effect letters over the years to ensure that licensees and other entities subject to NRC authority are taking appropriate actions to foster a workplace environment that encourages employees to raise safety concerns and to feel free to do so without fear of retaliation. The NRC considers multiple issues when evaluating a chilled work environment allegation. Although not an absolute, when 20% or more employees indicate a fear of retaliation for raising concerns, the NRC has historically considered the matter as potentially needing attention by licensee management. In its 2017 report on safety culture at the NRC, USC credited the agency's expertise in addressing safety culture and chilled work environments at licensed facilities by noting that "...NRC's interventions were both successful and sustainable."

Implementing an effective anti-reprisal program requires specific policies and commitments.

The EEOC Task Force Study reported, "Policies, reporting procedures, investigations, and corrective actions are essential components of the holistic effort that employers must engage in to prevent harassment."

OSHA identifies the following five key elements to an effective anti-retaliation program.

1. Management leadership, commitment, and accountability
2. System for listening to and resolving employees' safety and compliance concerns
3. System for receiving and responding to reports of retaliation
4. Anti-retaliation training for employees and managers
5. Program oversight

Appendix F includes OSHA's brochure, "Recommended Practices for Anti-Retaliation Programs."

The 2013 LinkVisum benchmarking report identified best practices for addressing concerns of retaliation, including:

- Ensure employees are aware of complaint processes, understand them and can easily follow them.
- Ensure supervisors are trained on the anti-retaliation policy and understand expectations of upholding the policy.
- Dedicate an impartial individual or department to periodically review and implement anti-retaliation policies and procedures, conduct investigations, and provide training.
- Implement disciplinary action consistently and fairly.
- Carefully document all performance appraisals and disciplinary actions to retain proof that your practices are fair and lawful.
- Regularly check in with the employee during and after the investigation.

Training is an essential component of an anti-reprisal program.

Training can increase the ability of employees to understand the type of conduct that is considered reprisal and hence unacceptable in the workplace. Providing realistic examples of harassment, intimidation, retaliation, and discrimination can increase the likelihood that all employees will understand that unacceptable conduct can be exhibited by coworkers as well as supervisors and managers. However, even effective training cannot occur in a vacuum—it must be part of a culture of non-reprisal that starts at the top. Similarly, one size does not fit all. Training is most effective when tailored to the specific needs of each audience. When trained correctly, middle managers and first-line supervisors can be a valuable resource in preventing and stopping reprisal.

Preventing reprisal is good for employees and good for business (i.e., mission).

Several data sources note that an effective approach to reprisal should focus beyond legal compliance and focus on prevention and resolution at the lowest level. OSHA notes that implementing a pro-active anti-retaliation program helps ensure that concerns will be raised because employees do not fear retaliation or feel frustrated over the lack of effective resolution of their concerns. Knowing about problems early may make them easier to correct. The NRC's Anti-Harassment Policy emphasizes the value of resolution of issues at the lowest levels and before they become compliance issues.

In responding to the challenges associated with concerns of reprisal, the LinkVisum report stated, "The best remedy for this is to work *proactively* to develop an open organizational safety culture, where employees take personal responsibility for their actions, there is a communal feel to the environment, and everyone is working toward the same goals." The EEOC Task Force report emphasized taking a holistic approach beyond compliance and seeing the big picture of civility. Stephen Paskoff, president and CEO of ELI, presents a business case for organizations when they make the most of their human capital and argues that civility is a means to that end. Paskoff also advocates for simplicity and integrating behavioral issues under the umbrella of civility and civil treatment. He cautions that multiple initiatives, directives, policies, and training programs using different terms, voices, and perspectives can result in "regulatory fatigue" and a splintered approach to dealing with problems that below the surface, are connected (see item 3, "You can't conquer if you divide," in Appendix G).

Involving senior management in employment actions may help prevent reprisal.

The NRC's RIS on safety conscious work environment (SCWE) noted, "An effective way for licensee management to prevent actual or perceived retaliatory actions by their staff is to review proposed employment actions on an as-needed basis before the actions are taken to determine whether any of the factors of retaliation are known to be present." Several licensees use executive review boards to review personnel actions. For example, in response to safety culture concerns at Salem and Hope Creek, in 2004, the owners told the NRC that it had created an executive review board tasked with reviewing proposed disciplinary actions, promotions, and transfers of workers to ensure no adverse actions were taken for raising safety concerns. The NCP and DPO Program MDs require that proposed personnel actions involving NCP or DPO submitters or participants not be in retaliation for involvement in the processes and that performance appraisals do not reflect negatively on the use of, or participation in the processes. It is not clear how offices ensure compliance with the requirement.

VI. CONSIDERATIONS

Based on the results of the collected data, insights and observations, we offer senior management the following considerations. As previously noted, the study captures the essence of all considerations that were identified by the multi-office focus group. It does not reflect a consensus view from the group on all considerations. In fact, several considerations were deemed unnecessary by several members of the group, such as the establishment of an anti-retaliation policy and procedures to address protected activity and protected disclosure, creation of an advisory review panel, and development of additional training. The considerations are offered, nonetheless, as strategies that may be considered for potential improvements within the goals of the Agency Action Plan.

Demonstrate management commitment and accountability.

Several benchmarking sources identified the importance of management commitment and accountability in infusing reprisal prevention into workplace culture (e.g., OSHA's guidance lists it as element 1). Although management can continue to communicate this goal, data from the recent surveys indicate that we have not made progress in building trust in this area. The 2015 SCCS indicates that few employees feel significant action has been taken as a result of the previous survey and the NRC continues to lose ground in the confidence in senior management. Stephen Paskoff, president and CEO of ELI, emphasizes the importance of building trust through actions. Actions can

be significant. Trust can also be built through small acts done daily, which are supported or discouraged in daily situations. Consequently, management should consider actionable opportunities to demonstrate commitment beyond communications, including ensuring that anti-reprisal efforts are given the necessary time and resources to be effective. OSHA's guidance includes multiple ways to demonstrate management commitment, including incorporating anti-retaliation measures in management performance standards and reviews.

Survey all employees to ask whether they believe they have experienced reprisal for raising a mission-related concern or differing view.

Having data on the extent of perceived reprisal is a critical step in understanding and addressing this important issue. Also including a followup question asking employees that if they believe they experienced reprisal but didn't report it, why they didn't report it with a multiple choice response. The data from this question can provide insights to develop strategies to overcome the barriers to reporting and improve the likelihood that employees will report allegations of reprisal. These questions could be included as agency specific questions in the 2018 FEVS and recommended to the OIG for inclusion in the next SCCS, expected in 2018.

Establish and maintain a comprehensive policy and procedures to prevent, identify, investigate, and address reprisal for raising mission-related concerns or differing views.

An anti-reprisal policy is a key component of a holistic reprisal prevention effort. The policy should include a statement that reprisal (including harassment) for raising mission-related concerns or differing views will not be tolerated (regardless of whether or not they are expressed within the differing views processes). It should include an easy-to-understand description of prohibited conduct, including illustrative examples.

The policy and procedures should include roles and responsibilities, including guidance designed to enhance communications among and across organizations with responsibilities and interests in this area, e.g., OCHCO, OGC, OE, SBCR, and OIG.

A reporting system that allows employees to file a report of reprisal they have experienced or observed, and a process for undertaking investigations, are also essential components of a holistic reprisal prevention effort. Sufficient resources should be available so that workplace investigations

are prompt, objective, and thorough. Investigations should be independent. Investigations should be kept as confidential as possible, recognizing that complete confidentiality or anonymity will not always be attainable. Ensure that where reprisal is found to have occurred, discipline is prompt and proportionate to the behavior(s) at issue and the severity of the infraction. Management should ensure that discipline is consistent, and does not give (or create the appearance of) undue favor to any particular employee.

Ensure that the anti-reprisal policy, and in particular, details about how to file a complaint of reprisal and how to report observed reprisal, are communicated frequently to employees, in a variety of forms and methods.

Establishing an anti-reprisal policy and process is consistent with the staff commitment to the Chairman in 2014 to establish a process for responding to claims of retaliation (ML14346A300).

(b)(5)



Management could consider establishing an Anti-Harassment Policy (and associated procedures) that could include two separate components. The first component could include the existing Anti-Harassment Policy addressing protected class and EEO-based issues. The second component could model the current policy's infrastructure (with revisions, as necessary) to address reprisal for raising mission-related concerns or differing views (protected activity and protected disclosure). An overarching Anti-Harassment Policy could underscore the agency's position that harassment based on *any* protected characteristic will not be tolerated. It could also make it easier for employees and supervisors to understand and implement and identify resources (i.e., avoiding "regulatory fatigue" and creating "one-stop shopping"). This unified approach could support continuous improvement through shared insights and best practices and benefit from existing coordination and communication efforts between organizations, such as OCHCO, OGC, OIG, SBCR and NTEU. Oversight for the Anti-Harassment Policy need not be from one organization. Instead, each

component could be overseen by a different organization, while maintaining the presence of a singular resource and intake point for employees.

Finally, as previously noted, creating some type of anti-reprisal policy and procedure has the potential to demonstrate greater management commitment and build greater trust beyond communication-based strategies (i.e., actions speak louder than words).

Establish an advisory review panel (ARP) to review proposed employment actions on an as-needed basis before the actions are taken to determine whether any of the factors of retaliation are known to be present and to advise on mitigation strategies to address the potential for the actions to cause a chilling effect and, if already alleged, respond to concerns of chilling effect and chilled work environment.

This pro-active strategy (similar to the practice included in the NRC's RIS on SCWE) could support supervisors and managers who may lack the expertise in recognizing, understanding, and responding to potential reprisal and chilling effect issues and could promote consistency. The ARP would serve in an advisory capacity and would not usurp or replace existing authorities or processes. The ARP charter and roles and responsibilities could be crafted to ensure that using the ARP would maintain any attorney/client privileges and would not violate due process requirements already in place for certain actions, such as disciplinary actions.

A job aid or checklist could be used to help determine whether any of the factors of retaliation are known to be present before proposed employment actions are taken. The job aid could recommend consultation with the ARP when retaliation factors are present, thereby potentially preventing reprisal or providing reassurance for the contemplated employment action. Another checklist could be used to help determine whether actions (or inactions) related to the protected activity or disclosure could reasonably cause a chilling effect or chilled work environment. The job aid could recommend consultation with the ARP to offer mitigation strategies to address the potential for the actions to cause a chilling effect and, if already alleged, respond to concerns of chilling effect and chilled work environment.

The following two scenarios are provided as examples of how the ARP might support supervisors. They are informational in nature and not intended to represent actual cases or dictate or limit future responses.

In the first scenario, a supervisor may be concerned about cancelling an employee's training in light of the employee's repeated expression of a differing view. Use of a job aid and support from the ARP could affirm that cancelling the training is not retaliatory and justified in light of the legitimate business case (budget constraints). The ARP could offer proactive mitigation strategies to address the potential chilling effect based on the potential perception of retaliation. For example, the ARP might recommend that the supervisor (1) inform the employee of the rationale for the training cancellation and (2) announce cancellation of all similar training at the next staff meeting because of budget constraints, as well as reinforcing support for raising concerns expressing differing views.

In the second scenario, a supervisor may want to lower a performance rating in the communication element because the employee's NCP submittal was poorly written. Use of a job aid could indicate that support from the ARP is advisable because the protected activity is linked to the adverse action. The ARP might probe further to determine if the decline in written communication was more prevalent or limited to the NCP. Based on the response, the ARP might recommend that justification for the lowered rating focus on other examples of written communications or recommend that the lowered rating establishes a prima facie showing of discrimination and advise against the lowered rating.

The ARP could also conduct periodic meetings to share insights about critical issues, relevant studies, media articles, and trends in the area of reprisal and chilling effect for raising mission-related concerns and differing views. The group could also make recommendations to current policies, procedures, and practices in this area and serve as a resource when analyzing and proposing actions in response to future surveys that include this area.

The ARP should include senior employees and managers with experience in evaluating reprisal complaints for raising mission-related concerns and differing views. Supplemental training may be appropriate, such as the investigator training offered through the National Association of Employee Concerns Professionals, or the senior manager training offered through the Institute of Nuclear Power Operations. The ARP should include designated representatives (and backups) from multiple offices, including, but not limited to OCHCO, OGC, and OE. Designated representatives and backups could promote consistency and leverage lessons learned and best practices thereby enhancing the skill and value of the ARP. Additional groups could provide support to the ARP in an advisory capacity (e.g., SBCR, OI, OIG, and NTEU).

Examine existing training and consider enhancing, adding, or replacing.

Evaluate the merits of developing a diverse training strategy to address the topic of reprisal and chilling effect for raising mission-related concerns and differing views to ensure that the timing and delivery methods are appropriate and aligned with the needs of each target audience (i.e., all employees, first-line supervisors, and managers). Revision of the No FEAR Act training may be warranted. Management may want to consider including use of [OSC's online quiz on prohibited personal practices and protected disclosures](#).

As previously noted, training can increase the ability of employees to understand the type of conduct that is considered reprisal and hence unacceptable in the workplace. Providing realistic examples of harassment, intimidation, retaliation, and discrimination can increase the likelihood that all employees will understand that unacceptable conduct can be exhibited by coworkers as well as supervisors and managers.

Dedicate sufficient resources to require training for all managers and supervisors on how to respond effectively to reprisal that they observe, that is reported to them, or of which they have knowledge or information—even before such reprisal reaches a legally-actionable level. Include guidance on the four elements of reprisal (prima facie showing of discrimination). Training should also address chilling effect, including what it is, how to prevent it, and how to respond to it.

Consistent with the commitment to the Chairman in 2014, coordinate whistleblower training and outreach with the OIG WPO (ML14346A300).

Consider guest speakers with expertise to participate in Executive Leadership Seminars and all-supervisory meetings (e.g., Clifford & Garde, LLP, and Morgan Lewis).

Because the current changes in the agency could inhibit the willingness of employees to raise mission-related concerns and differing views, consider infusing key messages in any training and communications implemented in response to the Change Management Listening Sessions Report, such as the importance of reinforcing the support and encouragement of raising mission-related concerns and differing views without fear of reprisal.

Evaluate the merits of infusing key messages into existing training, including reinforcing that supervisors and managers and all employees will be held accountable for their actions. Expand diversity and inclusion training and initiatives beyond traditional EEO-based themes to include diversity of views.

Develop on-time job aids for supervisors with employees raising mission-related concerns and differing views or participating in the NCP and DPO Program to address reprisal and chilling effect. For example, a checklist could be used to help determine whether any of the factors of retaliation are known to be present before proposed employment actions are taken. The job aid could recommend consultation with the ARP when retaliation factors are present that could help prevent reprisal. A checklist could be used to help determine whether actions (or inactions) as a result of the NCP or DPO could reasonably cause a chilling effect or chilled work environment. The job aid could recommend consultation with the ARP to offer mitigation strategies to address the potential for the actions to cause a chilling effect and, if already alleged, respond to concerns of chilling effect and chilled work environment.

Enhance communications on whistleblower rights and protections.

Yellow Announcements could be issued annually to ensure that employees are aware of and understand the whistleblower protections available to them as Federal employees, that they are informed regarding prohibited personnel practices, protected activities and protected disclosures, and that they know how to access additional resources and contact information regarding their rights. (The last Yellow Announcement was issued in 2014.)

In addition to electronic posters included on internal Web sites, hard copy posters of employee rights under whistleblower laws should be posted in all office locations and in all buildings where employees can readily see them.

The Issues Resolution Matrix is a useful tool that helps employees understand the numerous avenues and resources available to them. The matrix currently identifies resources for harassment and discrimination in the context of protected class and EEO concerns, but does not identify resources on whistleblower rights and protections for raising mission-related concerns and differing views. The matrix could be revised to include this type of information and could be revamped by categorizing the various programs, processes, outlets, etc. and developing a user-friendly tool to help point employees in the right direction to address the type of concern.

(b)(5)



Continue to communicate the value of raising mission-related concerns and differing views and that the agency does not tolerate reprisal for speaking up or using the differing views processes.

Managers, supervisors and team leads should continue to affirm the value of speaking up and that people who speak up will not be penalized or harmed in any way. The messages should be simple, sincere, and routinely repeated – not just in annual meetings. Stephen Paskoff, president and CEO of ELI, urges leaders to “...say it and mean it, not read it or phone it in.” Messages should link the value of differing views beyond behaviors and “soft skills” to the mission. The 2015 SCCS results indicate that 94% of employees believe NRC’s commitment to public safety is apparent in what we do on a day-to-day basis. Leveraging the existing dedication and emotional commitment to the

mission reinforces the importance to public safety and security in a way that may resonate with employees and keep them engaged. This is consistent with the “make it matter” message from Stephen Paskoff, president and CEO of ELI.

