



WORKPLACES RESPOND TO DOMESTIC & SEXUAL VIOLENCE

A NATIONAL RESOURCE CENTER

IMPLEMENTATION GUIDE

OVW Special Condition on Workplace-Related Sexual Misconduct & Domestic/Dating Violence

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ABOUT THE SPECIAL CONDITION

The Office on Violence Against Women, U.S. Department of Justice (hereinafter "OVW"), has adopted a Special Condition on Workplace-Related Sexual Misconduct and Domestic/Dating Violence (hereinafter "Special Condition").

This Implementation Guide will help grant recipients and subrecipients (hereinafter collectively "Grantees") prepare for the Special Condition and create required policy. This guide will also help Grantees develop training programs to help their employees, volunteers, contractors, and consultants (hereinafter "workers") understand the required policy and their rights and obligations under the policy.

Full Text of the Special Condition

Award condition:

Policy for response to workplace-related incidents of sexual misconduct, domestic violence, and dating violence

The recipient, and any subrecipient at any tier, must have a policy, or issue a policy within 270 days of the award date, to address workplace-related incidents of sexual misconduct, domestic violence, and dating violence involving an employee, volunteer, consultant, or contractor. The details of this requirement are posted on the OVW web site at <https://www.justice.gov/ovw/award-conditions>.

- **Blog: [Sexual Harassment Policies Now Required For All OVW Grantees](#)**, Courtesy of Laura L. Rogers, Principal Deputy Director, Office on Violence Against Women (September 2, 2020)
- **Workplaces Respond OVW Grantee Resource Page:** Featuring [resources on implementing](#) the Special Condition.

IN SHORT...

Grantees must:

Have a policy, or issue a policy within 270 days of the award date, to address workplace-related incidents of sexual misconduct, domestic violence, and dating violence involving an employee, volunteer, consultant, or contractor.

The policy must address:

1) allegations of workplace-related incidents of sexual misconduct, domestic violence, and dating violence by an employee, volunteer, consultant, or contractor;

2) workplace supports for employees, volunteers, consultants, or contractors who are victims of sexual misconduct, domestic violence, or dating violence; and

3) adjudications that will result in an employee, volunteer, contractor, or consultant being prohibited from occupying positions that could undermine the ability of the recipient or subrecipient to carry out the grant-funded project, such as positions working with victims and other vulnerable populations.

The recipient must make its policy available to OVW upon request. Subrecipients must make their policies available to the recipient upon request.

THE POLICY SHOULD APPLY TO...

Examples of circumstances that should implicate the policy include, but are not limited to:

- A worker sexually assaults, stalks, sexually harasses, and/or uses domestic or dating violence (uses "violence") against another worker.
- A worker is bound by an order of protection, or is subject to a civil or criminal action, arising from an incident of violence, regardless of whether the victim/survivor is a worker of Grantee.
- A worker uses violence against any other person during a Grantee-sanctioned event, including informal social events that occur solely because of the attendee's relationship with Grantee.

If a worker is adjudicated as having used violence, they should be prohibited from occupying positions that could undermine the ability of Grantee to carry out OVW-funded projects (subject to certain exceptions as described in a subsequent section of this guide).

CHECKLIST: HOW TO DEVELOP A POLICY THAT COMPLIES WITH THE SPECIAL CONDITION

- Convene a Working Group
- Develop a Consensus Purpose Statement
- Customize Persons Covered & Definitions
- Draft the Policy
- Identify & Promote Workplace & Community Supports

Grantees are invited to consult Workplaces Respond for technical assistance in complying with the Special Condition.

Upon request and resources permitting, Workplaces Respond helps workplace stakeholders develop policies, resource materials, education and training in order to promote workplace cultures that support survivors and prevent gender-based violence affecting workers and the workplace.

workplacesrespond@futureswithoutviolence.org



Convene a Working Group

Make it a team effort! In addition to facilitating compliance with the Special Condition, a Working Group comprised of members who reflect all stakeholders can seize the opportunity to co-create a comprehensive program that promotes a culture of prevention, safety, and support.

