

## Appendix D

### Department of the Army Anti-Harassment Policy Implementation Procedures

#### D–1. Unlawful harassment

*a.* Unlawful harassment includes, but is not limited to, unwelcome conduct, intimidation, ridicule, insult, offensive comments or jokes, or physical conduct based on race, color, religion, sex (whether or not of a sexual nature), national origin, age (over 40), disability, genetic information, or reprisal when an employee's acceptance or rejection of such conduct explicitly or implicitly forms the basis for a tangible employment action affecting the employee, or the conduct is sufficiently severe or pervasive as to alter the terms, conditions, or privileges of the employee's employment or otherwise create a hostile or abusive work environment.

*b.* The harasser can be a person's supervisor, a supervisor in another area, a coworker or someone who is not an employee of the agency, such as a contractor or customer.

*c.* The Army may be liable for unlawful harassment by a supervisor that results in a tangible (negative) employment action, such as termination or a failure to promote. If the supervisor's harassment results in a hostile work environment, but not in a tangible employment action, the Army may nevertheless be liable, unless—

- (1) Management reasonably tried to prevent and promptly correct the harassing behavior, and
- (2) The employee unreasonably failed to take advantage of any preventive or corrective opportunities the Army provided.

*d.* The Army may be liable for harassment by nonsupervisory employees or nonemployees it has control over (for example, independent contractors or customers on the premises), if management knew or should have known about the harassment and failed to take prompt and appropriate corrective action.

#### D–2. Responsibilities of supervisors and management officials

*a.* Supervisors and managers, both civilian and military supervisors of Army employees, have a responsibility to maintain a workplace free of harassment. Supervisors will make reasonable efforts to prevent and promptly correct harassing behavior in the workplace.

*b.* When an employee makes a complaint to a management official about alleged harassment, the Army will investigate the allegation regardless of whether the harassment rises to the level of being severe or pervasive. Complaints of harassment do not need to conform to any particular format or be in writing.

*c.* Supervisors and managers of Army civilian employees will promptly address allegations of harassment with the employees directly involved in the incident, along with any witnesses who might have firsthand information. Managers must take prompt preventive and corrective action, including discipline, as appropriate, in consultation with the servicing staff judge advocate and the Labor Management Employee Relations (LMER) staff.

*d.* Supervisors and managers will ensure that non-supervisory employees complete the Army's "EEO, Anti-Harassment and No FEAR Act Training" Course for nonsupervisory personnel annually and that they are aware of the anti-harassment policy and procedures and their role in the Complaint Process.

*e.* Supervisors will complete the Army's "EEO, Anti-Harassment and No FEAR Act Training" Course for supervisors annually.

#### D–3. Responsibilities of employees

*a.* Conduct that is discriminatory or harassing is contrary to the Army's core values and may be unlawful. An employee engaging in such conduct is subject to appropriate corrective action, including discipline.

*b.* Employees must report any behavior they view as harassment before it becomes severe or pervasive. Although isolated incidents of harassment generally do not violate Federal law, a pattern of incidents may be unlawful. Employees should take advantage of opportunities the agency provides to prevent further harm. Supervisors and managers cannot correct harassing conduct unless they are aware of it.

*c.* All Army employees (supervisors and nonsupervisors) are responsible for completing the mandatory "EEO, Anti-Harassment No FEAR Act Training" Course to gain an understanding of the Army's anti-harassment policy and procedures and their role in the Complaint Process.

#### D–4. How to report harassment

*a.* An employee who believes another person has subjected them to unwelcome harassing conduct should inform the person(s) responsible for the conduct that it is unwelcome and offensive and request that it cease.

*b.* If the conduct continues, or if the employee is uncomfortable confronting the responsible person(s) about the conduct, he or she should immediately report the matter to his or her immediate supervisor, the supervisor of the harasser or any

other management official in the chain of command. The employee may also report the matter to other officials, including The Inspector General, EEO or CPAC LMER personnel, union officials, or chaplains. If using these alternative options to report harassing conduct, the employee should give the official permission to notify the employee's supervisory or management chain.

c. Employees who witness or become aware of harassing conduct directed at another employee(s) should report the matter to the supervisor of the offending employee(s) or other management officials in their chain of command.