Raising concerns and differing views and using the differing views processes will gain greater support and credibility if these activities are seen as a positive way to address concerns rather than a weakness or failure in resolving concerns through informal communications. Proactively fostering an environment that encourages and supports differing views can reduce the fear of reprisal. Management should demonstrate this clearly and frequently through their actions and communications.

Management should continue to support a variety of outreach activities and communication tools, such as EDO Updates, monthly senior management meetings, all-supervisor meetings, senior leadership meetings, Yellow Announcements, all-hands meetings, brown bag lunches, seminars, events, and articles in the *NRC Reporter* and office-level newsletters. Management should also consider hosting panel discussions including employees who have raised concerns or differing views or have used or participated in the differing views processes to share experiences and normalize healthy dissent and engagement at the agency.

Establish an agency-level advisory committee on environment for raising mission-related concerns and differing views.

A voluntary advisory committee including staff and managers could support diversity of views and promote a reprisal-free work environment. The committee could raise awareness of and make recommendations to current policies, procedures, and practices in this area. Having a diverse group of volunteers sponsor events could improve employee engagement and participation and help normalize and infuse this trait within our organizational culture at an agency level. This initiative would support the three overarching goals of the Agency Action Plan. The committee could be patterned similar to the current [EEO and Diversity Management Advisory Committees](#) or the [Office of New Reactors Open Collaborative Work Environment Working Group](#).

Establish an annual Meritorious Service Award.

As previously noted, actions can speak louder than words. Data from the 2015 SCCS indicates that only 58% of staff believe that employees are positively recognized for raising concerns. Management could consider an annual Meritorious Service Award to recognize the value of maintaining an environment that encourages all NRC employees and contractors to raise concerns and differing views promptly without fear of reprisal. This level of recognition is consistent with one of OSHA's recommendations to demonstrate management commitment. Although other forms of recognition and awards exist, the status and recognition of a Meritorious Service Award could go a long way in demonstrating management support of raising mission-related concerns and differing views, normalizing the behavior, and reducing the fear of reprisal. As previously noted, management demonstrates a commitment to diversity and inclusion by issuing an annual Meritorious Service Award for EEO Excellence.

VII. CONSOLIDATED LIST OF OBSERVATIONS AND CONSIDERATIONS

The following section includes a list of all observations and considerations included in this report.

A. Observations

1. There is much we do not know about the prevalence of reprisal and chilling effect or chilled work environment at the NRC for raising mission-related concerns and differing views.
2. The staff is unaware of how many complaints of reprisal for raising mission-related concerns or differing views or for using the ODP, NCP, or DPO Program are reported per year; whether (and how) they are reviewed; how many cases are substantiated; and what (if any) corrective actions are taken.
3. Employees may not be willing to report allegations of reprisal.
4. The NRC does not have a specific formal policy that addresses the issue of reprisal for raising mission-related concerns or differing views.
5. The NRC does not have a specific process or procedure to prevent, identify, investigate, and address reprisal for raising mission-related concerns or differing views.
6. Whistleblower rights and responsibilities under the ERA are unsettled, and as a result, could lead to negative consequences.
7. Reprisal concerns may negatively impact employee engagement.
8. The clarity of the agency's future, the impact of Project Aim, and emphasis on organizational effectiveness could potentially impact the willingness of employees to raise mission-related concerns and differing views.
9. Reprisal for raising mission-related concerns and differing views and reprisal for EEO-based issues have similar themes and concerns.
10. The NRC has robust Civil Rights and Affirmative Action and Diversity Programs, including policies, procedures, training, and resources to support diversity and inclusion (including EEO-based reprisal). These programs also address prevention and resolution at the lowest level.
11. The NRC has expertise in addressing discrimination complaints for raising safety concerns at licensed facilities. The NRC also has expertise in addressing chilling effect and chilled work environment allegations.
12. Implementing an effective anti-reprisal program requires specific policies and commitments.
13. Training is an essential component of an anti-reprisal program.
14. Preventing reprisal is good for employees and good for business (i.e., mission).
15. Involving senior management in employment actions may help prevent reprisal.

B. Considerations

1. Demonstrate management commitment and accountability.
2. Survey all employees to ask whether they believe they have experienced reprisal for raising a mission-related concern or differing view.
3. Establish and maintain a comprehensive policy and procedures to prevent, identify, investigate, and address reprisal for raising mission-related concerns or differing views.
4. Establish an ARP to review proposed employment actions on an as-needed basis before the actions are taken to determine whether any of the factors of retaliation are known to be present and to advise on mitigation strategies to address the potential for the actions to cause a chilling effect and, if already alleged, respond to concerns of chilling effect and chilled work environment.
5. Examine existing training and consider enhancing, adding, or replacing.
6. Enhance communications on whistleblower rights and protections.
7. Continue to communicate the value of raising mission-related concerns and differing views and that the agency does not tolerate reprisal for speaking up or using the differing views processes.
8. Establish an agency-level advisory committee on environment for raising mission-related concerns and differing views.
9. Establish an annual Meritorious Service Award.

VIII. APPENDICES

The appendices to this study include more detailed information and data.

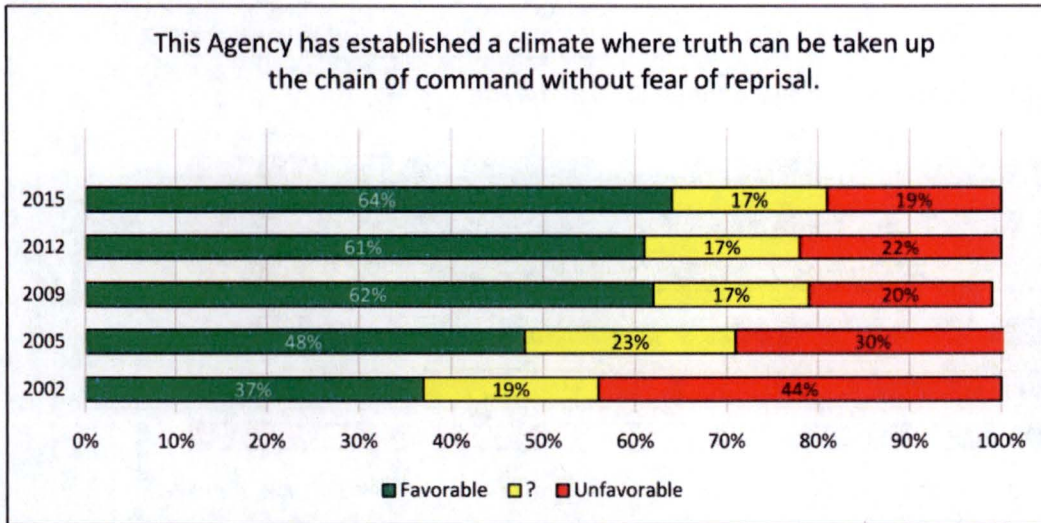
- A.** Results From the Safety Culture and Climate Survey
- B.** Results From the Federal Employee Viewpoint Survey
- C.** Finding and Recommendations from OCWE Assessment
- D.** Results From the Targeted NCP and DPO Program Surveys
- E.** OSHA, Recommended Practices for Anti-Retaliation Programs
- F.** EEOC, Select Task Force on the Study of Harrassment in the Workplace - Executive Summary and Summary of Recommendations
- G.** ELI, 6 Ways to Make Civility Rule!

Appendix A

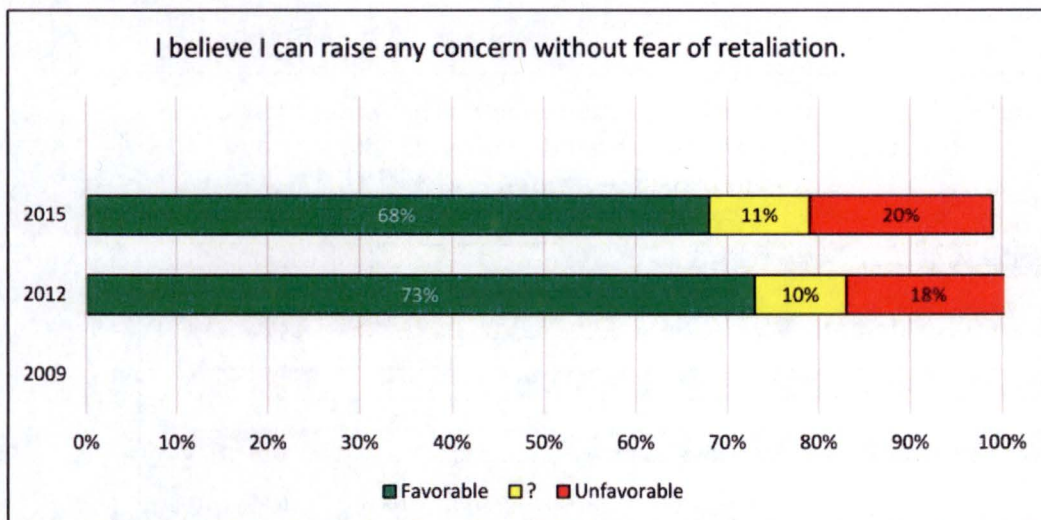
Results From the Safety Culture and Climate Survey

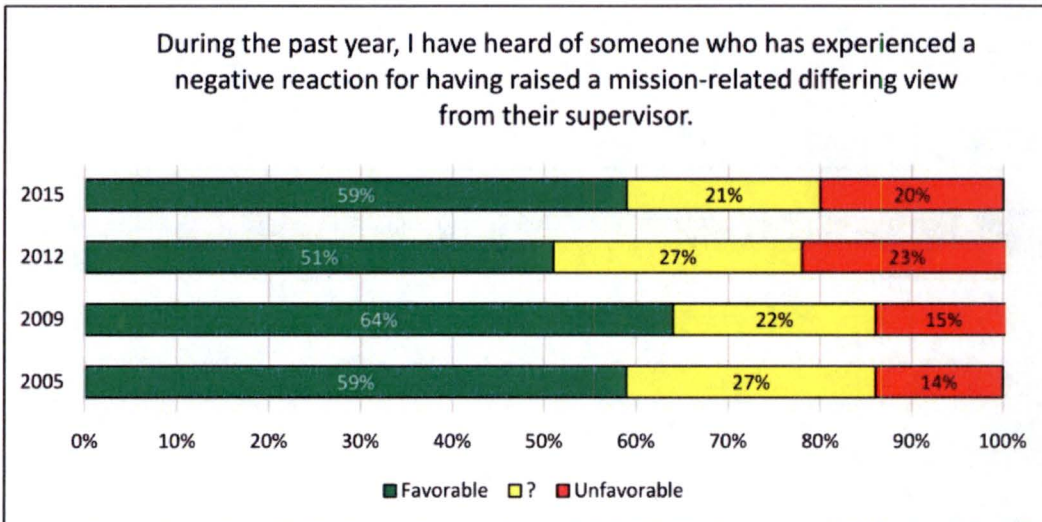
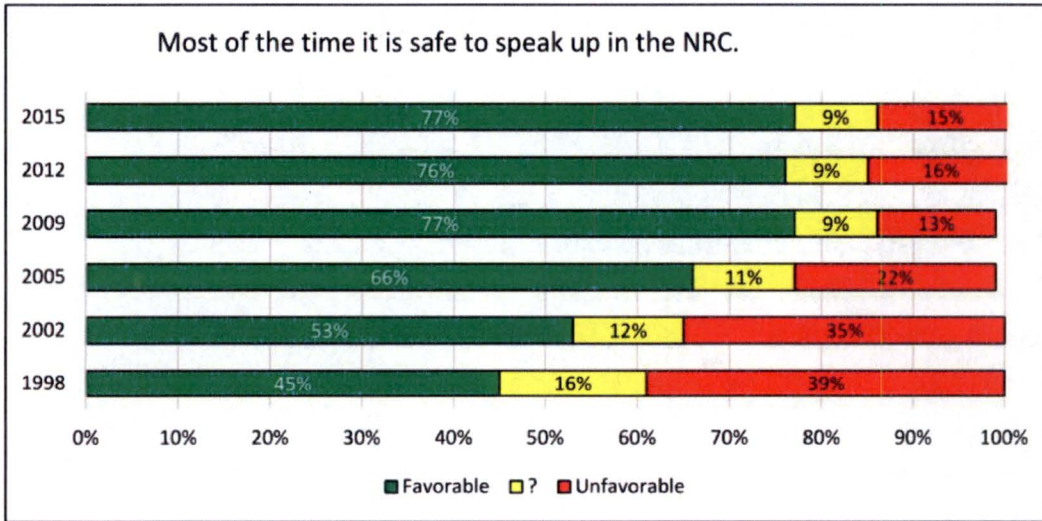
The OIG conducts periodic SCCSs. The SCCS is intended to: (1) measure NRC's safety culture and climate to identify areas of strength and opportunities for improvement, (2) understand the key drivers of engagement, (3) compare the results of the SCCS against the results of previous SCCS's, and (4) provide, where practical, benchmarks for the findings against other similar organizations and high performing companies.

The response rate for the 2015 SCCS was 70%, down from 79% for 2012, and 87% for 2009.

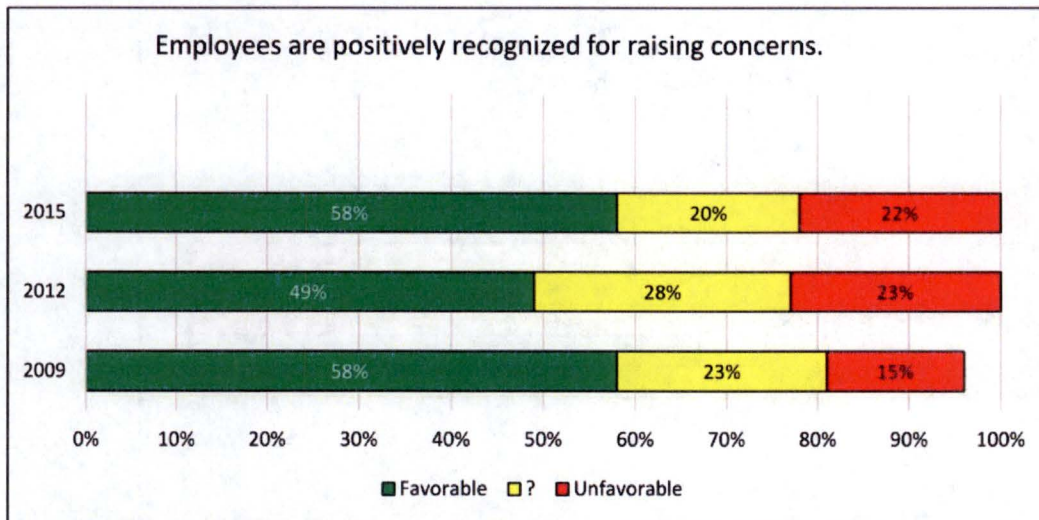
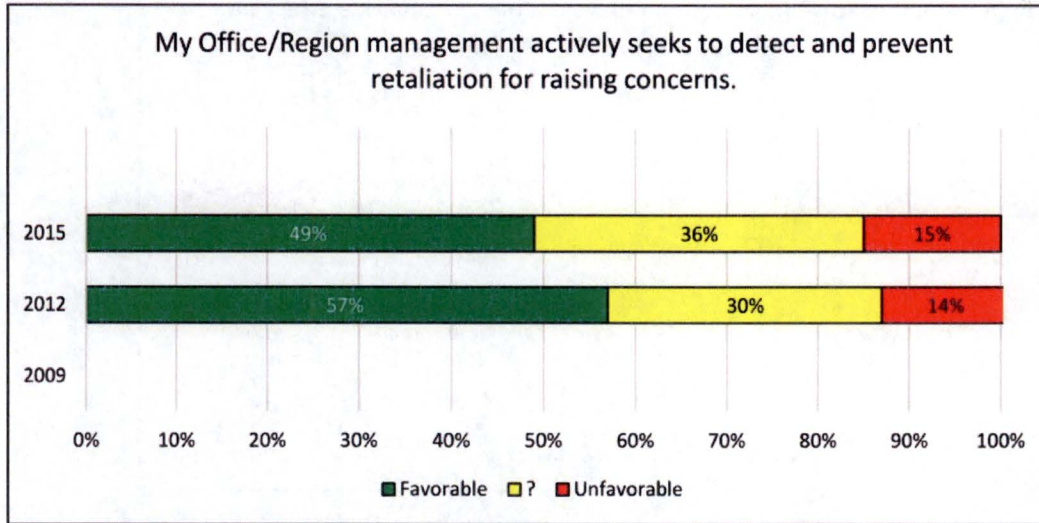


