U.S. International Development Finance Corporation

MEMORANDUM

TO: DFC Staff

FROM: Dev Jagadesan, Acting Chief Executive Officer

DATE: 4/14/21

RE: Maintaining a Non-Hostile Workplace Free of Discriminatory Harassment

This is to affirm DFC's responsibility to maintain a workplace free from harassment (including sexual harassment which is a form of discrimination based on sex) and retaliation, and to ensure that all employees are aware of my personal commitment to this goal.

The U.S. Equal Employment Opportunity Commission (EEOC) requires agencies to remove every form of prejudice or discrimination from personnel policies, practices, and work conditions (29 C.F.R. §1614.102(a)(3)). A hostile work environment is one that allows ridicule, abuse, insults, or derogatory comments that are directly or indirectly based on race, color, national origin, sex (including pregnancy and gender identity), religion, age, disability, sexual orientation, marital status, genetic information, political affiliation, or parental status. A hostile work environment also can be created by reprisal or retaliation for exercising rights under these criteria. It is further defined as an offensive or intimidating environment that unreasonably interferes with work performance or that otherwise adversely affects employment opportunities. Personal conversations that can be overheard by other employees who consider the conversations offensive also can create a hostile environment.

DFC follows guidance established by EEOC and standards set by the U.S. Supreme Court in two landmark decisions: *Burlington Industries, Inc. v. Ellerth*, 524 U.S. 742 (1998) and *Faragher v. City of Boca Raton*, 524 U.S. 775 (1998). In these decisions, the Supreme Court made clear that employers are subject to vicarious liability for unlawful harassment by supervisors. Liability is premised on two principles:

1) an employer is responsible for the acts of its supervisors; and

2) employers should be encouraged to prevent harassment and employees should be encouraged to avoid or limit the harm from harassment.

Managers and supervisors are responsible for maintaining a non-hostile work environment, one that is free from discriminatory harassment (both sexual and non-sexual). They can be held accountable for their own behavior and that of their employees. If an employee makes abusive or derogatory comments to another employee and the matter comes to a manager's or supervisor's attention, the manager or supervisor must take prompt action. It is very important to demonstrate to concerned employees that their allegations are taken seriously, and that management will not condone offensive behavior. For additional guidance, managers and supervisors should contact the Office of Human Resources Management (HRM).

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Further, when an employee complains to management about alleged harassment, management is obligated to investigate the allegation regardless of whether the employee's complaint conforms to a particular format or is not made in writing. Disciplinary or other remedial actions should reflect management's findings during the course of the inquiry.

Employees are responsible for reporting any behavior they view as harassment before it becomes severe or pervasive, by speaking to:

1) their immediate supervisor or, if the alleged harassment is at this level, to a second or third level supervisor;

2) HRM; or

3) the Director, Office of Equal Employment Opportunity (EEO).

While isolated incidents of harassment generally do not violate federal law, a pattern of incidents may be unlawful. Employees also are responsible for taking advantage of any preventive or corrective opportunities provided by DFC or to otherwise avoid harm. To the extent possible, the confidentiality of employees bringing harassment claims will be protected.

Employees who raise claims of harassment or provide information related to such claims are legally entitled to be free from retaliation. Retaliation is a form of discrimination where an employee is subjected to an adverse employment action or harassment that creates a hostile or abusive work environment solely because the employee opposed an unlawful employment practice. "Opposing" an unlawful employment practice includes filing a charge of discrimination, participating in an investigation, proceeding or hearing, or taking other, similar action in opposition to the unlawful practice.

Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when:

1) Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment;

2) Submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual; or

3) Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.

Whether such conduct is intimidating, hostile, or offensive is determined by both objective and subjective factors, including the perception of the recipient, witnesses, or others affected by the conduct. The person who initiates the conduct, i.e., the alleged harasser, does not ultimately determine whether such conduct constitutes sexual harassment.

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In *Meritor Savings Bank v Vinson*, 477 U.S. 57 (1986), the U.S. Supreme Court has ruled that sexual harassment is proven if the offensive conduct is based on the employee's sex, is unwelcome, and is sufficiently severe or pervasive to interfere with the employee's job performance or to create an abusive work environment. EEOC has stated that a complaint may be filed by anyone offended by such conduct, even if the employee is not the person at whom it is directed.

Offended individuals are encouraged to initiate actions to resolve harassment issues at the earliest possible stage. When the situation permits, the offended individual should inform the offending individual that their conduct is considered intimidating, hostile, or unwelcome. The immediate supervisor will often be the first level of resolution for harassment issues. However, employees also may directly contact HRM. Supervisors shall inform HRM whenever they become aware of any situation that could have harassment implications.

In some situations, DFC will conduct an investigation in order to determine if an employee or anyone else has engaged in inappropriate conduct or illegal harassment. DFC will initiate any such investigation within 10 days of the report of inappropriate conduct or illegal activity. DFC is also committed to conclude any investigation as quickly as possible, taking into account the complexity of the facts, the number of witnesses, and the issues arising out of the investigation. DFC will keep complaining witnesses informed of the status of the investigation, recognizing that some information may not be disclosed if the disclosure would violate the privacy rights of someone else.

When an individual feels that it is necessary to consider filing an EEO complaint, the individual should contact an EEO Counselor or the EEO Director within forty-five (45) days of the alleged inappropriate conduct or illegal harassment. The complaint will be processed in accordance with 29 C.F.R., Part 1614. If an EEO complaint is to be pursued, the individual will then work with an EEO Counselor to try to resolve the matter prior to filing a formal EEO complaint.

It is DFC's intention to discourage harassment (including sexual harassment) and retaliation from occurring and, if it does occur, to take firm and immediate action.

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