Management

Leadership buy-in sends an important signal

Human Resources

Typically responsible for enforcement

Legal

Helps mitigate liability

Who Should Be At The Table?

Contractor

(if applicable)
Bound by the policy

Supervisor(s)

Often charged with additional responsibilities

Volunteer

(if applicable)
Bound by the policy

Non-Supervisor(s)

Reflective of demographics, responsibilities & pay grades

Convene a Working Group

Potential Working Group Tasks

Assess Needs

Familiarize stakeholders with the Special Condition & provide confidential opportunities for all to express their views, experiences, & needs.

Draft & Customize Values Statements & Policies

All Grantees have unique needs, & challenges. Strive to reach consensuses that are tailored to identified needs.

Access Technical Assistance

Consult Workplaces Respond for advice on best practices in developing policies, training practices, & resource materials.

Raise Awareness & Train

Take the lead on informing & training stakeholders on new or amended policies.

Liaise with OVW

OVW must have access the policy upon request.

Evaluate & Refine

Keep track of how the policy is impacting stakeholders & make adjustments as necessary.

Address Additional Needs

Working Groups provide a great opportunity to [assess organizational culture](#), conduct activities like [Culture Walks](#), & address other identified needs.



Develop a Consensus Purpose Statement

Recipients should consider beginning their policy with a purpose statement that clearly articulates the culture the Grantee seeks to create and sets broad goals for the policy.

Sample Purpose Statement

[Grantee] institutes this policy as part of its commitment to a safer and more supportive organizational climate and to the prevention and reduction of the occurrences and effects of workplace-related incidents of sexual misconduct, domestic violence, and dating violence [hereinafter “violence”]. [Grantee] recognizes violence presents unique issues for its employees, volunteers, consultants, and contractors [hereinafter “workers”].

Violence can be workplace-related even if incidents occur elsewhere. It crosses economic, educational, cultural, age, gender, racial, and religious lines and occurs in a wide variety of contexts.

The purposes and goals of this policy are to:

- Support a comprehensive workplace education and training program to prevent violence;
- Institutionalize responsive policies and procedures to assist and support workers who are impacted by violence;
- Discipline and hold accountable workers who use violence, which - in certain cases - may include such assistive and supportive measures as requiring counseling; and
- Assure that a worker who uses violence is prohibited from occupying positions that could undermine [Grantee's] mission - as well as the missions of other grantees.

Consider developing an optional Code of Conduct that highlights the policy's essential elements

Draft an introductory paragraph that:

- Refers to the Policy on Sexual Misconduct, Domestic Violence & Dating Violence (hereinafter "policy"), and summarizes its purpose;
- Notes that the policy applies regardless of whether a worker is physically present on a site controlled by Grantee or discharging work-related responsibilities;
- Notes that the Code of Conduct establishes broad principles and is designed to illustrate, but not supplant, policy provisions; and
- Notes that supports are available to workers who report that they have experienced violence, which may include planning for their immediate safety needs, resources for their physical and emotional well-being, and consideration of requests for reasonable accommodations.

Crystalizing Purpose: Model Code of Conduct

- 1) Sexual misconduct, domestic violence & dating violence (hereinafter "violence") perpetrated by [Grantee's] employees, volunteers, consultants, and contractors (hereinafter "workers") undermine [Grantee's] mission and purpose. Accordingly, workers shall not use violence in any work-related or privacy capacity, including any [Grantee]-sanctioned event or [Grantee]-related social occasion regardless of where it occurs.
- 2) [Grantee] is committed to the safety and restoration of workers who have experienced or witnessed violence. Workers who have experienced or witnessed violence are encouraged to document in writing as much information as possible, and report incidents to any supervisor.
- 3) Supervisors must report all work-related violence that they are aware of to [appropriate contact]. Please consult [appropriate contact] for more information about the supervisors' duty to report.
- 4) [Grantee] encourages workers who experienced or witnessed violence to request any reasonable accommodation necessary for their immediate safety needs and physical and emotional well-being.
- 5) Workers accused of using violence shall cooperate with all internal and external investigations.
- 6) [Grantee] prohibits all acts of retaliation against any worker who has experienced, witnessed, or reported an act of violence.
- 7) [Grantee] may terminate any formal or informal relationship with workers who have been adjudicated as having used violence.