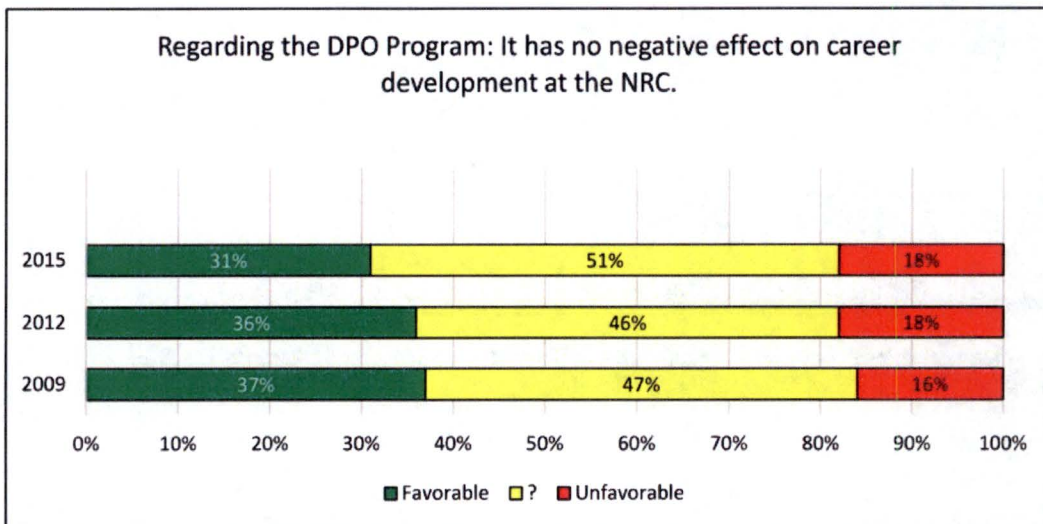
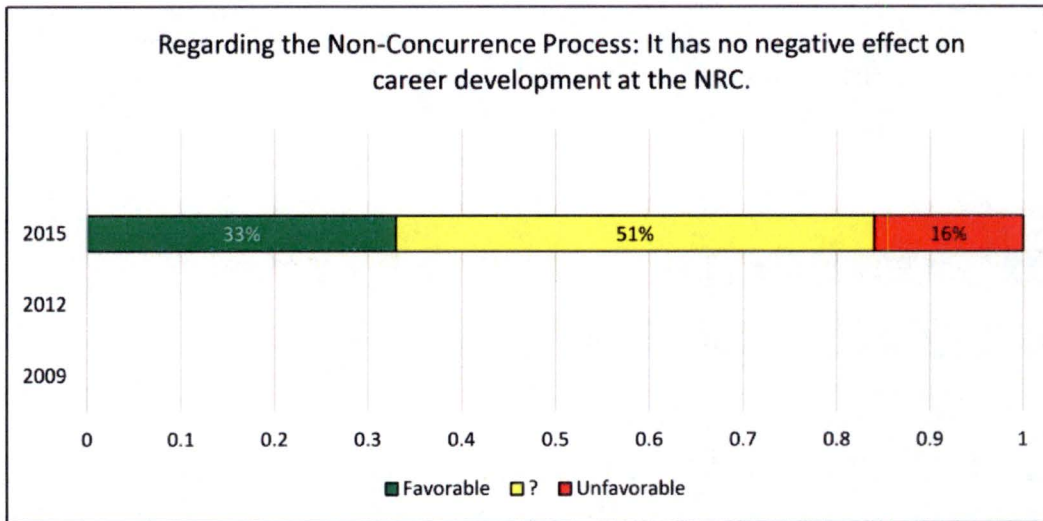
This question is identified as a key driver of employee engagement.

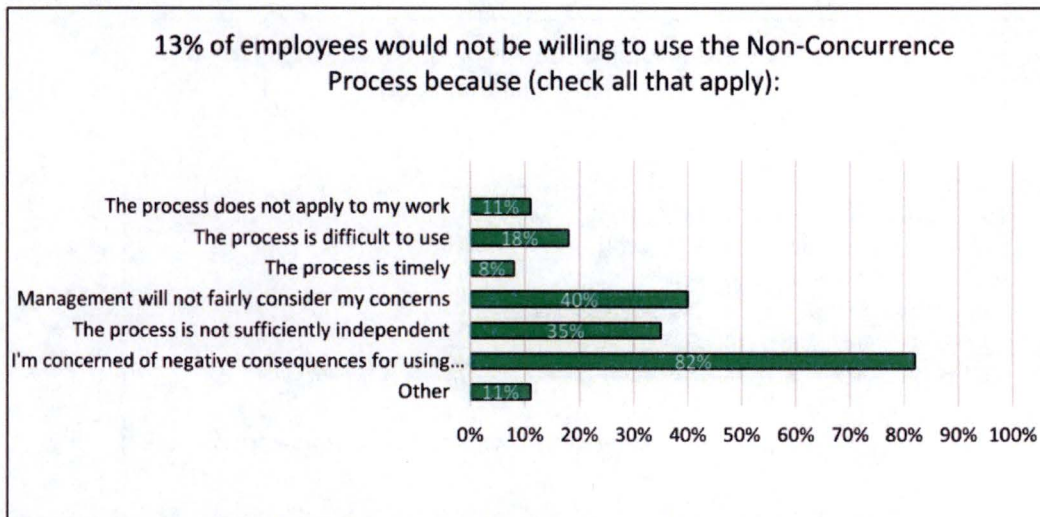
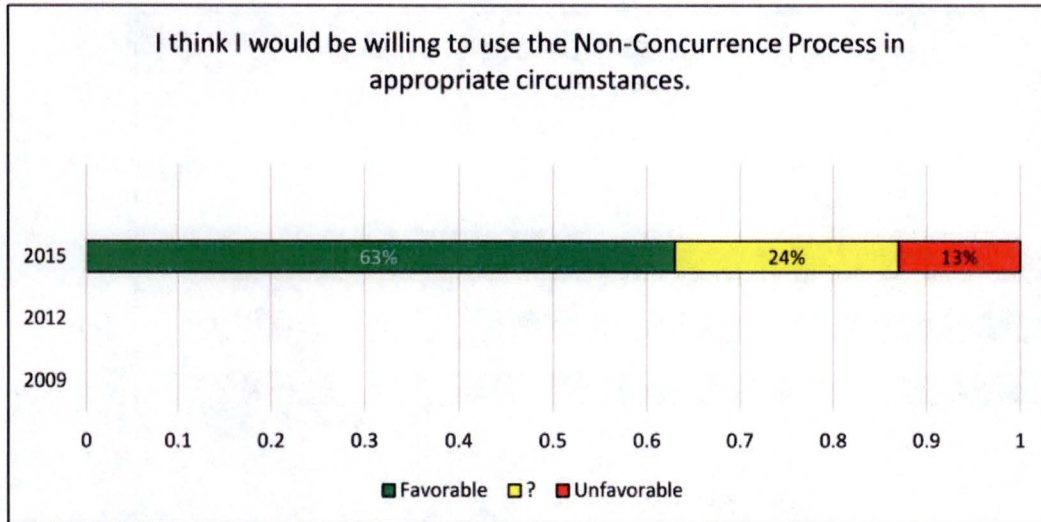


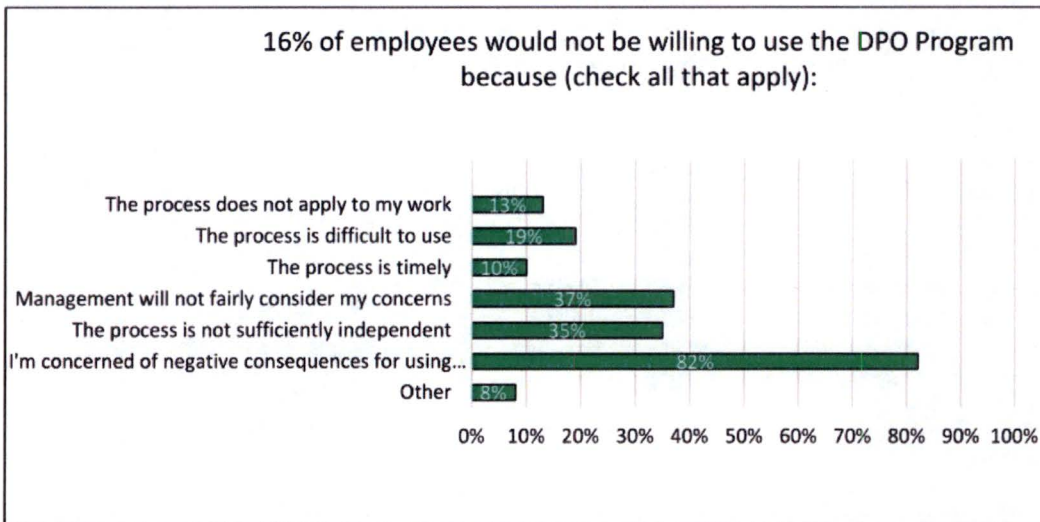
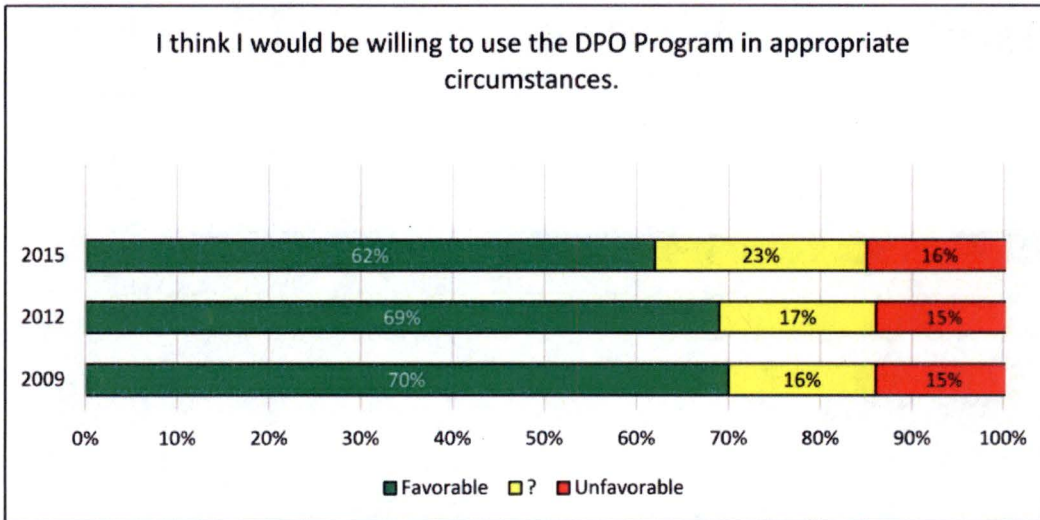


Note that disagreeing to this question is the favorable response.









Appendix B

Results From the Federal Employee Viewpoint Survey

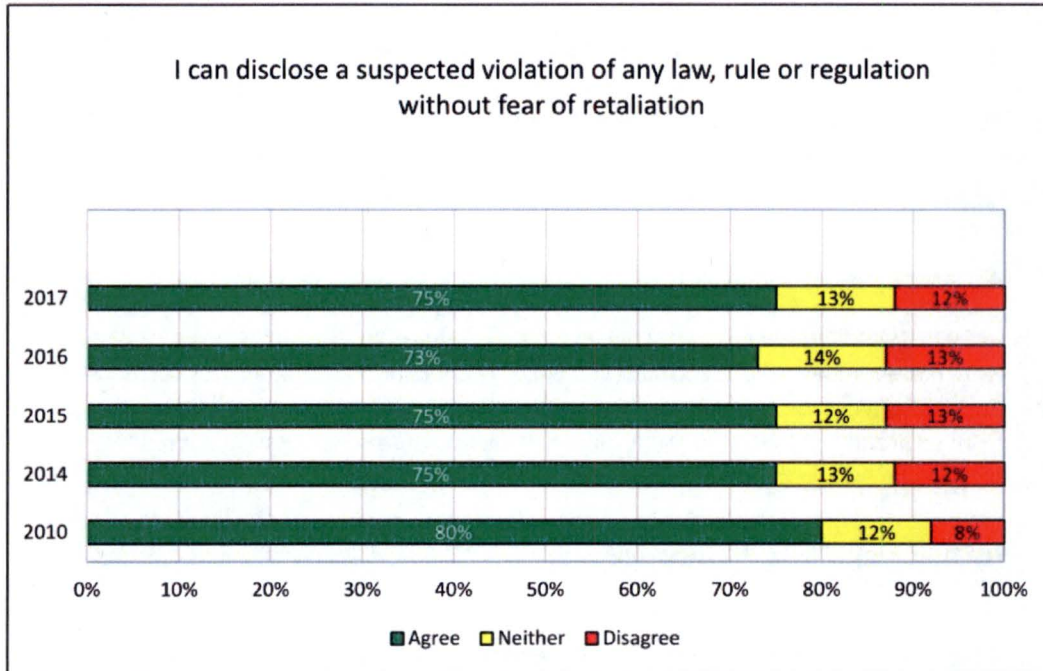
OPM conducts an annual FEVS. This government-wide survey initiative is conducted annually and has been in place since 2002. It measures employees' perceptions of whether, and to what extent, conditions characterizing successful organizations are present in their agencies. This survey presents the most comprehensive and collective effort to obtain the views of federal employees.

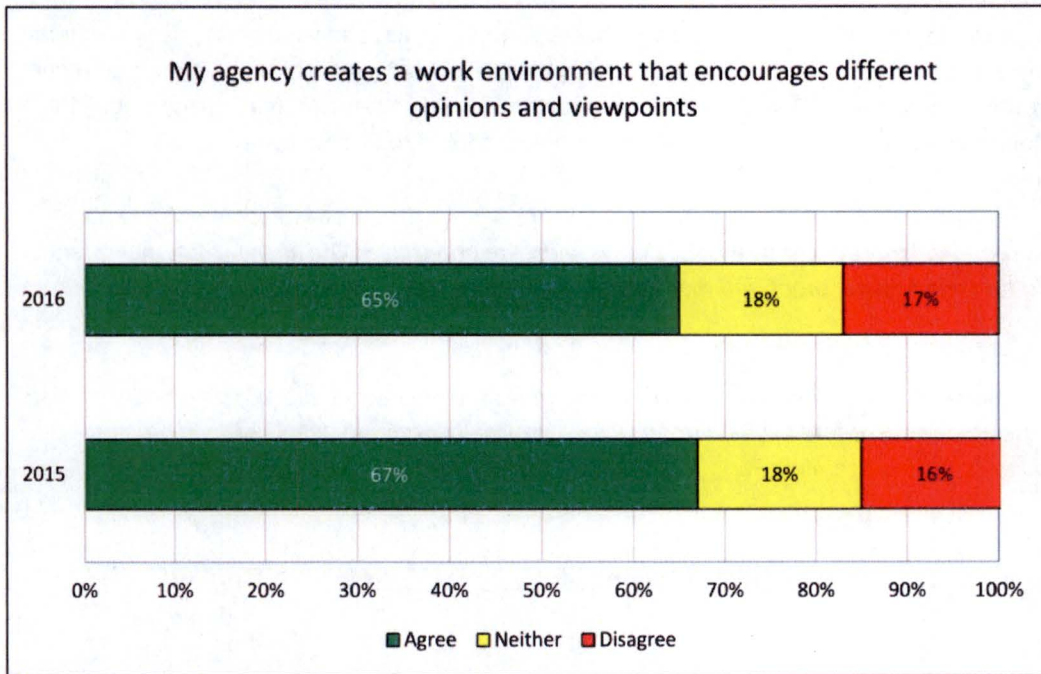
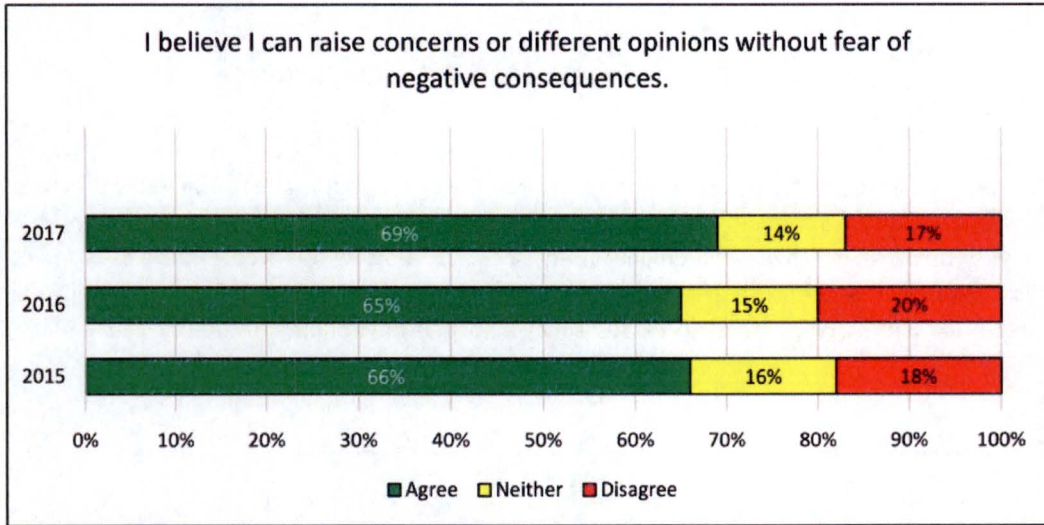
The NRC has participated in the FEVS since its inception in 2002, and uses the survey results to identify improvement opportunities to build a stronger agency culture. OPM allows agencies to include individualized questions. In 2015, 2016, and 2017, the NRC included multiple questions focused on an environment that encourages different viewpoints and opinions and whether employees can raise concerns and differing views without fear of negative consequences.

