BY ORDER OF THE INSTALLATION COMMANDER
HEADQUARTERS, 377TH AIR BASE WING (AFMC)
KIRTLAND AIR FORCE BASE, NEW MEXICO 87117-5606

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Personnel

SEXUAL HARASSMENT COMPLAINTS

COMPLIANCE WITH THIS PUBLICATION IS MANDATORY

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This instruction implements 29 C.F.R. 1614, *Federal Sector Equal Employment Opportunity*, 29 C.F.R. 1604.11, *Guidelines On Discrimination Because Of Sex,* Section 591 of the 1998 National Defense Authorization Act as codified at 10 U.S.C., SECDEF Interim Policy Guidance for DoD Implementation of 10 U.S.C. 1561, dated 9 February 1999, and AFI 36-1201, *Discrimination Complaints.* The specific guidance in this instruction explains procedures to follow in the event of an allegation of sexual harassment. It applies to all Department of Defense employees, civilian and military.

1. Purpose. To provide a standardized procedure for DoD units/components at Kirtland AFB to process sexual harassment allegations.

2. Policy. The Federal Government is committed to a discrimination and harassment-free work environment. In accordance with DoD, AF, AFMC, and Kirtland Air Force Base policy, unlawful discrimination or reprisal in any form will not be tolerated. Unlawful discrimination is defined as discrimination based on race, color, national origin, sex (includes sexual harassment), religion, reprisal, and for civilians, age or disabled (handicap) condition. No matter the basis, unlawful discrimination has a negative effect on good order, discipline, job performance, and morale of assigned workforce members and mission accomplishment. Each military member and civilian employee at Kirtland AFB must behave in a manner that reflects well upon the Air Force and contributes to a healthy and productive work environment.

Definitions, Responsibilities, and Reporting Requirements

Section A: Definitions

3. Sexual Harassment

3.1. Harassment on the basis of sex is a violation of section 703 of Title VII. 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.

3.2. With respect to conduct between fellow employees (co-workers), an employer is responsible for acts of sexual harassment in the workplace where the employer (or its agents or supervisory employees) knows or should have known of the conduct, unless it can show that it took prompt action to eliminate/eradicate the improper behavior.

3.3. An employer may also be responsible for the acts of non-employees, with respect to sexual harassment of employees in the workplace, where the employer (or its agents or supervisory employees) knows or should have known of the conduct and fails to take prompt action to eliminate/eradicate the improper behavior.

4. Sexual Assault. Sexual assault includes a wide range of victimizations, distinct from rape or attempted rape. These crimes include completed or attempted attacks generally involving unwanted sexual contact between the victim and offender. Sexual assaults may or may not involve force and include such things as grabbing or fondling. These definitions are the same ones used by the U.S. Department of Justice's annual National Crime Victimization Survey, the most comprehensive study of the incidence of rape.

5. Equal Employment Opportunity (EEO) Pre-complaint. An EEO pre-complaint is an allegation made by aggrieved employees who believe they have been discriminated against on the basis of race, color, religion, sex, national origin, age, disability or who believe they have been subjected to sexual harassment or retaliated against for opposing discrimination or for participating in the complaint process. Employees must initially contact an EEO counselor within 45 days of the date of the matter alleged to be discriminatory or, in the case of a personnel action, within 45 days of the effective date or when they become aware of the personnel action.

6. Formal EEO Complaint. A formal EEO complaint is a written complaint, filed using DD Form 2655, signed by the complainant or complainant's attorney, which is specific with regard to the claim(s) that the aggrieved person raised during pre-complaint processing.

7. Informal Military Equal Opportunity (MEO) Complaint. The MEO staff documents an informal MEO complaint on an AF Form 1587-1, Military Equal Opportunity Informal Complaint (complainant's signature optional). The complainant may orally address or prepare written correspondence to the alleged offender advising him/her of the inappropriate behavior with a clear message that continued behavior may or will result in formal complaint action, request intervention by a coworker, or use the chain of command.

8. Formal MEO Complaint. A formal MEO complaint is an allegation of sexual harassment that is submitted in writing by a military member on AF Form 1587 to 377 ABW/MEO and is signed by the complainant. Trained MEO technicians rather than the chain of command or other investigatory agencies clarify formal MEO complaints.

9. MEO Complaint Clarification. A process conducted by a trained MEO technician of gathering information for the commander or individual who has jurisdiction over the alleged offender. The clarification helps the commander to determine whether a "preponderance of evidence" exists that sexual harassment has occurred.

10. Complaints under Section 10 U.S.C. 1561. An investigation into allegations of sexual harassment, requested by an employee, and conducted by a Section 1561 Point of Contact (POC) investigator, as designated by the Installation Commander.

11. Commander Directed Investigation (CDI). Commanders have the inherent authority to investigate matters under their jurisdiction, unless preempted by higher authority. A Commander Directed Investigation is a process to gather, analyze, and record relevant information about matters of primary interest to command authorities. Unlike an IG investigation, a CDI is not intended to be an outside look by an "independent" office. Per AFI 90-301, *Inspector General Complaints,* "Commanders must not: Appoint IGs or IG staff members as investigation officers of CDIs." However, 377 ABW/IG staff will provide training to an individual appointed as an investigating officer (IO) for a CDI. The 377 ABW/IG staff will also provide an IO kit, a copy of the CDI Guide published by SAF/IGQ, and information enabling them access to an electronic tool kit maintained by SAF/IGQ. IOs are also required to coordinate with 377 ABW/JA prior to commencing a CDI to obtain guidance.

