

Justice Department Releases New Sexual Harassment Guidelines
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By KATIE BENNER

WASHINGTON — The Justice Department has issued directives to address sexual harassment, but critics say the new rules could be unevenly applied across the department, leaving some employees unprotected.

The new policies, sent to division heads on Wednesday, were drafted in response to a 48-page report issued last year by Michael E. Horowitz, the department's inspector general, that described harassment, assault and sexual misconduct.

“The department will not wait for a pattern of offensive conduct to emerge before addressing claims of harassment,” according to three memos obtained by The New York Times that outline the guidelines. “Rather, the department will act before the harassing conduct is so pervasive and offensive as to constitute a hostile environment.”

The directives, written by the deputy attorney general, Rod J. Rosenstein, and two other officials in his office, are intended to ensure that the department metes out “serious and consistent” punishments to those found guilty of sexual harassment, and that each section in the department is held accountable for how it handles accusations of harassment and misconduct.

Individual units must punish people found guilty of harassment in a consistent manner and take measures to protect accusers as cases are being investigated.

The policies direct sections to systematically track sexual harassment claims. Each allegation must specify the nature of the claim, whether it was reported to the inspector general or to security, and the disciplinary action taken. And they say that managers must account for such allegations before giving an employee an award or other public commendation.

But the guidelines allow each unit to decide how best to enforce many of the new directives, a decision that critics say does not comply with one of the inspector general's top recommendations of equal policy enforcement across the department.

The department's sprawling network of prosecutorial offices and other outposts employ more than 115,000 staff members. The different sections also have different reputations concerning how they treat employees.

“There should not be discretion among components in how each applies a directive,” said Cathy Harris, an employment lawyer at Kator, Parks, Weiser & Harris.

“You could have one component say it will wait 30 days after a complaint before investigating it, whereas another could launch an investigation within a business day. What we need here is top-down leadership.”

Over the past five years, the inspector general has issued at least four reports detailing episodes of harassment, assault and sexual misconduct at the department, including the solicitation of prostitutes and employees asking colleagues to watch pornography.

In the most recent report, issued in May, Mr. Horowitz described instructors who had slept with trainees and an employee who had stalked a colleague.

Managers were inconsistent in how they punished wrongdoers, he said, and in whether they enforced those penalties.

The deputy attorney general and his office have been slow to respond. Mr. Horowitz gave the department 60 days after that report was released to indicate how it would address his concerns. Mr. Rosenstein issued the policies eight months after that deadline.

Soon after the May report, a group of Justice Department employees asked to meet with the deputy attorney general's office, according to employees briefed on those requests. In a letter written in August, they sought to be part of any next steps. Officials responded to that letter in December.

Over the past year, two women have come forward to publicly accuse colleagues of retaliation after they reported sexual harassment. A Times investigation in

March found that officials had ignored years of complaints that supervisors in the death penalty unit had engaged in gender discrimination and sexual harassment. The department investigated some of the allegations, one of which was supported by texts and firsthand accounts, but the men are still department employees.

Three days after The Times published its article, Mr. Horowitz met with Justice Department employees to talk about sexual harassment. Hundreds packed the department's Great Hall, filling seats and lining the perimeter of the room.

The moderator for the event told fellow employees that department officials had responded to the inspector general's report last year by saying that the episodes he uncovered had all occurred under the Obama administration. Mr. Horowitz said that sexual harassment was a systemic issue and that he hoped it would be taken seriously "no matter who's in charge."

Employees told Mr. Horowitz that they were frustrated that people were rarely fired after being found guilty of harassment and assault. He replied that people in the department were taking "far more seriously" issues that in the past had not, and that his office had seen cases that resulted in terminations that "we're not sure in the past would have been handled as terminations."

Mr. Horowitz said that the department was likely to enforce more severe punishments as it took harassment more seriously.

The Justice Department's new policies make explicit that substantiated sexual harassment cases should result in "a penalty ranging from a 15-day suspension to removal."

But Mr. Horowitz warned at the meeting that the department could face other challenges as it became more willing to issue harsher penalties. Individuals found guilty of wrongdoing “often challenge some of the harsher, you know stronger penalties.” He said that in the past, their punishments have been softened after they pushed back.

“If you have zero tolerance, how can you permit people found to have committed more egregious acts of harassment or assault to continue to work and walk the halls?” said Ms. Harris, the lawyer. “The Justice Department is a very prestigious place to work. They can enforce true zero tolerance and fire people, which is what is happening in corporate America right now.”

At the death penalty unit, the deputy supervisor there was accused of groping his administrative assistant at a restaurant, trying to persuade her to check into a hotel and sending her texts offering to give her money or take her on a trip. Colleagues who had witnessed the episode at the restaurant and read the texts told managers and the inspector general. That supervisor still works at the Justice Department and is appealing the department’s decision to move him to a different unit.

“The question this raises is who does the Department of Justice prioritize?” Ms. Harris said. “Right now, they’re worried about being sued by harassers. They should be worried about being sued by the victims whose claims are ignored. That will be much more damaging to the department’s reputation.”