The response rate for the 2017 FEVS was 75.8%, up from the 2016 FEVS response rate of 61.8%. The response rate for the 2015 FEVS was 74.5%.

Percent "Agree" scores (shown in green) are a combination of the "strongly agree" and "agree" respondents divided by the total number of respondents for that question. Percent "Neither" scores (shown in yellow) are the number of respondents that indicated "neither agree nor disagree" divided by the total number of respondents for that question. Percent "Disagree" scores (shown in red), are a combination of the "disagree" and "strongly disagree" respondents divided by the total number of respondents for that question.

This calculation method was used rather than the OPM percentage scores. For example, in response to the question, "I believe I can raise concerns or different opinions without fear of negative consequences," the number of strongly agree and agree respondents in 2017 were 755 and 911, respectively. This total (1,666) divided by the total respondents for the question (2403), results in a 69% Agree score. OPM percentage scores for strongly agree (30.1%) and agree (38.3%) results in a 68% Agree score for the same question.





Appendix C

Finding and Recommendations from 2014 OCWE Assessment

The data analyzed for this report demonstrates that the agency has made considerable progress in promoting an environment that encourages all employees to raise concerns and different views or opinions, which was the original intent of OCWE. Despite this progress, the assessment has identified areas for continued focus. The following recommendations are categorized by the three areas necessary for creating and sustaining a positive environment for raising concerns.

An Environment that Promotes Raising Concerns and Differing Views

The data indicates that most employees are comfortable raising a differing view with peers, supervisors and management, although their level of comfort decreased as the level of management increased. However, employees continue to have concerns that raising a differing view, particularly by using one of the formal processes, could negatively impact their career or result in retaliation. Finally, the data suggests that confusion remains, particularly among the non-technical staff, of what an OCWE is and how it applies to all employees.

Recommendation 1 - Clarify what OCWE is and its relationship to the agency's internal safety culture and broader organizational culture.

Recommendation 2 - Reinforce the commitment from senior leadership to model behaviors that encourage employees to raise differing views, provide appropriate feedback, and promptly address claims of retaliation.

Avenues to Raise Mission Related Concerns and Differing Views

The availability and effectiveness of appropriate programs to resolve issues is central to an OCWE, and the agency has numerous avenues available to staff to raise concerns. Although awareness of these programs is increasing among staff, many indicated confusion on which program to use and how to use it.

Recommendation 3 – Provide support to assist staff in identifying the correct avenue for resolving their issue.

Recommendation 4 – Continue implementation of the action plans resulting from the NCP and DPO Program Assessments.

Raising Concerns Without Fear of Retaliation

The 2012 SCCS evaluation report indicates that employees continue to have concerns about negative reactions when raising views different from senior management, supervisors, and peers. Other sources of data, such as the 2010 Focus Group Surveys, 2010 Evaluation of Issue Resolution Programs, and the 2014 NCP assessment also reflected employees' concern that raising concerns will result in some type of negative consequence. These persistent findings are counterproductive to an OCWE and a healthy environment for raising concerns.

Recommendation 5 – Improve education, outreach, and support to reduce actual and perceived instances of retaliation and assist employees who believe they are the victim of retaliation for raising concerns and differing views.

Appendix D

Results of Targeted NCP and DPO Program Surveys

OE has conducted two anonymous voluntary surveys to employees who submitted non-concurrences and DPOs.

The first surveys were sent to submitters with closed NCP cases from 2007 (when the NCP was established) through the end of 2013 and to submitters with closed DPO cases from 2005 (when the DPO MD was revised) through the end of 2013.

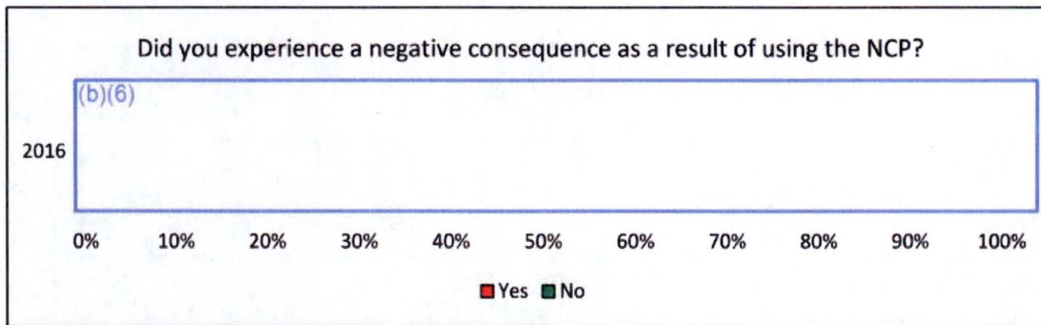
The second surveys were sent to NCP and DPO submitters with closed cases from 2014 through the end of 2016.

The submitter response rates for the 2016 NCP survey was (b) (6), down from (b) (6) for 2013.

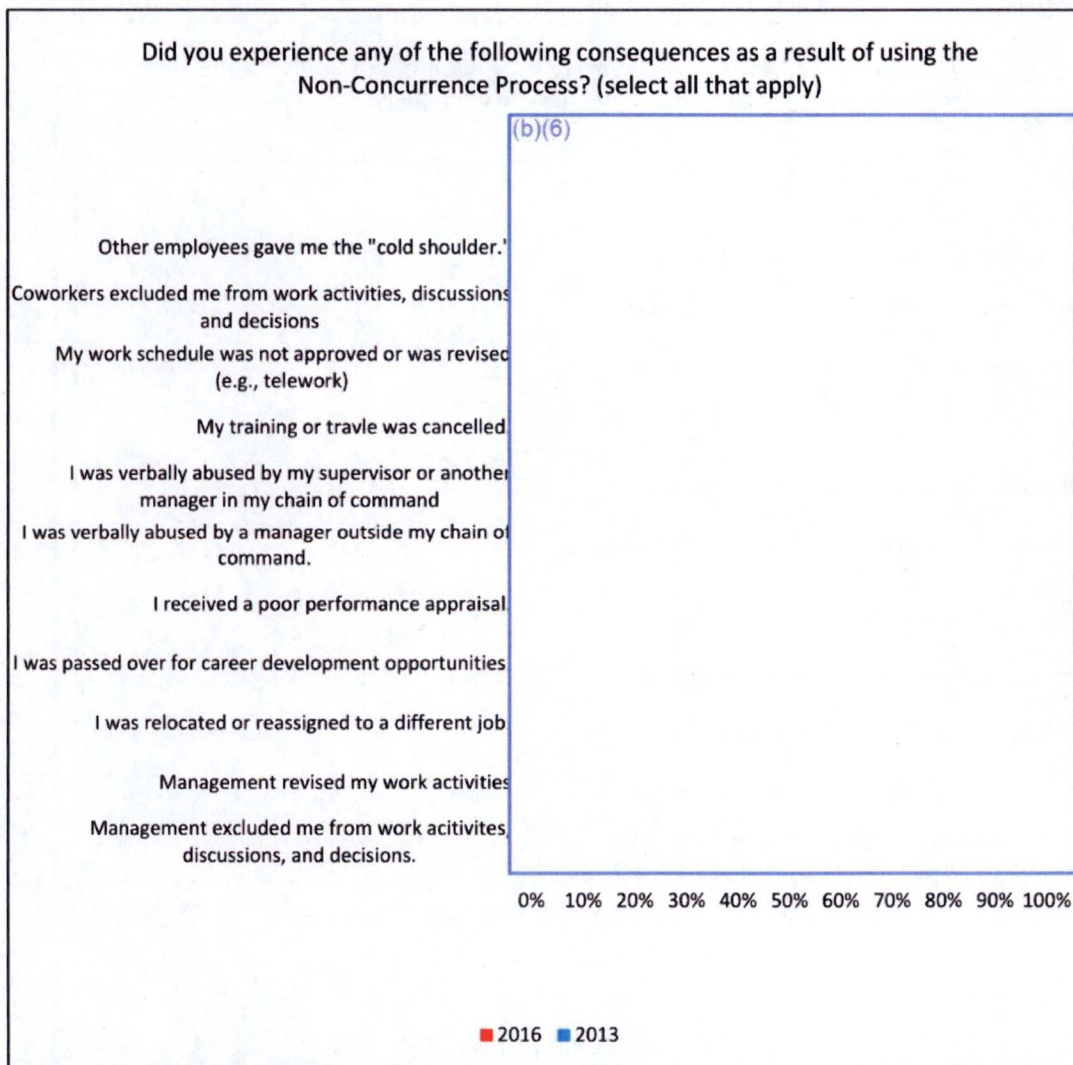
The submitter response rates for the 2016 DPO survey was (b) (6), down from (b) (6) for 2013.

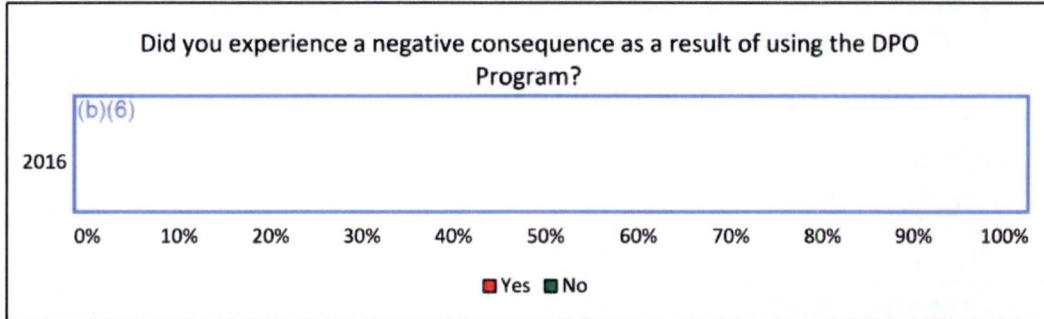
We could not definitively identify a reason (or reasons) for the decreased 2016 NCP survey response rate. However, we note that there has been a decline in survey response rates for the latest SCCS and FEVS.

As previously noted, the results provide insight on use of and experiences with the processes. The data should not be used to draw generalized conclusions on the state of the agency's environment for raising concerns or extent of reprisal. Similarly, the results should not be used to dismiss employee feedback on the perceptions of reprisal. The impact of reprisal (real or perceived) can be detrimental to an employee's work performance, professional advancement, and/or mental health. Further, if it becomes part of office lore, it has the potential to impact the views of many employees and potentially cause a chilled work environment.

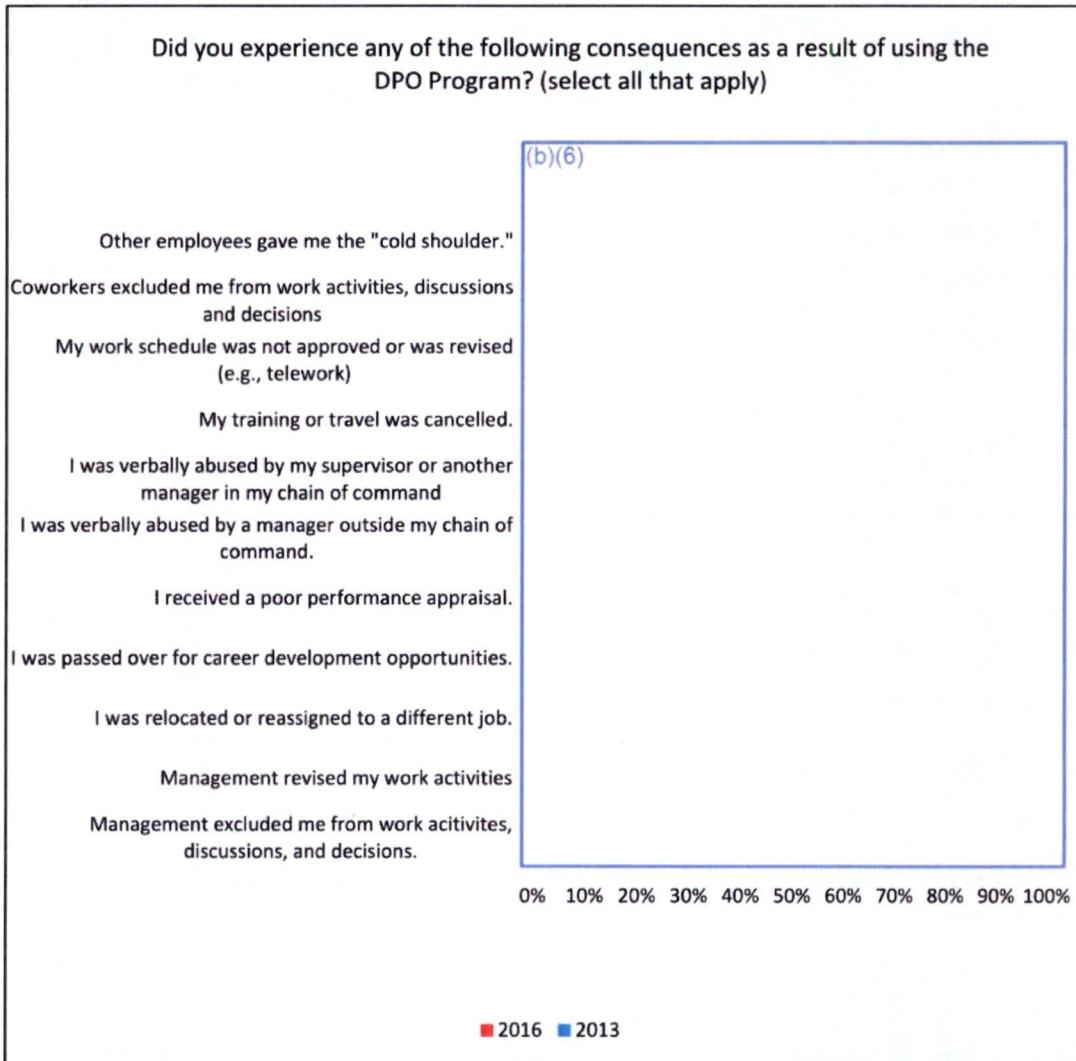


Note that this question was first asked in the 2016 survey.





Note that this question first asked in the 2016 survey.



Appendix E

EEOC Select Task Force on the Study of Harassment in the Workplace – June 2016

Executive Summary and Summary of Recommendations

EXECUTIVE SUMMARY

As co-chairs of the Equal Employment Opportunity Commission's Select Task Force on the Study of Harassment in the Workplace ("Select Task Force"), we have spent the last 18 months examining the myriad and complex issues associated with harassment in the workplace. Thirty years after the U.S. Supreme Court held in the landmark case of *Meritor Savings Bank v. Vinson* that workplace harassment was an actionable form of discrimination prohibited by Title VII of the Civil Rights Act of 1964, we conclude that we have come a far way since that day, but sadly and too often still have far to go.

Created in January 2015, the Select Task Force was comprised of 16 members from around the country, including representatives of academia from various social science disciplines; legal practitioners on both the plaintiff and defense side; employers and employee advocacy groups; and organized labor. The Select Task Force reflected a broad diversity of experience, expertise, and opinion. From April 2015 through June 2016, the Select Task Force held a series of meetings – some were open to the public, some were closed working sessions, and others were a combination of both. In the course of a year, the Select Task Force received testimony from more than 30 witnesses, and received numerous public comments.

Throughout this past year, we sought to deploy the expertise of our Select Task Force members and our witnesses to move beyond the legal arena and gain insights from the worlds of social science, and practitioners on the ground, on how to prevent harassment in the workplace. We focused on learning everything we could about workplace harassment – from sociologists, industrial-organizational psychologists, investigators, trainers, lawyers, employers, advocates, and anyone else who had something useful to convey to us.

Because our focus was on prevention, we did not confine ourselves to the legal definition of workplace harassment, but rather included examination of conduct and behaviors which might not be "legally actionable," but left unchecked, may set the stage for unlawful harassment.

This report is written by the two of us, in our capacity as Co-Chairs of the Select Task Force. It does not reflect the consensus view of the Select Task Force members, but is informed by the experience and observations of the Select Task Force members' wide range of viewpoints, as well as the testimony and information received and reviewed by the Select Task Force. Our report includes analysis and recommendations for a range of stakeholders: EEOC, the employer community, the civil

rights community, other government agencies, academic researchers, and other interested parties. We summarize our key findings below.