Customize Persons Covered & Definitions

The Special Condition requires the policy to cover **employees, volunteers, consultants, and contractors**. A customized policy may cover additional persons, such as interns, temporary workers, visitors, and event faculty, participants, and attendees.

The Special Condition delineates the following definitions (some policies may require additional definitions):

- **“Adjudication”** includes a conviction, issuance of a final protection order, court-ordered diversion, or other judicial finding that the employee, volunteer, consultant, or contractor has engaged in domestic violence, dating violence, sexual assault, or stalking.
 - The recipient may choose to include adjudications for additional, related offenses, such as sex trafficking.
- **“Domestic violence,” “dating violence,” “sexual assault,” and “stalking”** have the meanings given in 34 U.S.C. § 12291(a).
- **“Sexual misconduct”** means sexual assault, stalking, and sexual harassment.
- **“Sexual harassment”** means unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when this conduct explicitly or implicitly affects an individual’s employment, unreasonably interferes with an individual’s work performance, or creates an intimidating, hostile, or offensive work environment, whether such activity is carried out by a supervisor or by a co-worker, volunteer, or contractor.



Customize Persons Covered & Definitions

- An individual is considered to be in the **“workplace”** of the recipient or subrecipient while in, or using the resources of, the recipient’s or subrecipient’s offices or facilities, using its equipment or vehicles, engaging in approved telework, on work-related travel, or otherwise conducting business on behalf of the recipient or subrecipient. The availability and nature of the response to a workplace-related incident may depend on the location at issue.
- **“Workplace-related incidents”** of sexual misconduct, domestic violence, and dating violence include acts, attempted acts, or threatened acts by or against employees, consultants, volunteers, or contractors, that occur in the workplace or that occur outside the workplace but have an impact on the workplace or otherwise undermine the ability of the recipient or subrecipient to carry out the grant-funded project.

Draft the Policy

Drafting Discussion Points

- What constitutes an “incident?”
- What makes an incident “workplace-related?”
- How are allegations lodged?
- What steps are taken immediately after an allegation is lodged?
- What happens to a worker accused of violence while an allegation is under investigation?
- How is confidentiality protected?
- What supports or flexibilities should be available to victims?

Draft the Policy

OVW requires the policy to address:

"Adjudications that will result in an employee, volunteer, contractor, or consultant being **prohibited from occupying positions that could undermine the ability of the recipient or subrecipient to carry out the grant-funded project**, such as positions working with victims and other vulnerable populations."

In short: Workers who have been adjudicated as using violence may not occupy positions that could undermine the ability of the grantee to carry out the project. The policy must address when and under what circumstances the Grantee may not have employment, contractual, or volunteer relationships with individuals who have been adjudicated as using violence.

"A policy may provide that **certain adjudications do not prohibit an individual from occupying such a position** but must include **standards for granting such an exemption** for an individual."

In short: Grantees may opt to allow certain workers who have been adjudicated as using violence to occupy positions that might impact the grant project, so long as a set of standards governs the granting of exceptions. An example of an employee that might be appropriate would be a person who is a former domestic violence abuser working in a batterer intervention program or a victim of domestic violence whose abuser had obtained a mutual protection order.

Model Policy

Model Workplace Policy on Workplace-Related Sexual Misconduct and Domestic/Dating Violence

I. Purpose

[Grantee] institutes this policy as part of its commitment to a safer and more supportive organizational climate and to the prevention and reduction of the occurrences and effects of workplace-related incidents of sexual misconduct, domestic violence, and dating violence [hereinafter “violence”]. [Grantee] recognizes violence presents unique issues for its employees, volunteers, consultants, and contractors [hereinafter “workers”].