#### **D-5. Inquiries into allegations of harassing conduct**

a. *Initial response.* A supervisor or management official who receives notice of an allegation or witnesses harassing conduct will contact their servicing staff judge advocate within 1 business day for guidance on the appropriate type of inquiry and response necessary to promptly address and resolve the matters at issue.

b. *Matters requiring further investigation.* If the results of an initial inquiry are insufficient to determine whether the issue requires corrective action, the supervisor or management official responsible for taking disciplinary action against the alleged harasser may request further investigation in accordance with AR 15-6. Management should make such requests on a case-by-case basis and in consultation with their servicing staff judge advocate. After completion and approval of the AR 15-6 investigation, management may use the information obtained, including the findings and recommendations, in taking corrective action against the alleged harasser, including disciplinary action, if appropriate.

c. *Confidentiality.* DA will maintain all reported information, including results of inquiries and investigations, on a confidential basis to the greatest extent possible. The identity of the employee alleging the violation will remain confidential, except as necessary to conduct an appropriate investigation into the alleged violations or when the law or regulation requires otherwise. Management cannot guarantee complete confidentiality because it cannot conduct an effective investigation without disclosing certain information to the alleged harasser and potential witnesses. Management may have to disclose information to an employee being disciplined as a result of an inquiry or investigation. Also, the agency may have to disclose the information as part of any litigation for which the information may be relevant and necessary. However, the maintenance of investigative records and any disclosures of information from those records will be in compliance with the Privacy Act (5 USC 552a).

#### **D-6. Action to take after an inquiry**

a. Upon completion of the inquiry or investigation, the management official who is responsible for taking disciplinary action against the alleged harasser will promptly evaluate the evidence and determine the appropriate action to take in consultation with the servicing staff judge advocate and the LMER specialist in the servicing CPAC. This responsibility normally rests with the first-line supervisor of the employee alleged to have engaged in the harassing conduct, unless the supervisor is involved in the allegation. In those cases, the record of the investigation will be provided to the senior management official in the supervisor's chain of command.

b. In cases of alleged severe and pervasive harassing conduct, the management official must consult with the agency's attorney/labor counselor and EEO or LMER specialist within 1 business day regarding recommendations on appropriate corrective action.

c. When the inquiry establishes that an employee engaged in harassing conduct, that employee is subject to appropriate disciplinary or other corrective action in accordance with AR 690-700. If the alleged harasser is a military member, that individual is subject to the provisions of the Uniform Code of Military Justice. When the inquiry establishes that a manager or supervisor did not properly carry out their responsibility as provided in these procedures, the manager or supervisor is subject to appropriate disciplinary or other corrective action in accordance with AR 690-700.

d. No further action is necessary under these procedures once management, in consultation with the servicing staff judge advocate, is satisfied that its corrective action has stopped the harassing conduct and deterred its recurrence.

#### **D-7. Filing a complaint of discrimination or harassment in other forums**

a. Reporting harassment in accordance with the procedures in appendix D does not replace or satisfy the requirements for filing EEO Complaints, union grievances or complaints in other forums, nor does it delay or waive the time limits for initiating claims in these forums.

b. To seek monetary and nonmonetary remedies for unlawful harassment, an employee may file in one of the following forums:

(1) *Equal Employment Opportunity.* Employees may file an EEO Complaint through their servicing EEO office. The employee must, however, file an EEO Complaint within 45 calendar days of the alleged incident or when the employee knew or should have known of the discriminatory or harassing conduct. To the greatest extent possible, EEO officials must adhere to an aggrieved person's right to anonymity during the informal processing of the complaint unless the aggrieved

employee waives his or her right to anonymity. AR 690–600 outlines the Army EEO Complaint Process (see also 29 CFR Part 1614).

(2) *Negotiated grievance procedure.* Employees covered by a collective bargaining agreement may file a grievance under their negotiated grievance procedure instead of an EEO Complaint if the agreement provides for the option. Bargaining unit employees should contact their union steward or appropriate union official for information about their rights and responsibilities under the negotiated grievance procedure.

(3) *MSPB.* Eligible Federal employees may appeal an adverse agency personnel action (such as a removal or suspension of more than 14 days) with the MSPB if the personnel action is within the jurisdiction of the MSPB. The employee must file an appeal within 30 days of the effective date of an appealable adverse action or within 30 days of the date of receipt of the agency's decision, whichever is later. 5 CFR Part 1201 outlines the procedures for filing appeals, including appeals that include a claim of discrimination or harassment.

c. If an employee pursues a claim of harassment through the EEO process, the negotiated grievance procedure or an MSPB appeal, the EEO/LMER official who receives notice of the claim will promptly notify the appropriate responsible management official. The management official will treat the notification as a report and follow the procedures outlined in paragraphs D–5 and D–6 of this appendix.