Workplace Harassment Remains a Persistent Problem. Almost fully one third of the approximately 90,000 charges received by EEOC in fiscal year 2015 included an allegation of workplace harassment. This includes, among other things, charges of unlawful harassment on the basis of sex (including sexual orientation, gender identity, and pregnancy), race, disability, age, ethnicity/national origin, color, and religion. While there is robust data and academic literature on sex-based harassment, there is very limited data regarding harassment on other protected bases. . More research is needed.

Workplace Harassment Too Often Goes Unreported. Common workplace-based responses by those who experience sex-based harassment are to avoid the harasser, deny or downplay the gravity of the situation, or attempt to ignore, forget, or endure the behavior. The least common response to harassment is to take some formal action – either to report the harassment internally or file a formal legal complaint. Roughly three out of four individuals who experienced harassment never even talked to a supervisor, manager, or union representative about the harassing conduct. Employees who experience harassment fail to report the harassing behavior or to file a complaint because they fear disbelief of their claim, inaction on their claim, blame, or social or professional retaliation.

There Is a Compelling Business Case for Stopping and Preventing Harassment. When employers consider the costs of workplace harassment, they often focus on legal costs, and with good reason. Last year, EEOC alone recovered \$164.5 million for workers alleging harassment – and these direct costs are just the tip of the iceberg. Workplace harassment first and foremost comes at a steep cost to those who suffer it, as they experience mental, physical, and economic harm. Beyond that, workplace harassment affects all workers, and its true cost includes decreased productivity, increased turnover, and reputational harm. All of this is a drag on performance – and the bottom-line.

It Starts at the Top – Leadership and Accountability Are Critical. Workplace culture has the greatest impact on allowing harassment to flourish, or conversely, in preventing harassment. The importance of leadership cannot be overstated – effective harassment prevention efforts, and workplace culture in which harassment is not tolerated, must start with and involve the highest level of management of the company. But a commitment (even from the top) to a diverse, inclusive, and respectful workplace is not enough. Rather, at all levels, across all positions, an organization must have systems in place that hold employees accountable for this expectation. Accountability systems must ensure that those who engage in harassment are held responsible in a meaningful, appropriate, and proportional manner, and that those whose job it is to prevent or respond to harassment should be rewarded for doing that job well (or penalized for failing to do so). Finally, leadership means ensuring that anti-harassment efforts are given the necessary time and resources to be effective.

Training Must Change. Much of the training done over the last 30 years has not worked as a prevention tool – it’s been too focused on simply avoiding legal liability. We believe effective training can reduce workplace harassment, and recognize that ineffective training can be unhelpful or even counterproductive. However, even effective training cannot occur in a vacuum – it must be part of a holistic culture of non-harassment that starts at the top. Similarly, one size does not fit all: Training is most effective when tailored to the specific workforce and workplace, and to different cohorts of employees. Finally, when trained correctly, middle- managers and first-line supervisors in particular can be an employer’s most valuable resource in preventing and stopping harassment.

New and Different Approaches to Training Should Be Explored. We heard of several new models of training that may show promise for harassment training. “Bystander intervention training” – increasingly used to combat sexual violence on school campuses – empowers co- workers and gives them the tools to intervene when they witness harassing behavior, and may show promise for harassment prevention. Workplace “civility training” that does not focus on eliminating unwelcome or offensive behavior based on characteristics protected under employment non-discrimination laws, but rather on promoting respect and civility in the workplace generally, likewise may offer solutions.

It’s On Us. Harassment in the workplace will not stop on its own – it’s on all of us to be part of the fight to stop workplace harassment. We cannot be complacent bystanders and expect our workplace cultures to change themselves. For this reason, we suggest exploring the launch of an It’s on Us campaign for the workplace. Originally developed to reduce sexual violence in educational settings, the It’s on Us campaign is premised on the idea that students, faculty, and campus staff should be empowered to be part of the solution to sexual assault, and should be provided the tools and resources to prevent sexual assault as engaged bystanders. Launching a similar It’s on Us campaign in workplaces across the nation – large and small, urban and rural – is an audacious goal. But doing so could transform the problem of workplace harassment from being about targets, harassers, and legal compliance, into one in which co-workers, supervisors, clients, and customers all have roles to play in stopping such harassment.

Our final report also includes detailed recommendations and a number of helpful tools to aid in designing effective anti-harassment policies; developing training curricula; implementing complaint, reporting, and investigation procedures; creating an organizational culture in which harassment is not tolerated; ensuring employees are held accountable; and assessing and responding to workplace “risk factors” for harassment.

SUMMARY OF RECOMMENDATIONS

Our goal over the past year has been to learn everything we could about workplace harassment and the means to prevent it. Based on that work, we now call for a reboot of workplace harassment prevention efforts. We hope the information provided in this report, as well as our concrete recommendations for action, will energize individuals and organizations across the country to join us in that effort.

EEOC has an essential role in rebooting workplace harassment prevention efforts. But we will always only be one piece of the solution. Everyone in society must feel a sense of urgency in preventing harassment: individual employers and employer associations; individual employees and employee associations; labor union leadership and rank-and-file; federal, state, and local government agencies; academics, foundations, and community leaders. That is the only way we will achieve the goal of reducing the level of workplace harassment to the lowest level possible.

To that end, we set forth below a compilation of the recommendations set forth throughout the report. It's on Us.

Recommendations Regarding the Prevalence of Harassment in the Workplace

- EEOC should work with the Bureau of Labor Statistics or the Census Bureau, and/or private partners, to develop and conduct a national poll to measure the prevalence of workplace harassment based on sex (including pregnancy, sexual orientation and gender identity), race, ethnicity/national origin, religion, age, disability, and genetic information over time.
- Academic researchers should compile baseline research on the prevalence of workplace harassment based on race, ethnicity/national origin, color, religion, age, disability, genetic information, sexual orientation, and gender identity.
- EEOC should confer with the Merit Systems Protection Board to determine whether it can repeat its study of harassment of federal employees, and expand its survey to ask questions regarding harassment based on race, ethnicity/national origin, color, religion, age, disability, genetic information, sexual orientation, and gender identity in the federal government, and to disaggregate sexually-based harassment and gender-based harassment.
- EEOC should work within the structure established by the Office of Personnel Management to offer specific questions on workplace harassment in the Federal Employee Viewpoint Survey.

Recommendations Regarding Workplace Leadership and Accountability

- Employers should foster an organizational culture in which harassment is not tolerated, and in which respect and civility are promoted. Employers should communicate and model a consistent commitment to that goal.
- Employers should assess their workplaces for the risk factors associated with harassment and explore ideas for minimizing those risks.
- Employers should conduct climate surveys to assess the extent to which harassment is a problem in their organization.
- Employers should devote sufficient resources to harassment prevention efforts, both to ensure that such efforts are effective, and to reinforce the credibility of leadership's commitment to creating a workplace free of harassment.

- Employers should ensure that where harassment is found to have occurred, discipline is prompt and proportionate to the severity of the infraction. In addition, employers should ensure that where harassment is found to have occurred, discipline is consistent, and does not give (or create the appearance of) undue favor to any particular employee.
- Employers should hold mid-level managers and front-line supervisors accountable for preventing and/or responding to workplace harassment, including through the use of metrics and performance reviews.
- If employers have a diversity and inclusion strategy and budget, harassment prevention should be an integral part of that strategy.

Recommendations Regarding Harassment Prevention Policies and Procedures

- Employers should adopt and maintain a comprehensive anti-harassment policy (which prohibits harassment based on any protected characteristic, and which includes social media considerations) and should establish procedures consistent with the principles discussed in this report.
- Employers should ensure that the anti-harassment policy, and in particular details about how to complain of harassment and how to report observed harassment, are communicated frequently to employees, in a variety of forms and methods.
- Employers should offer reporting procedures that are multi-faceted, offering a range of methods, multiple points-of-contact, and geographic and organizational diversity where possible, for an employee to report harassment.
- Employers should be alert for any possibility of retaliation against an employee who reports harassment and should take steps to ensure that such retaliation does not occur.
- Employers should periodically "test" their reporting system to determine how well the system is working.
- Employers should devote sufficient resources so that workplace investigations are prompt, objective, and thorough. Investigations should be kept as confidential as possible, recognizing that complete confidentiality or anonymity will not always be attainable.
- EEOC and the National Labor Relations Board should confer, consult, and attempt to jointly clarify and harmonize the interplay of the National Labor Relations Act and federal EEO statutes with regard to the permissible confidentiality of workplace investigations, and the permissible scope of policies regulating workplace social media usage.
- Employers should ensure that where harassment is found to have occurred, discipline is prompt and proportionate to the behavior(s) at issue and the severity of the infraction. Employers should ensure that discipline is consistent, and does not give (or create the appearance of) undue favor to any particular employee.
- In unionized workplaces, the labor union should ensure that its own policy and reporting system meet the principles outlined in this section.

- EEOC should, as a best practice in cases alleging harassment, seek as a term of its settlement agreements, conciliation agreements, and consent decrees, that any policy and any complaint or investigative procedures implemented to resolve an EEOC charge or lawsuit satisfy the elements of the policy, reporting system, investigative procedures, and corrective actions outlined above.
- EEOC should, as a best practice in cases alleging harassment, seek as part of its settlement agreements, conciliation agreements, and consent decrees, an agreement that researchers will be allowed to work with the employer in assessing the impact and efficacy of the policies, reporting systems, investigative procedures, and corrective actions put into place by that employer. While we encourage EEOC to seek such an agreement when appropriate, we do not suggest that the agency **must do so in all instances, or that failure to obtain such an agreement should derail otherwise acceptable settlement proposals.**
- **Groups of employers should consider coming together to offer researchers access to their workplaces to research the effectiveness of their policies, reporting systems, investigative procedures, and corrective actions put into place by those employers, in a manner that would allow research data to be aggregated in a manner that would not identify individual employers.**

Recommendations Regarding Anti-Harassment Compliance Training

- Employers should offer, on a regular basis and in a universal manner, compliance trainings that include the content and follow the structural principles described in this report, and which are offered on a dynamic and repeated basis to all employees.
- Employers should dedicate sufficient resources to train middle-management and first-line supervisors on how to respond effectively to harassment that they observe, that is reported to them, or of which they have knowledge or information - even before such harassment reaches a legally-actionable level.
- EEOC should, as a best practice in cases alleging harassment, seek as a term of its settlement agreements, conciliation agreements, and consent decrees, that employers adopt and maintain compliance training that comports with the content and follows the structural principles described in this report.
- EEOC should, as a best practice in cases alleging harassment, seek as a condition of its settlement agreements, conciliation agreements, and consent decrees, an agreement that researchers will be allowed to work with the employer to assess the climate and level of harassment in respondent workplaces pre- and post-implementation of compliance trainings, and to study the impact and efficacy of specific training components. Where possible, this research should focus not only on the efficacy of training in large organizations, but also smaller employers and newer or "start up" firms. While we encourage EEOC to seek such an agreement when appropriate, we do not suggest that the agency must do so in all instances, or that failure to obtain such an agreement should derail otherwise acceptable settlement proposals.
- Groups of employers should consider coming together to offer researchers access to their workplaces to research the effectiveness of trainings, particularly in the context of holistic

harassment prevention efforts, in a manner that would allow research data to be aggregated and not identify individual employers.

- EEOC should compile a resource guide for employers that contains checklists and training modules for compliance trainings.
- EEOC should review and update, consistent with the recommendations contained in this report, its anti-harassment compliance training modules used for Technical Assistance Seminars, Customer Specific Trainings, trainings for Federal agencies, and other outreach and education programs.

Recommendations Regarding Workplace Civility and Bystander Intervention Training

- Employers should consider including workplace civility training and bystander intervention training as part of a holistic harassment prevention program.
- EEOC and the National Labor Relations Board should confer, consult, and attempt to jointly clarify and harmonize the interplay of the National Labor Relations Act and federal EEO statutes with regard to the permissible content of workplace "civility codes."
- Researchers should assess the impact of workplace civility training on reducing the level of harassment in the workplace.
- EEOC should convene a panel of experts on sexual assault bystander intervention training to develop and evaluate a bystander intervention training module for reducing harassment in the workplace.
- EEOC should, as a best practice in cases alleging harassment, seek as part of its settlement agreements, conciliation agreements, and consent decrees, an agreement that researchers will be allowed to work with the employer in assessing the efficacy of workplace civility training and/or bystander intervention training on reducing the level of harassment in the workplace. While we encourage EEOC to seek such an agreement when appropriate, we do not suggest that the agency must do so in all instances, or that failure to obtain such an agreement should derail otherwise acceptable settlement proposals.
- Groups of employers should consider coming together to offer researchers access to their workplaces to research the effectiveness of workplace civility and bystander intervention trainings in a manner that would allow research data to be aggregated and not identify individual employers.

Recommendations Regarding General Outreach

- EEOC should develop additional resources for its website, including user-friendly guides on workplace harassment for employers and employees, that can be used with mobile devices.
- Non-profit organizations should conduct targeted outreach to employers to explain the business case for strong harassment prevention cultures, policies, and procedures.

- Non-profit organizations (including employee advocacy organizations, business membership associations, and labor unions) should develop easy-to-understand written resources and other creative materials (such as videos, posters, etc.) that will help workers and employers understand their rights and responsibilities.
- EEOC should partner with internet search engines to ensure that a range of EEOC resources appear high on the list of results returned by search engines.

Recommendations Regarding Targeted Outreach to Youth

- EEOC should continue to update its Youth@Work initiative (including its website) to include more information about harassment.
- Colleges and high schools should incorporate a component on workplace harassment in their school-based anti-bullying and anti-sexual assault efforts.
- EEOC should partner with web-based educational websites, such as Khan Academy, or YouTube channels that have a large youth following, to develop content around workplace harassment.
- EEOC should establish a contest in which youth are invited to design their own videos or apps to educate their peers about workplace harassment.

Recommendation Regarding an It's on Us campaign

- EEOC assists in launching an "It's on Us" campaign to end harassment in the workplace.

Appendix F

OSHA, Recommended Practices for Anti-Retaliation Programs

The Secretary of Labor's Whistleblower Protection Advisory Committee developed core recommendations for use by employers covered by the 22 whistleblower protection statutes that OSHA enforces.

The NRC Agency Allegation Advisor reviewed and contributed to the brochure before it was published.

Recommended Practices for Anti-Retaliation Programs

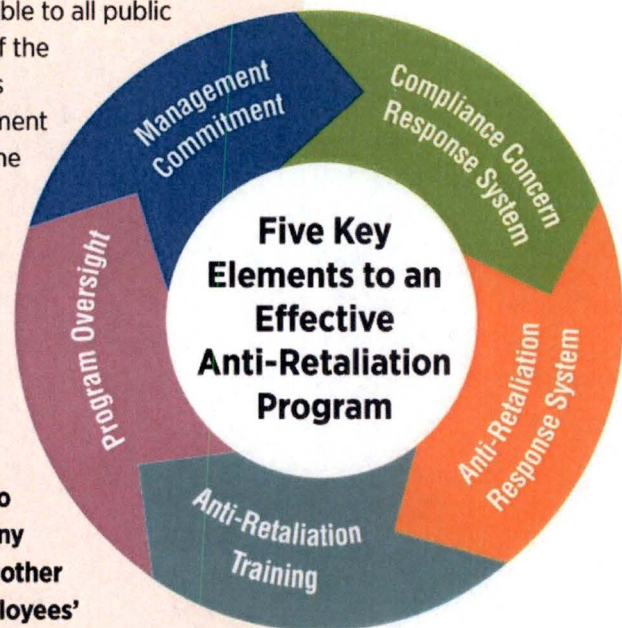


How to Use These Recommended Practices

This set of recommendations is intended to assist employers in creating workplaces that are free of retaliation, including retaliation against employees who engage in activity protected under the 22 whistleblower laws that the Occupational Safety and Health Administration (OSHA) enforces. This document is advisory in nature and informational in content. It is not mandatory for employers, and does not interpret or create legal obligations.

These recommendations are intended to be broadly applicable to all public and private sector employers that may be covered by any of the whistleblower protection provisions enforced by OSHA. This recommended framework can be used to create and implement a new program, or to enhance an existing program. While the concepts outlined here are adaptable to most workplaces, employers may adjust these guidelines for such variables as employer size, the makeup of the workforce, and the type of work performed.¹

This guidance is directed at employers that may be covered by the 22 whistleblower protection statutes that OSHA enforces, although the basic principles in this guidance could also be useful in circumstances where other anti-retaliation protections apply. **This guidance is not intended to advise employees about their rights or protections under any whistleblower protection statute enforced by OSHA or any other government agency. Information and resources about employees' rights under the whistleblower protection statutes that OSHA enforces can be found at www.whistleblowers.gov.**



Retaliation Is Against the Law

OSHA's Whistleblower Protection Program enforces the whistleblower provisions of 22 federal statutes protecting employees who raise or report concerns about hazards or violations of various workplace safety and health, airline, commercial motor carrier, consumer product, environmental, financial reform, food safety, health insurance reform, motor vehicle safety, nuclear, pipeline, public transportation agency, railroad, maritime, and securities laws (see list of statutes at the end of this document).