Violence can be workplace-related even if incidents occur elsewhere. It crosses economic, educational, cultural, age, gender, racial, and religious lines and occurs in a wide variety of contexts.

The purposes and goals of this policy are to:

- Support a comprehensive workplace education and training program to prevent violence;
- Institutionalize responsive policies and procedures to assist and support workers who are impacted by violence;
- Discipline and hold accountable workers who use violence, which - in certain cases - may include such assistive and supportive measures as requiring counseling; and
- Assure that a worker who uses violence is prohibited from occupying positions that could undermine [Grantee's] mission - as well as the missions of other grantees.

Model Policy

II. Definitions

- **“Adjudication”** includes a conviction, issuance of a final protection order, court-ordered diversion, or other judicial finding that the employee, volunteer, consultant, or contractor has engaged in domestic violence, dating violence, sexual assault, or stalking.
- **“Domestic violence,” “dating violence,” “sexual assault,” and “stalking”** have the meanings given in 34 U.S.C. § 12291(a).
- **“Sexual misconduct”** means sexual assault, stalking, and sexual harassment.
- **“Sexual harassment”** means unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when this conduct explicitly or implicitly affects an individual’s employment, unreasonably interferes with an individual’s work performance, or creates an intimidating, hostile, or offensive work environment, whether such activity is carried out by a supervisor or by a co-worker, volunteer, or contractor.
- An individual is considered to be in the **“workplace”** of the recipient or subrecipient while in, or using the resources of, the recipient’s or subrecipient’s offices or facilities, using its equipment or vehicles, engaging in approved telework, on work-related travel, or otherwise conducting business on behalf of the recipient or subrecipient. The availability and nature of the response to a workplace-related incident may depend on the location at issue.

Model Policy

- **“Workplace-related incidents”** of sexual misconduct, domestic violence, and dating violence include acts, attempted acts, or threatened acts by or against employees, consultants, volunteers, or contractors, that occur in the workplace or that occur outside the workplace but have an impact on the workplace or otherwise undermine the ability of the recipient or subrecipient to carry out the grant-funded project.

III. Persons Covered by this Policy

Persons covered by this policy include full and part-time employees, volunteers, consultants, and contractors engaged by - or in any location or event controlled or sanctioned by - [Grantee].

IV. Statement of Confidentiality

[Grantee] recognizes and respects a worker's right to privacy and the need for confidentiality and autonomy. [Grantee] shall maintain the confidentiality of a worker's disclosure regarding violence to the extent allowed by law, and unless to do so would result in physical harm to any person, and/or jeopardize safety within any location or event controlled by [Grantee].

When information must be disclosed to protect the safety of individuals within any location or event controlled by [Grantee], [Grantee] shall limit the breadth and content of such disclosure to information reasonably necessary to protect the safety of the disclosing workers and others, and to comply with the law. [Grantee] shall provide advance notice to the worker who disclosed information, to the extent possible, if the disclosure must be shared with other parties in order to maintain safety in any location or event controlled by [Grantee] or elsewhere.

Model Policy

[Grantee] shall also provide the worker with the name and title of the person to whom [Grantee] intends to share the worker's statements, and shall explain the necessity and purpose regarding said disclosure.

V. [Grantee] Responses to Violence

A. Reporting by Workers with Information About Violence

Workers who have information about or witness an act of violence perpetrated by another worker, or who have information about or witness violence against a worker, are encouraged to report this information to the [appropriate contact].

Supervisors who have information about or witness an act of violence perpetrated by another worker or supervisor, or who have information about or witness violence against a worker or supervisor, are required to report this information to the [appropriate contact].

B. Responses to Workers Accused of Using Violence

If [Grantee] receives information that alleges or suggests that a worker has committed an incident of workplace-related violence, as defined in this Policy, or if any manager or supervisor receives information that any worker has engaged in any incident of workplace-related violence, then the matter shall be referred to the [designated official] for the purpose of investigating the information or allegation.

[Grantee] shall conduct an immediate investigation of the information or allegation, which investigation shall be completed within 45 days of receipt of the information or allegation concerning the alleged incident of violence.

Model Policy

Every worker has a duty to cooperate with the investigation, and failure to do so will result in disciplinary action being taken against the uncooperative worker up to and including termination or severance of a contractual relationship. Additionally, every worker has the duty to be truthful and must disclose all information known to the worker when requested to do so by any person designated by [Grantee] to investigate an alleged incident of violence. Any worker who fails to be completely truthful or who withholds information shall be subject to disciplinary action up to and including termination or severance of a contractual relationship.

At the conclusion of the investigation conducted by [Grantee], the investigator shall report their findings to the [designated official]. If the investigator concludes, by a preponderance of the evidence, that the worker has engaged in a workplace-related incident, as defined in this Policy, then that worker shall be subject to disciplinary action up to and including termination or severance of a contractual relationship. The worker might also be required to participate in counseling or other remedial measures.

A worker who is subject to a protection or restraining order, or a named defendant in a criminal action as a result of a threat or act of violence, as defined in this Policy, must notify the [Grantee's] Human Resources Department immediately regarding the existence of such criminal or civil action. Failure to disclose the existence of such criminal or civil actions in these circumstances will result in disciplinary action, up to and including termination from employment or severance of a contractual relationship.

Model Policy

C. Responses to Workers Adjudicated of Using Violence

In the event that the investigator reports to the designated official that the worker has engaged in a workplace-related incident, as defined in this Policy, or the worker has been found guilty or liable in a criminal or civil action arising from a threat or act of violence, as defined in this Policy, the designated official shall determine whether a continued employment, contractual, or volunteer relationship with the worker would undermine [Grantee's] ability to carry out Office on Violence Against Women (OVW) grant-funded projects. If the designated official determines that a continued employment, contractual, or volunteer relationship with the worker would undermine [Grantee's] ability to carry out OVW grant-funded projects, the designated official shall remove the worker from any position that may undermine [Grantee's] ability to carry out OVW grant-funded projects.

[Grantee] may grant an exception and allow an employee, contractor, or volunteer who was previously adjudicated of having used violence by any jurisdiction or previous employer or contractee to occupy a position that could otherwise undermine the ability of [Grantee] to carry out the OVW funded project, so long as the [Grantee] can establish to that the worker has met the following qualifications:

- No survivor of violence used by the worker, nor any family member or friend of a survivor of violence used by the worker, will encounter the worker in any [Grantee]-controlled capacity;
- The worker evidences accountability, restoration, and rehabilitation; and
- [Grantee]'s mission would benefit from the worker's experience.

Model Policy

All terminations of an employment or contractual relationship with a worker pursuant to this provision, as well as any exception granted pursuant to this provision (including the standards [Grantee] relied upon in granting an exception), must be reported to OVW.

VI. Reporting by Workers Who are Victims/Survivors

Workers who are surviving violence, and workers who are concerned about coworkers who might be victims, are encouraged to provide a report to [Grantee]. [Grantee] has designated [person] or any supervisor as persons to whom such reports should be made. [Grantee's] designee shall provide community referrals and resources in order to assist workers with their experiences and concerns.

VII. Reporting Violation of Policy

A person who wishes to report a violation of this policy should also contact [person] or any supervisor. [Grantee] prohibits retaliation against any person who makes a report under this policy.