An employer must not retaliate against an employee for engaging in activities that are protected under these laws. Protected activities may include: filing a report about a

¹ The core recommendations presented in this document were recommended unanimously by the Secretary of Labor's Whistleblower Protection Advisory Committee.



www.whistleblowers.gov
(800) 321-OSHA (6742)
OSHA 3905-01/2017

possible violation of the law with OSHA or other government agencies, reporting a concern about a possible violation of the law to the employer, reporting a workplace injury, illness, or hazard, cooperating with law enforcement, refusing to conduct tasks that would violate the law, or engaging in any other type of statutorily protected activity.

Preventing Retaliation Is Good for Workers and Good for Business

Retaliation against employees who raise or report concerns or otherwise exercise their rights under these laws is not only illegal, it is also bad for workers and bad for business. A proactive anti-retaliation program is designed to (1) receive and respond appropriately to employees' compliance concerns (i.e., concerns about hazards or potential employer violations of one of the 22 laws) and (2) prevent and address retaliation against employees who raise or report concerns. Without an effective program, problems in the workplace may go unreported because workers fear retaliation for reporting concerns or feel frustration over the lack of effective resolution of their concerns.

An anti-retaliation program that enables all members of the workforce, including permanent employees, contractors and temporary workers, to voice their concerns without fear of retaliation can help employers learn of problems and appropriately address them before they become more difficult to correct. A program based on this proactive approach not only helps employers ensure that they are following federal laws, but also helps create a positive workplace culture that prevents unlawful retaliation against employees. Furthermore, a successful anti-retaliation program improves employee satisfaction and engagement, and helps protect workers and members of the public from the harm of violations of federal laws and regulations.

A successful anti-retaliation program improves employee engagement, and helps protect workers and members of the public from violations of federal laws and regulations.

Employees' Rights to Report to the Government

While an anti-retaliation program that enables employees to communicate their compliance concerns to the employer can be beneficial to employers, workers, and the public, employers must also recognize that employees have the right to provide "tips" or file complaints about hazards or potential violations of the law with OSHA and other government agencies. Employer policies must not discourage employees from reporting concerns to a government agency, delay employee reports to government, or require employees to report concerns to the employer first. OSHA also cautions employers that an anti-retaliation program must not have the effect of discouraging or misleading employees about their right to report compliance concerns or retaliation externally. Anti-retaliation program policies and training for management and employees should clearly explain employees' rights to report hazards, violations of the law and retaliation externally, and that retaliation for reporting externally is against the law.

What Is Retaliation?

Retaliation occurs when an employer (through a manager, supervisor, or administrator) takes an adverse action against an employee because the employee engaged in protected activity, such as raising a concern about a workplace condition or activity that could have an adverse impact on the safety, health, or well-being of the reporting employee, other workers, or the public; or reporting a suspected violation of law. Retaliation also occurs when an employer takes an adverse action because an employee reported an injury or to dissuade an employee from reporting an injury. An adverse action is an action that could dissuade or intimidate a reasonable worker from raising a concern about a workplace condition or activity. Retaliation against an employee is not only harmful to the employee who experienced the adverse action, it can also have a negative impact on overall employee morale because of the chilling effect that retaliation can have on other employees' willingness to report concerns.

Because adverse action can be subtle, it may not always be easy to spot. Examples of adverse action include, but are not limited to:

- Firing or laying off
- Demoting
- Denying overtime or promotion
- Disciplining
- Denying benefits
- Failing to hire or rehire
- Intimidation
- Making threats
- Blacklisting (e.g., notifying other potential employers that an applicant should not be hired or refusing to consider applicants for employment who have reported concerns to previous employers)
- Reassignment to a less desirable position or actions affecting prospects for promotion (such as excluding an employee from training meetings)
- Reducing pay or hours
- More subtle actions, such as isolating, ostracizing, mocking, or falsely accusing the employee of poor performance.

Creating an Anti-Retaliation Program

Implementing an effective anti-retaliation program is not intuitive and requires specific policies and commitments. There are five key elements to creating an effective anti-retaliation program:

1. Management leadership, commitment, and accountability
2. System for listening to and resolving employees' safety and compliance concerns
3. System for receiving and responding to reports of retaliation
4. Anti-retaliation training for employees and managers
5. Program oversight

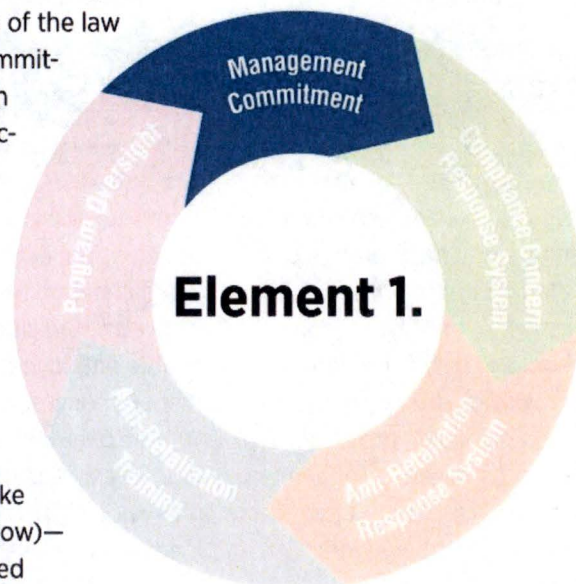
In order to effectively support employee reporting and protect employees from retaliation, employers should integrate all five elements into a cohesive program.

Management Leadership, Commitment, and Accountability

To make preventing retaliation and following the law integral aspects of the workplace culture, it is important that senior management demonstrate leadership and commitment to these values. Senior management, such as the CEO and board (if applicable), should lead by example to demonstrate a culture of valuing and addressing employees' concerns regarding potential violations of the law and commitment to preventing retaliation. To demonstrate commitment, management should back up words with actions; written policies that are not actively practiced and enforced are ineffective. Managers at all levels should be held accountable for the quality of their response to employees' concerns, including reports of potential violations of the law, of safety hazards, and of retaliation.

How can management show commitment to preventing retaliation?

- Ensure that the systems for reporting hazards, compliance concerns and retaliation—including systems for maintaining the confidentiality of employees who make reports (discussed in more detail in elements 2 and 3 below)—are implemented, enforced, and evaluated by a designated manager who is responsible and accountable for these programs, and has access to top managers and the board (if applicable).
- Confer with workers and worker representatives (if any) about creating and improving management awareness and implementation of anti-retaliation policies and practices.
- Require training for managers and board members (if applicable) to make certain they understand what retaliation is, the employer's and their own legal obligations (including their obligation to maintain the confidentiality of employees who make reports), the organizational benefits of anti-retaliation practices, and what it takes programmatically to prevent retaliation. (For more information, see element 4 below.)
- Ensure that there is a mechanism for accurately evaluating employees' willingness to report concerns about the workplace and the employer's actual record in preventing retaliation against employees who report, and ensure that there is a means for accurately reporting to top management the results of such evaluation.
- If appropriate, and taking into account an employee's preference for confidentiality, publicly recognize the contribution of employees whose disclosures have made a positive difference for the employer, perhaps through an award that is publicized company-wide.



How can management be held accountable for preventing retaliation?

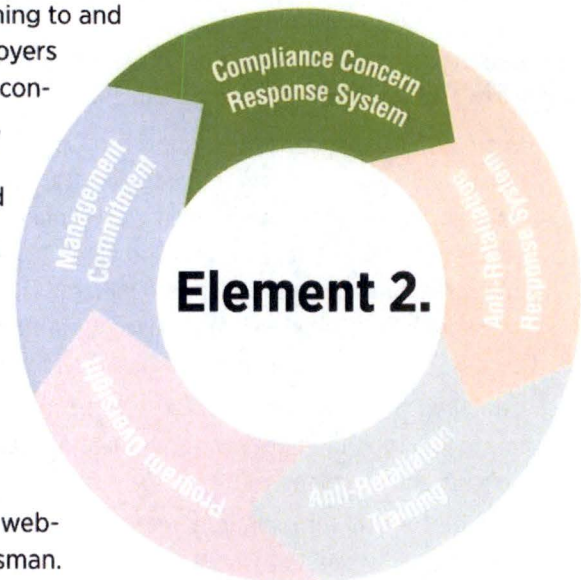
- Incorporate anti-retaliation measures (e.g., promptly and constructively addressing employee concerns, attending training, and championing anti-retaliation initiatives) in management performance standards and reviews.
- Implement strong codes of conduct and ethics programs that clearly identify whistleblower retaliation as a form of misconduct to ensure anti-retaliation policies and practices are enforceable.
- Apply appropriate consequences, such as discipline, to managers who retaliate or who violate the confidentiality of an employee who has made a report. These consequences should be sufficient to serve as a deterrent to future acts of retaliation.

System for Listening to and Resolving Employees' Safety and Compliance Concerns

To help prevent retaliation, employers should proactively foster an organizational culture in which raising concerns about workplace conditions and activities is valued. Employers can cultivate such an environment by listening to and resolving employees' compliance concerns. Specifically, employers should establish procedures that enable employees to report concerns (including through confidential or anonymous channels, when possible), provide for fair and transparent evaluation of concerns raised, offer a timely response, and ensure a fair and effective resolution of concerns. In developing these policies, employers should work with employees and worker representatives (if any).

What can employers do to enable employees to raise safety and compliance concerns?

- Create at least one or, preferably, multiple channels for reporting compliance concerns. Channels can include helplines, anonymous reporting through email boxes or websites, or reporting to a trusted official and/or an ombudsman.
- Protect the confidentiality or anonymity of employees who report concerns, and ensure that confidentiality is not used as a shield to prevent whistleblowers from having access to information needed to exercise their rights.²
- Give employees clear and accessible instructions on how they can report compliance concerns both internally and externally, and make clear that the employee has the right to choose which avenue to use to report concerns. Employees must not be penalized for reporting concerns to the employer by a means other than through these channels.
- Ensure that the program does not restrict or discourage employees from reporting allegations to the government or other appropriate regulatory and oversight agencies.



² While an employee should be permitted to remain anonymous when reporting compliance concerns internally (i.e., within the company) or externally to a government agency, the 22 whistleblower statutes enforced by OSHA do not allow for an employee to anonymously file a retaliation complaint with OSHA.

- Provide employees with opportunities to share information informally and to ask questions at an early stage, before issues become more difficult to resolve.
- Eliminate or restructure formal and informal workplace incentives that may encourage or allow retaliation or discourage reporting. Examples of incentives that may discourage reporting or encourage retaliation include rewarding employee work units with prizes for low injury rates or directly linking supervisors' bonuses to lower reported injury rates.

(For additional information on incentive programs, see OSHA's information on Employer Safety Incentive and Disincentive Policies and Practices, <http://www.osha.gov/as/opa/whistleblowermemo.html>, Revised VPP Memo #5: Further Improvements to the Voluntary Protection Programs, https://www.osha.gov/dcsp/vpp/policy_memo5.html, and incentive program guidance at https://www.osha.gov/recordkeeping/modernization_guidance.html.)

How should employers ensure prompt and fair resolution of compliance concerns?

- Have an independent investigator review reports of concerns promptly, thoroughly, and with transparency, including responding to the employee who brought forward the initial concern.
- Ensure that supervisors or managers respond in a constructive and timely manner upon receiving reports of concerns from employees.
- Guarantee that employee rights are protected even if the person is incorrect or unpleasant in raising a concern.
- Follow through on employee concerns, even if they appear to be trivial.
- Have a strong, enforceable policy of not punishing employees for reporting concerns or incidents or for engaging in any other protected activity.
- Help employees get unbiased, confidential advice or information about exercising whistleblower rights and coping with the stress of reporting concerns, such as by providing a list of resources.
- Ensure that any employment agreement or policy that requires employees to keep employer information confidential does not prohibit or discourage employees from reporting or taking the steps necessary to report information reasonably related to concerns about hazards or violations of the law to any government agency. Steps that may be necessary include conferring with legal counsel, union or other worker representatives, or with medical professionals regarding the employee's concerns. Employers should not use confidentiality or non-disclosure agreements to penalize, through lawsuits or otherwise, employees who report suspected violations of the law or take steps necessary to make such reports.
- Ensure that employment status changes, such as demotions and denials of promotions, are only made for legitimate non-retaliatory reasons and are not likely to be perceived as retaliatory.

Create at least one or, preferably, multiple channels for reporting compliance concerns.

If an employee is disciplined after reporting a concern, injury, or other issue, how should the employer review the discipline to ensure that it is not retaliatory?

Ask questions such as:

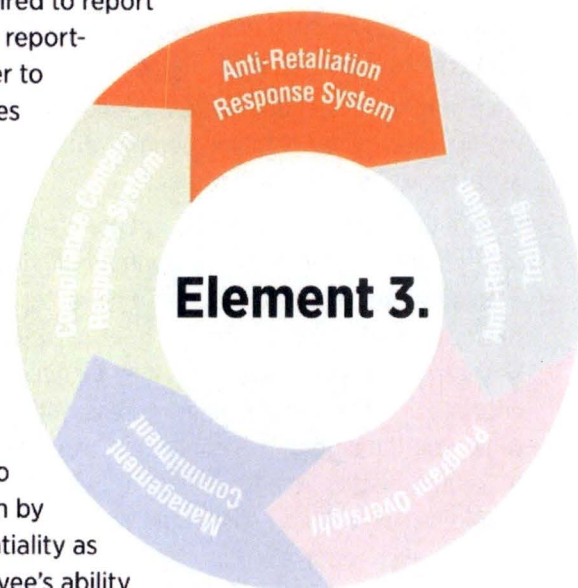
- Did the employee's report influence the decision to initiate disciplinary action in any way?
- Has the employer disciplined other employees who engaged in the same conduct as the employee but who did not report a concern?
- Is the discipline imposed on the employee of the same severity as the employer's response to the same conduct by other employees who did not report a concern?
- Has the disciplinary action been independently reviewed by a manager who was not involved in the incident?
- If the employer uses progressive discipline, has it been appropriately used up to this point?
- Could the workforce perceive the punishment as retaliatory? If so, what actions can management take to mitigate the potential chilling effect?

System for Receiving and Responding to Reports of Retaliation

Employees who believe they have experienced retaliation should have independent channels for reporting the retaliation; they should not be required to report to the manager who they believe retaliated against them. The reporting employee should also have the ability to elevate the matter to higher levels, if necessary. There should be clearly defined roles and responsibilities for managers at all levels and others who are involved in responding to reports of retaliation, such as human resources or ethics and compliance personnel. The procedures should be known and accessible to all.

When retaliation is reported, employers should investigate the claim promptly and thoroughly, utilizing an established retaliation response system. Such investigations should:

- Take all reports of retaliation seriously.
- Maintain employee confidentiality as much as possible to protect the employee from further retaliation or isolation by coworkers. However, employers should not use confidentiality as a shield to impede a government agency's or the employee's ability to successfully resolve the retaliation claim.
- Be transparent to the employee alleging retaliation about how investigations are conducted, including the roles and independence of the investigators.
- Investigate claims using an objective, independent complaint review process; focus on evaluating the circumstances surrounding the employment decision objectively rather than on defending against the claim; and listen to all sides before making a judgment.



- Ensure that investigations of alleged retaliation are not tainted by preconceptions about what happened.
- Utilize conflict of interest protections.
- Involve senior managers and others who recognize the organizational impact, benefits, risks, and policy ramifications of both the reported concern and the need to prevent retaliation against the reporting employee.
- Ensure that the program does not restrict or discourage employees from reporting retaliation allegations to the government or other appropriate regulatory and oversight agencies.
- Keep the reporting employee and management representatives informed of developments throughout the investigation and ensure respectful, proper closure of the issue.
- After the reported problem has been investigated and resolved, periodically follow up with the reporting employee for a reasonable amount of time to ensure continued protection from retaliation.
- Use third-party, independent investigators if the employer can support it and the circumstances warrant it (e.g., when the allegations involve particularly polarizing or high-stakes issues).
- If possible, make the anti-retaliation investigation completely independent from the corporation's legal counsel, who is obligated to protect the employer's interests. If the employer's legal representative is involved in conducting the investigation, fully inform the whistleblower that the investigator represents the employer's interests and that any attorney-client privilege will only extend to the employer.
- Consider using early dispute resolution techniques when significant disputes arise about an employee's disclosures or when considering implementing adverse actions like termination or demotion.
- Ensure that employees understand that they may file a retaliation complaint with OSHA and, if applicable, another government agency and that any internal investigation by the employer or attempts at early dispute resolution by the employer will not automatically delay or toll the deadline for filing a retaliation complaint with OSHA or another government agency. In certain circumstances, employers should consider whether offering to formally delay the deadline to file would be appropriate.
- Be attuned to the potential for a chilling effect caused by the workforce's perception that management's actions were retaliatory, and if likely, address such a perception through timely and effective communications or other mitigating strategies.

Take all reports of retaliation seriously.

Employers should respond quickly to reports of retaliation. Failure to do so can discourage employees from reporting concerns about workplace conditions or activities.

If the employer confirms that retaliation took place, it should remedy the retaliation and review its anti-retaliation program to determine why the system failed and what changes may be needed to prevent future retaliation. Workers and worker representatives (if any) should be integrally involved in this evaluation.

Anti-Retaliation Training for Employees and Managers

Effective training of employees and all levels of management and the board (if applicable) is key to any anti-retaliation program. Training is essential because it provides management and employees with the knowledge, skills, and tools they need to recognize, report, prevent, and/or properly address hazards, potential violations of the law, and retaliation. Training should be tailored to teach workers and managers about the specific federal whistleblower protection laws and company policies that apply to them, employees' rights under the laws, how employees can exercise their rights using available internal and external protection programs, and the organizational benefits of such programs. Managers should learn these concepts as well as related skills, behaviors, and obligations to act.

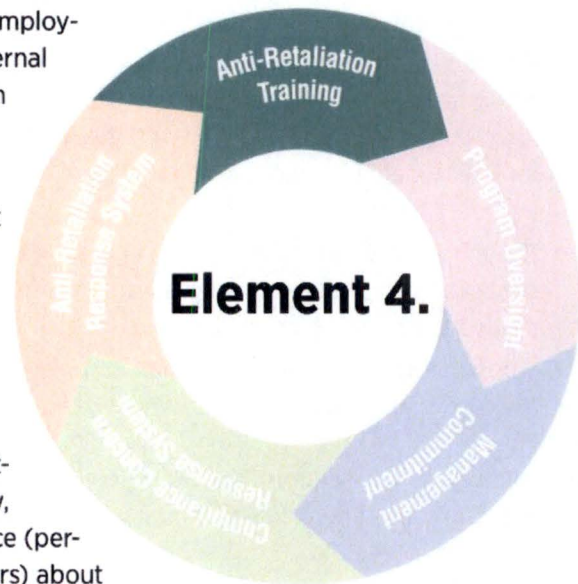
Training should be provided in accessible language(s) and at a level that can be easily understood by the intended audience.

Anti-retaliation training for employees, at a minimum, should include coverage of:

- Relevant laws and regulations.
- An explanation of the employer's commitment to creating an organizational culture of complying with the law, addressing concerns from all members of the workforce (permanent employees, contractors, and temporary workers) about potential hazards and violations of the law, and complying with its code of ethics, including prohibitions on retaliation.
- Employees' rights and obligations, if any, to report potential hazards and violations of the law externally to law enforcement, including OSHA and other government agencies, regardless of whether the employee first reported the violation to the employer.
- Statutory rights to be protected from retaliation for reporting potential violations.
- The elements of the employer's anti-retaliation program, including roles and responsibilities, how to report concerns internally and externally, options for confidential or anonymous reporting, and how to elevate a concern internally when supervisors or others do not respond.
- What constitutes retaliation, including actions such as firing or laying off, demoting, denying overtime or promotion, disciplining, denying benefits, failure to hire or rehire, reducing pay or hours, and blacklisting, along with common but less overt behaviors, such as ostracizing, mocking, intimidating, and making false accusations of poor performance.

In addition to the employee training topics described above, anti-retaliation training for managers should include, at a minimum:

- Skills for defusing conflict, problem solving, and stopping retaliation in a work group.



- How to respond to a report of a workplace concern while protecting an employee's confidentiality and without engaging in retaliation, appearing to engage in retaliation, or questioning the motives for the report.
- How to separate annoying or inappropriate behavior from the concern itself.
- Consequences for managers who fail to follow anti-retaliation policies or respond to concerns inappropriately.
- How to recognize that an employee believes there has been retaliation, when employers are required to act, and the potential legal consequences the employer and the manager face for inaction.
- Other issues specific to the employer.

Legal requirements can change. Employers should create a process for staying up to date on changes to anti-retaliation laws and regulations and update their training and policies accordingly. Refresher training should be conducted on a regular basis and as needed, such as when there is a change in legal requirements, when retaliation has occurred, or when program oversight reveals that it is needed. Concepts from the training should not only be discussed during the designated training sessions, but should be reinforced frequently using other types of communications in order to make it part of the workplace culture.

Effective training is key to any anti-retaliation program.

Program Oversight

A well-designed anti-retaliation program needs rigorous oversight to ensure that it is effective and working as intended. Employers should develop and implement a plan for oversight of the anti-retaliation program, review oversight findings, and ensure that the program is improved and modified as needed.

What are some methods of oversight that can be used to assess the anti-retaliation program?

Monitoring and audits are two forms of oversight that can help employers gain insight into a program's strengths and weaknesses and reveal whether program improvements are needed.

- Monitoring is an ongoing analysis of whether the program processes in place are achieving the organization's planned results and program goals.
- Auditing is an independent, formal, and systematic approach designed to determine whether program processes are efficient, effective, and working as intended. Audits should be conducted by individuals who are independent of the process being audited.

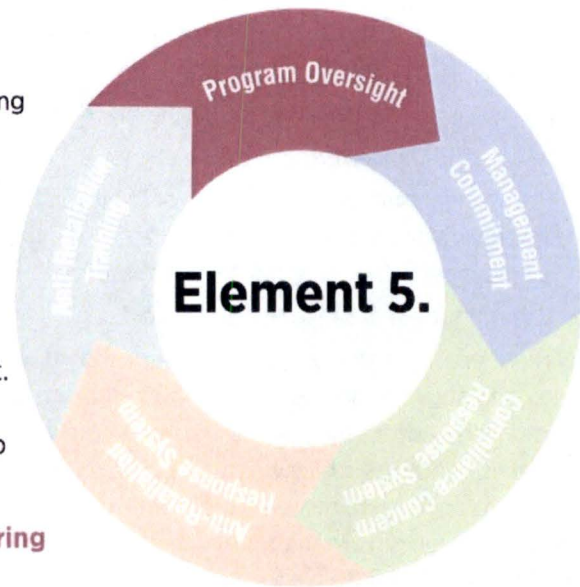
The functions of monitoring and auditing may overlap, and results from any one activity can be used to direct efforts of the other activities.

What issues should employers assess using oversight tools like monitoring and auditing?

Oversight tools like monitoring and auditing should be tailored to meet an organization's specific needs. Examples of the types of anti-retaliation program topics that may be assessed using oversight include:

- Trends in issue reporting and resolution, including anonymous reporting;
- Whether managers are following program policies;
- Whether workers are unafraid of retaliation and coming forward with concerns; and
- Whether the types of measurements that are used to track issue response and reward improvement could have the effect of discouraging reporting rather than incentivizing it.

Note that when new anti-retaliation programs are implemented, the numbers of reported incidents may rise at first. This often means that employees are more comfortable reporting, not that there are a larger number of concerns to report.



What sources of information should be examined during program oversight?

Program oversight may examine a variety of sources, such as: anonymous surveys; confidential interviews with employees who reported compliance concerns or retaliation; narratives from injury or error reports; case studies of investigated issues and responses; claims department or risk management case files related to injuries or errors; and complaint files relating to reporting requirements.

Employers can also cross-check the data obtained as part of monitoring or auditing with other sources of relevant information, such as information reported to workers' compensation, in grievances, to outside agencies, or in exit interviews. Cross-checking these other sources of information could reveal whether a policy is creating a chilling effect or other barrier that is discouraging or preventing employees from reporting compliance concerns or retaliation.

How should employers use the results or findings of program oversight?

The results of oversight activities like monitoring and auditing should be reported directly to the top managers and the board (if applicable). The results should also be shared with all levels of management and the workers covered by the program.

Top-level managers and board members (if applicable) should review in-depth results of monitoring and auditing, including dashboard reports on all program measurements. Management should also periodically discuss the program with employees and worker representatives (if applicable) to get ideas and feedback.

Employers should use monitoring results as a basis for program improvements and accountability. If the results identify problems, employers should determine whether possible system failures led to the problem and make changes to the reporting system if warranted. Managers should create plans to improve work groups or facilities that have trends indicating room for improvement.

How OSHA Can Help

Filing a complaint

Employees who believe that they have been retaliated against in violation of any of the 22 whistleblower protection statutes that OSHA enforces may file a complaint with OSHA. Employees must file a complaint with OSHA before the filing deadline under the relevant statute (filing deadlines vary by statute). For example, a complaint of retaliation under the Occupational Safety and Health Act must be filed within 30 days of the alleged retaliation. For more information about the filing deadlines for the whistleblower statutes that OSHA enforces, view our “Whistleblower Statutes Desk Aid” at www.whistleblowers.gov/whistleblower_acts-desk_reference.pdf.

Complaints may be filed with OSHA by visiting or calling the local OSHA office at 1-800-321-OSHA (6742), or may be filed in writing by sending a written complaint to the closest OSHA regional or area office, or by filing a complaint online at www.whistleblowers.gov/complaint_page.html. Written complaints may be filed by facsimile, electronic communication, hand delivery during normal business hours, U.S. mail (confirmation services recommended), or other third-party commercial carrier.

Further information

For more information on filing a complaint under the 22 whistleblower statutes that OSHA enforces, please visit www.whistleblowers.gov. You can also call OSHA at 1-800-321-OSHA (6742) if you have questions or need more information.

OSHA enforces the whistleblower provisions of the following statutes: (1) Occupational Safety and Health Act (OSHA 11(c)), 29 U.S.C. § 660(c); (2) Surface Transportation Assistance Act (STAA), 49 U.S.C. § 31105; (3) Asbestos Hazard Emergency Response Act (AHERA), 15 U.S.C. § 2651; (4) International Safe Container Act (ISCA), 46 U.S.C. § 80507; (5) Safe Drinking Water Act (SDWA), 42 U.S.C. § 300j-9(i); (6) Federal Water Pollution Control Act (FWPCA), 33 U.S.C. § 1367; (7) Toxic Substances Control Act (TSCA), 15 U.S.C. § 2622; (8) Solid Waste Disposal Act (SWDA), 42 U.S.C. § 6971; (9) Clean Air Act (CAA), 42 U.S.C. § 7622; (10) Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 U.S.C. § 9610; (11) Energy Reorganization Act (ERA), 42 U.S.C. § 5851; (12) Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (AIR21), 49 U.S.C. § 42121; (13) Sarbanes Oxley Act (SOX), 18 U.S.C. § 1514A; (14) Pipeline Safety Improvement Act (PSIA), 49 U.S.C. § 60129; (15) Federal Railroad Safety Act (FRSA), 49 U.S.C. § 20109; (16) National Transit Systems Security Act (NTSSA), 6 U.S.C. § 1142; (17) Consumer Product Safety Improvement Act (CPSIA), 15 U.S.C. § 2087; (18) Affordable Care Act (ACA), 29 U.S.C. § 218C; (19) Consumer Financial Protection Act of 2010 (CFPA), 12 U.S.C. § 5567; (20) Seaman's Protection Act, 46 U.S.C. § 2114 (SPA); (21) FDA Food Safety Modernization Act (FSMA), 21 U.S.C. § 399d; and (22) Moving Ahead for Progress in the 21st Century Act (MAP- 21), 49 U.S.C. § 30171.



www.whistleblowers.gov
(800) 321-OSHA (6742)
OSHA 3905-01/2017

Appendix G

ELI, 6 Ways to Make Civility Rule!

ELI is a training company founded by Stephen Paskoff to address unlawful and unproductive behaviors in the workplace. Years ago, ELI developed customized training for the nuclear community to support a safety conscious work environment called Safely Speaking for Managers[®] and Safely Speaking[®] for Employees.

In response to concerns about the agency's internal safety culture, ELI provided senior managers an abbreviated session of Safely Speaking for Managers[®] at a senior leadership meeting in 2009. Due to senior management's positive response, ELI provided numerous sessions to managers and supervisors in various NRC offices. The NRC subsequently contracted with ELI to customize the materials for the agency and certified multiple NRC employees as trainers. NRC certified trainers provided Safely Speaking for Managers[®] on multiple occasions to offices upon request.

ELI has evolved its training focus on civil behavior in the workplace and provides the following ebook to anyone who registers on the ELI Web site.



ways to make

Civility Rule!

*Practical ways to help
your organization
boost results and cut risk*

ELI[®]

Six Ways to Make **Civility Rule**



- 1 **Legal compliance is mandatory but not enough** 4
- 2 **Civility is a “soft skill” with hard results** 6
- 3 **You can’t conquer if you divide** 9
- 4 **Make It Matter. Make It Simple. Make It Stick.** 11
- 5 **If you don’t welcome concerns, you won’t know about problems until it’s too late** 13
- 6 **Leadership must be engaged and active** 15

ELI[®] Know what works at work.[®]

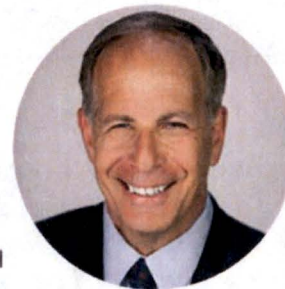
www.eliinc.com



Behavioral issues are often viewed as a collateral part of business, as a “soft skill” that is too vague to understand and control.

Civility Rules!: A new business approach for boosting results and cutting risk challenges that notion.

What’s soft about preventing millions of dollars in damage? Preserving your firm’s reputation? Creating an environment where you can get the most out of your human capital investment? Avoiding breaches of compliance? And perhaps even saving lives? What is soft about investing in the greatest area of cost and investment for most organizations (employees)? When leaders learn to treat civility as a business priority, they can achieve very real business results.



Civility Rules! presents the indisputable business logic for fostering civil treatment: a business environment where people treat one another with respect, feel they can contribute their best, are willing to speak up about ideas and problems, and are more likely to conform to laws and regulations. In this way, civil treatment and legality are intertwined: a workplace that focuses on civility is one that not only performs well, but is designed to be in compliance with the law.

The book makes the case that a civil treatment mindset is important to business leaders and gives examples of the key elements needed to accomplish this transformation. It points out a few simple rules of civility—and hopefully will convince you of the many ways in which Civility Rules!

Here are six insights from the book.

Stephen M. Paskoff

President and CEO of ELI®



Legal compliance is mandatory but not enough



A leading hospital was concerned about the behavior of two prominent surgeons, widely known for treating other staff with contempt, displaying frequent emotional outbursts including screaming, and making condescending remarks and insulting members of the medical team. The leadership was worried about whether the hospital was headed towards a lawsuit.



The lawyer the hospital consulted tells them there doesn't appear to be any legal threat. The physicians don't tell sexual or racial jokes. They don't make comments about appearance, ethnicity, age, religion, or national origin. They were not physically threatening any staff.

***Should they breath a sigh of relief?
This hospital's leadership did! >>>>>***

Legal Compliance is Mandatory but Not Enough *(continued)*

"No illegality, no problem" was their mentality. They were paying attention only to behaviors that seem to cross into illegal territory; ignoring the impact of behaviors that are legal no matter how unacceptable. The hospital leadership knew that the department these problematic surgeons worked for had trouble attracting and retaining top talent. There was a toxic atmosphere that made nurses and other professional caregivers reluctant to speak up if they noticed a problem during or after surgery. But those problems went unaddressed since nothing illegal was happening.



CIVILITY RULES! *In the Author's Words*

Probing The Edges Of The Law

One side effect of using illegality as your only standard to define unacceptable behavior is that people focus on identifying the boundaries of the law rather than appreciating its goal.

A number of laws, for example, are targeted at making sure companies do not create a hostile workplace. So I'll get questions like, "Surely not every dirty joke is illegal. What's the boundary?"

My response is, "Why on Earth would you want to find out? What is the benefit to your organization if you define a boundary between a dirty joke that may border on harassment and one that doesn't?" Just because a joke may be legal, that doesn't mean it's acceptable.



Civility is a “soft skill” with hard results



Civility in the workplace is sometimes viewed as a “soft skill” that is too vague to understand and control. *Civility Rules!* challenges that notion. What’s soft about preventing millions of dollars in damage? Preserving your firm’s reputation? Creating an environment where you can get the most out of your human capital investment? Avoiding breaches of compliance? Perhaps even saving lives?

What’s soft about investing in the greatest area of cost and potential for most organizations (employees)?