Crystalizing the Policy: Model Contractual Language

The policy should cover contractors, vendors, volunteers, visitors, or any other person who is not directly employed by a Grantee, but acts at a Grantee's behest. Consider integrating a provision on violence into contracts and other agreements:

Model Contractual Provision on Workplace-Related Sexual Misconduct and Domestic/Dating Violence

a) Definitions [as adopted by the Working Group]

b) Sexual misconduct, domestic violence & dating violence (hereinafter "violence") perpetrated by [Grantee's] employees, volunteers, consultants, or contractors] undermine [Grantee's] mission and purpose. Accordingly, [Grantee] expressly prohibits acts of violence perpetrated by [Employee / Volunteer / Consultant / Contractor] in any [Grantee]-related or privacy capacity, including any [Grantee]-sanctioned event or [Grantee]-related social occasion regardless of where it occurs.

c) A determination by [Grantee] or adjudication by any civil or criminal authority that [Employee / Volunteer / Consultant / Contractor] has perpetrated violence shall render [Employee / Volunteer / Consultant / Contractor] in material breach of this agreement and subject to disciplinary action up to and including cancellation of this agreement.

If this agreement is cancelled pursuant to this provision, parties expressly agree that they shall be held harmless for any and all payments, obligations, performance, or any other contractual requirements arising after the date of the incident of violence subject to the adjudication.

Crystalizing the Policy: Model Contractual Language

d) If [Grantee] receives information that alleges or suggests that [Employee / Volunteer / Consultant / Contractor] has perpetrated violence, then the matter shall be referred to the [designated official] for the purpose of investigating the information or allegation.

[Grantee] shall conduct an immediate investigation of the information or allegation, which investigation shall be completed within 45 days of receipt of the information or allegation concerning the alleged incident of violence.

During the pendency of the investigation, [Grantee] may at its discretion suspend the obligations and performance requirements of all parties to this agreement until such time as the investigation is complete.

e) [Employee / Volunteer / Consultant / Contractor] is informed that [Grantee] is required to report to the Office on Violence Against Women, U.S. Department of Justice, when [Grantee] has cancelled an agreement pursuant to this provision. [Employee / Volunteer / Consultant / Contractor] expressly holds [Grantee] harmless for any and all outcomes arising from [Grantee's] duty to report, including any challenges [Employee / Volunteer / Consultant / Contractor] might encounter in securing future grant-funded contracts.

Crystalizing the Policy: Model Contractual Language

f) [Employee / Volunteer / Consultant / Contractor] is further informed that [Grantee] at its discretion may optionally enter into a future agreement with [Employee / Volunteer / Consultant / Contractor] after an adjudication of having used violence, so long as [Grantee] can establish that [Employee / Volunteer / Consultant / Contractor] has one or more of the following qualifications:

- No victim/survivor of violence perpetrated by [Employee / Volunteer / Consultant / Contractor], nor any family member or friend of the victim/survivor, will encounter [Employee / Volunteer / Consultant / Contractor] in any [Grantee]-controlled capacity;
- [Employee / Volunteer / Consultant / Contractor] evidences accountability, restoration, and rehabilitation; and
- [Grantee]'s mission would benefit from [Employee / Volunteer / Consultant / Contractor] experience.



Identify & Promote Workplace & Community Supports

The Working Group should assure that all stakeholders are informed of workplace and community supports available to victims/survivors of violence. Consider attaching an information and resource document to all policies, codes of conduct, contracts, and all other policy-related materials.

At a minimum, the document should highlight:

- Information about protections against retaliation;
- Assistance in developing a workplace safety plan;
- Process for requesting workplace flexibilities, and examples of available reasonable accommodations, which may include but are not limited to:
 - Flexible scheduling and leave policies so that the victim/survivor can access health care, counseling, legal support, and attend to other needs;
 - Adjustments to job site infrastructure, including relocating to another work station, changing contact information, and enhancing security protocols;
 - Support in reporting to law enforcement, if the victim/survivor so chooses; and/or
- Affirmation of the victim/survivor's personal agency, such as processes to weigh in on what actions should be taken against the accused or how to terminate their employment or contractual relationship without penalty because of the trauma and impacts of their experience with violence.



Identify & Promote Workplace & Community Supports

- Supports available to the accused, which may include but are not limited to:
 - Adjustments to job site infrastructure, including relocating to another work station or scheduling adjustments; and/or
 - Requirements to and support in participating in counseling or other remedial or restorative measures.
- List of national hotlines, employee assistance programs, and local service providers.