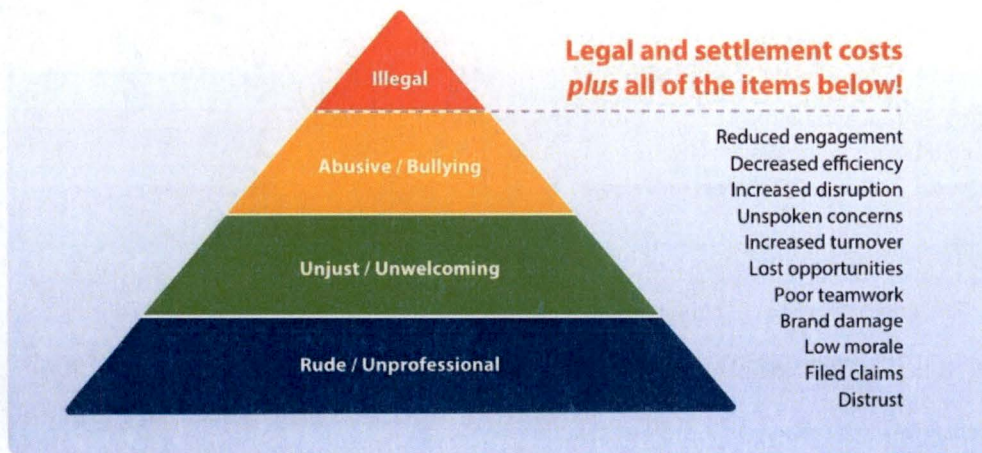
All of these areas are affected by your organization’s culture. To have the best business results, your organization must pay attention to what is seen as acceptable and unacceptable behavior. Focusing on civility will create the best workplace possible... one that produces positive results and minimizes negative behaviors.

Civility is a “soft skill” with hard results *(continued)*

The ideal workplace is a space where people are engaged and risks are minimized, a space where inclusion, respect, integrity, and teamwork reach their peak productivity while keeping the organization operating within the spirit, not just the letter, of the law. It is a place where a commitment to being both legal and civil helps prevent, detect, and ultimately limit compliance risk.

Drawing an artificial line between unacceptable behavior and illegal behavior is a common but basically unsound business strategy. In reality, there is a continuum of behaviors and the illegal behaviors that gather so much attention are really just the tip of an iceberg of harmful, non-productive and risky behaviors. But all layers of the iceberg impose very real costs on an organization (see figure).

The costs of illegal behaviors are really just the tip of an iceberg



Organizations that want to reduce all kinds of risk and improve workplace inclusion and respect have to think about using civility as the underlying theme. They have to pay attention to and address all unacceptable behaviors, not just those that stray over the illegal threshold.

Drawing an artificial line between unacceptable behavior and illegal behavior is an unsound business strategy >>>>

Civility is a soft skill with hard results *(continued)*



CIVILITY RULES!

In the Author's Words

What is the “best possible workplace”?

At the core of a “best possible workplace” is how work gets done through people. Organizations benefit when they make the most of their human capital, and civility is a means to accomplish that end. It allows an organization to create a workplace where employees:

- Can concentrate and perform at their best; they are not distracted by behaviors that hinder creativity, stifle contributions, or make them feel unwelcome.
- Care about their work and their employer.
- Act in line with basic codes of conduct and rules.
- Speak up to share their ideas and concerns.
- Trust that they and others in the organization can work out problems quickly and effectively.
- Are treated based on their merit, accomplishment, skills, and talents.

You can't conquer if you divide

Most organizations take a highly complex and fragmented divide-and-conquer approach to behavioral issues. They have an initiative on sexual harassment, one on discrimination, others on scores of compliance topics, perhaps one on values. The list goes on.



Typically, these initiatives are developed by experts in a narrow specialty who come up with a long list of important ideas, laden with technical terms that have specific meaning to the experts who work with them daily but not to anyone else. As a consequence, employees get confronted by many standards, directives, policies, and training programs, each of which is trying to teach them a lot of rules, principles, and guidelines using different terms, voices, and perspectives.

What is the result of this fragmentation? >>>>>

You can't conquer if you divide *(continued)*

The result of all this complexity is "regulatory fatigue" and a splintered approach to dealing with problems that, below the surface, are connected. People can't remember all the details thrown at them. Leaders are blind to the full costs of poor behaviors because incidents and risks are divided into separate buckets in the budget—or, more likely, don't appear at all on the balance sheet.

To simplify the task of dealing with unacceptable behavior, organizations should unite these fragmented issues and efforts under the umbrella of civility and civil treatment. That makes it easier to identify a few consistent messages that need to be communicated and reinforce.



CIVILITY RULES!
In the Author's Words

The civility core of diverse issues

To be clear, I am not advocating that organizations abandon their compliance functions or their learning curricula addressing the multiple learning topics required by state, local, or federal regulations.

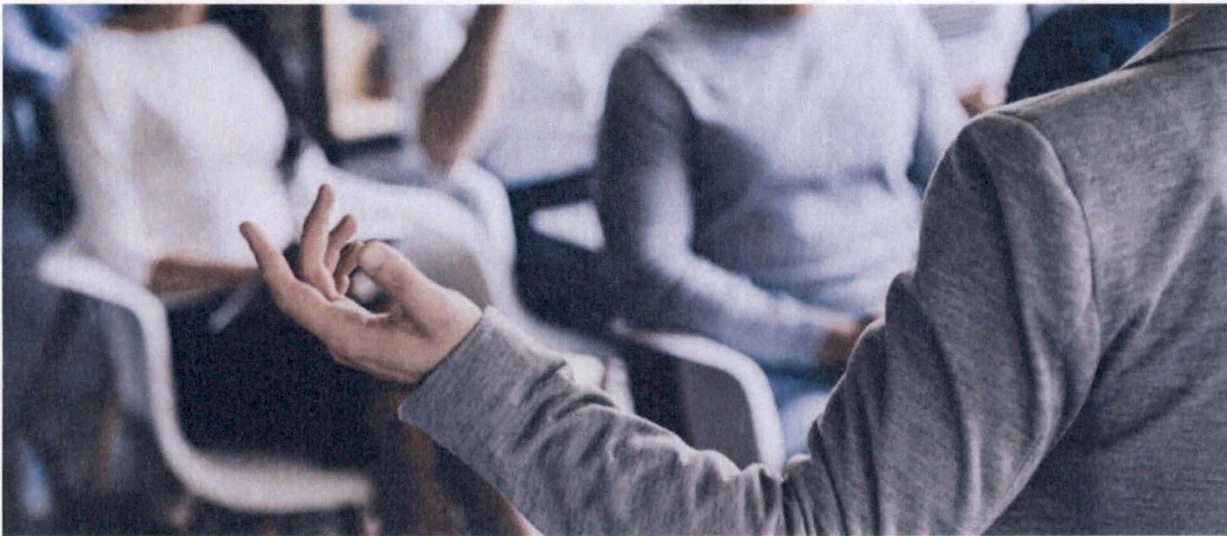
What I am arguing is that all of these traditional initiatives have embedded within them common behavioral principles and objectives about how people should treat one another. They all need to reinforce the key theme of civil treatment as a means of improving business rules, which includes a willingness to raise, listen to, and resolve issues (and, hence, minimize risk, which helps improve performance). And they are all linked to how values are embedded in an organization.





Make It Matter. Make It Simple. Make It Stick.®

A main factor contributing to the problem of poor behavior is that we've made ethics, compliance, and daily behavioral standards too complex. By trying to convey too much, we accomplish too little. Thus "teach little, remember much" is a better mantra than "teach much, remember little."



The more effective approach is to be as brazen in our simplicity and consistency as are the lawsuits and ethical lapses that make the headlines every day. We need to establish a few limited rules with clear language, explain the consequences to the person and the business of violating these rules, enforce them, and then repeat the pattern over and over again.

Be brazen in your simplicity and consistency >>>>



Make It Matter. Make It Simple. Make It Stick. *(continued)*

Rather than get trapped into a pattern of overwhelming complexity, make my motto your new mantra: Make it Matter. Make it Simple. Make it Stick. Applying that simple phrase to any change and learning initiative will help translate your values and goals into enduring behavioral and cultural change.



CIVILITY RULES!

In the Author's Words

Resisting the Siren Call of a Quick Fix

You know the drill: Somebody, somewhere in an organization misbehaves and everyone gets to go through more training. Doing “more training” is a quick fix that many organizations are addicted to. That path is understandable: providing check-the-box training programs makes it easy to reach lots of people quickly and provide affirmative defenses should there be lawsuits in the future.

Quick fixes can support messages when used as reinforcement, but they would only work as the first or sole means of education if the following assumptions were true (which they aren't):

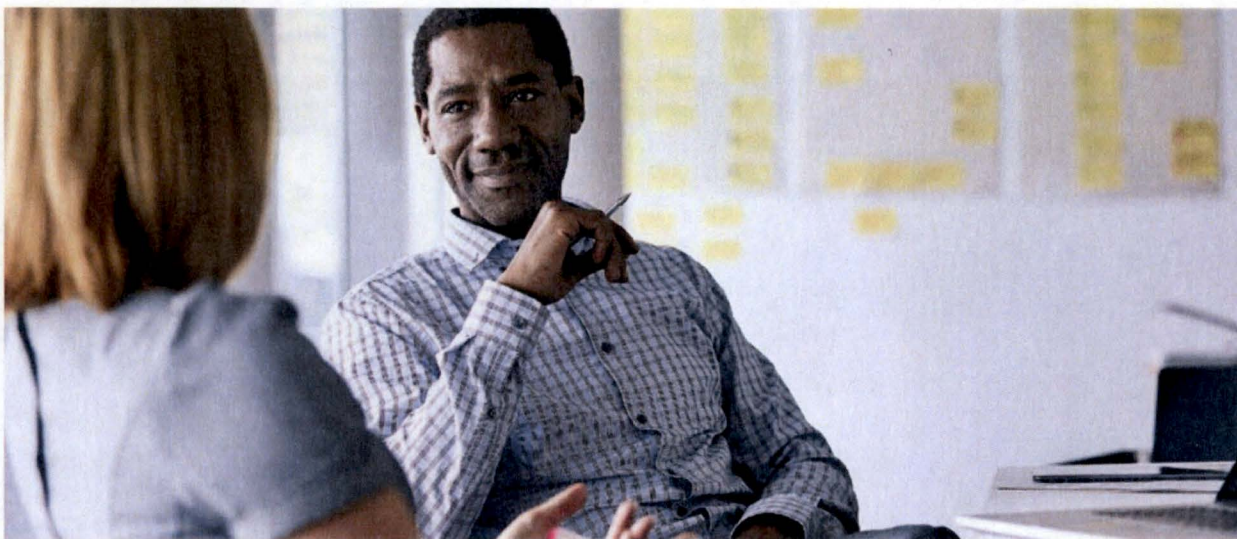
1. If people know what to do, they will do it.
2. The problem is with a few individuals.
3. The issues are cut-and-dried.

When it comes to creating a more civil workplace, the challenge cannot be addressed through any quick fix. Communicating information is the easy part of the job. The hardest part by far is persuading people to change. To achieve that goal, you need to look at what will be most effective not what is most convenient. The goal becomes not just teaching employees what you expect but giving them tools and reinforcement that help change behavior day in and day out.



If you don't welcome concerns, you won't know about problems until it's too late

One of the most serious legal challenges any organization can face is how to respond to employee complaints without violating scores of laws prohibiting retaliation. In an environment where concerns are invited, the response to a complaint will not be a reflexive and negative - "let's shoot the messenger" - reaction that spawns many complaints.



It will be more along the lines of "let's encourage and thank the person for coming forward." In companies that have worked to create an environment where concerns are welcomed, there's a climate where retaliation is actually taboo rather than an unspoken but accepted norm.

Further, when a welcoming environment is in place, many issues that are often minimized or ignored—meaning legal-but-uncivil forms of conduct—will be brought to fore where they can be dealt with and eventually minimized.



If you don't welcome concerns, you won't know about problems until it's too late *(continued)*

Also, when the concerns you are welcoming include minor issues associated with daily interactions, then you have a formula for sustained civil treatment. People will speak up about issues major and minor because they know that their supervisor, manager, or peer will listen to them, that action will be taken, and that speaking up will be rewarded. In other words, listening, action, and support replace dismissal, rejection, inaction, or even retaliation. "Concerns" become a matter for curiosity and investigation rather than fear.

That's why, of all the elements that go into creating a workplace that is more inclusive, diverse, productive, and legal, building an environment that truly welcomes concerns of all shapes and sizes is the most critical. In doing so, you will prevent crises and the everyday drag of incivility, and you'll be able to take action before a crisis erupts and suddenly everyone is saying they knew all along something like that would happen!



CIVILITY RULES!

In the Author's Words

The importance of welcoming concerns

The best indicator of whether an organization will succeed in creating a civil treatment environment is whether people feel free to speak up about issues small and large, minor and serious, uncivil and illegal. To have that kind of environment, you have to be doing a lot of things right. People have to know that you take matters of civility seriously. They have to know that behavior consistent with your values is acknowledged and rewarded and that behavior that is bad for the organization will not be tolerated. They have to trust that their managers will listen and that action will be taken (even if the outcome is not what they wanted). They have to trust that if they raise a concern they will not be retaliated against, ostracized, or singled out in any way.

While there are many aspects to an organization where civil treatment is taking root, the reality is that if you don't have an environment that truly welcomes concerns of all sorts, you can never claim to have a fully civil organization; and vice versa, without a focus on civil treatment, you will never have an environment that welcomes concerns.

Leadership must be engaged and active

Efforts linked to values and behavior can't be pigeonholed as a "human resource initiative" or a "risk management process"; they can't be driven solely by legal counsel or compliance officers. They must be initiated and directed by senior leaders responsible for the overall direction of the enterprise.



Your leaders need to actively support it, communicate their expectations that all employees do the same, and demonstrate with their own behavior that it's important to them personally. If any piece of this pattern is missing, employees will immediately pick up on the mismatch and perceive that the change isn't that important after all.

Getting leaders involved in launching and supporting civil treatment efforts is one of the cheapest ways to see real change. For a little bit of executive time, you will see a huge uptick in employee engagement.

Senior leaders should initiate and direct the change >>>>>



CIVILITY RULES!

In the Author's Words

Leaders as living apps

A good friend of mine was charged with building a global inclusion strategy for a world-renowned pharmaceutical firm.... He told me about advances his firm was making in learning. Because there are now multiple delivery platforms, his company's leaders can easily access learning modules on topics such as how to hire and engage new employees. There are avatars that can be adapted to simulate situations in different nations and cultures. My friend raved about the multiple apps for learning and completing just about every task.

I decided to challenge him ... "If relying on one-size-fits-all packaged training and avatars and all that other stuff alone is so great... tell me, what apps are you going to use to teach your grandson to be kind, ethical, decent, and honorable, just like you? Where are you going to find the app for that?"

He paused. Then he looked me dead in the eye and said, "I'm the app. That's my job. I'm the app."

And that's the point. Some lessons, especially those dealing with how we act and apply values, have to be delivered by the right "instructor" outside of any formal classroom environment. The learning platform must be human—direct and credible. There's no technology, no interactivity, no Learning Management System, and no clever avatar that can replace the power of a grandparent saying to a grandchild, "This is important. I want you to remember this. Here's a lesson you've got to learn to live and work by."

The same is true for instilling values in your organization. ... Like my friend, we as leaders must say, "Some lessons have to come from me, in real time, to be heard, understood, and applied. For those vital lessons, I'm the app."

Reshaping Your Perspective

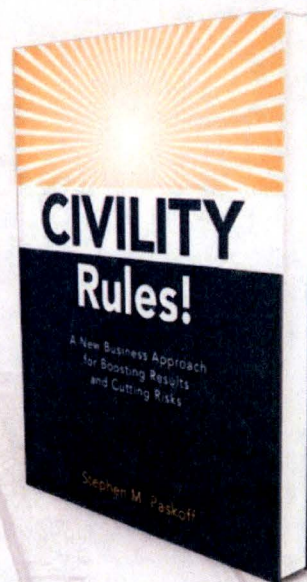
Organizations need to change the overriding emphasis they place on workplace behavior, which centers on compliance with legal requirements and treats other concerns as peripheral at best. This mentality is harmful to business performance, makes it harder to build respectful and productive cultures, and ultimately breeds a cynicism and narrowness of perspective that may enhance illegality and related damage.

Instead, we need to look at behaviors and conduct through the lens of organizational values like inclusion, respect, integrity, and teamwork. Simple values and behaviors, consistently reinforced, are the most effective strategy for initiating, creating, and sustaining a culture that minimizes uncivil and illegal behaviors and deals quickly and effectively with such behaviors when they do appear. That's the way to get great results and also operate within the spirit, not just the letter, of the law.

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by Stephen M. Paskoff

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ELI is a training company that helps organizations solve the problem of bad behavior in the workplace. This means more than just preventing discrimination and harassment lawsuits. It's about addressing the bigger costs of lost productivity, turnover, and brand damage caused by uncivil behavior.

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