12. Computation of Time: All time periods in this instruction that are stated in terms of days are calendar days, unless otherwise stated.

Section B: Responsibilities and Reporting Requirements

13. Responsibilities of the Installation Commander (377 ABW/CC): The Commander is responsible for proper administration of the EEO and MEO complaint programs for all assigned wing and wing-serviced associate organizations at Kirtland AFB, and for advocating and

ensuring a harassment-free work environment for the assigned workforce. To meet this responsibility, the Commander must:

13.1. Ensure adequate support, publicity, training, and resources are available to the EEO and MEO managers, as necessary, to effectively administer programs and adequately track complaints of sexual harassment.

13.2. Ensure supervisors and managers understand and meet their responsibilities when they learn of an allegation of sexual harassment or sexual assault. All allegations of sexual assault must be immediately reported to AFOSI Det 116 at DSN 246-0999 or commercial (505) 846-0999.

13.3. Ensure installation employees and management officials provide full cooperation to EEO or MEO officials and/or appointed investigators who are processing or investigating sexual harassment complaints or conducting CDIs into allegations of sexual harassment.

13.4. Ensure accurate and timely reports and files are developed and submitted according to EEOC, DoD and AF regulations, directives, guidance, applicable laws, and statutes.

13.5. Ensure every allegation of sexual harassment is appropriately investigated.

14. Responsibilities of Commanders and Equivalent Civilian Directors under 10 U.S.C. 1561: When notified of an allegation of sexual harassment, Commanders and Equivalent Civilian Directors will:

14.1. Ensure copies of the written notification and final report are forwarded to the Installation Commander as well as the EEO Manager for entry into the centralized sexual harassment database.

14.2. Ensure an investigation of the allegations is commenced, or caused to be commenced.

14.3. Ensure the aggrieved person is advised of the commencement of the investigation.

14.4. Notify the designated Section 1561 POC, the EEO or the MEO manager, as appropriate, of the allegation and the commencement of the investigation.

14.5. If a CDI has been initiated or completed, an additional investigation pursuant to 10 U.S.C. 1561 is not required. If a CDI is conducted, follow instructions stated in paragraph 18, **Responsibilities of the IG.**

14.6. When notified of an allegation of sexual assault, immediately refer the allegation to AFOSI Det 116 at DSN 246-0999 or commercial (505) 846-0999, for action.

15. Responsibilities of Supervisors and Managers: When notified of an allegation of sexual harassment, the supervisor or manager will:

15.1. **Within one work day,** separate the alleged victim from the alleged harasser, when both are within the supervisor's or manager's authority, to prevent additional incidents and/or related allegations.

15.2. Direct the civilian employee to the EEO Manager or military member to the MEO office for information and guidance on appropriate options.

15.3. Notify the unit commander, or civilian equivalent, and the EEO Manager or MEO Office of allegations of sexual harassment **not later than the close of business the following workday**, whether or not the employee making the claim takes the allegations to EEO or MEO.

15.4. When notified of an allegation of sexual assault, immediately refer the allegation to AFOSI Det 116 at DSN 246-0999 or commercial (505) 846-0999, for action.

16. Responsibilities of the Point of Contact (POC) for Civilian Sexual Harassment Allegations. T he EEO Manager is the POC and is responsible to ensure that allegations of sexual harassment made by civilian employees at Kirtland AFB are processed promptly and effectively. The EEO Manager or his/her designee will:

16.1. Advise employees, supervisors, and senior officials on all aspects covered by Title VII, DoD and AF policies, and this instruction. In doing so, the EEO Manager will inform employees of their options when they claim sexual harassment, i.e., that they may elect the EEO process, request an investigation under the authority of 1 0 U .S.C. S ection 1 561, o r elect both or neither of these processes. When notified of an allegation of sexual assault, immediately refer the allegation to AFOSI Det 116 at DSN 246-0999 or commercial (505) 846-0999, for action.

16.2. Notify the Installation Commander, SJA, and organization commander or civilian equivalent, of the allegations regardless of whether the employee files any type of complaint or grievance.

16.3. Determine whether or not a prospective complaint is covered by Section 1561. If so, and if the complainant files a Section 1561 complaint, within 48 hours after initial contact by an aggrieved person the POC provides the commander, civilian equivalent, or military officer a detailed, written description of the allegation (Attachment 1).

16.4. Maintain a database of all sexual harassment allegations made by military members and civilian employees at Kirtland AFB. Not later than 1 November of each year, provide a report to the Installation Commander on all such complaints and the results of the investigations occurring in the preceding year.

16.5. Provide sexual harassment training for installation employees.

17. Responsibilities of the Military Equal Opportunity (MEO) Office: The MEO staff addresses all allegations of sexual harassment made by military members. When notified of an allegation of sexual assault, MEO immediately refers the allegation to AFOSI Det 116 at DSN 246-0999 or commercial (505) 846-0999, for action. MEO will document and follow-up on informal MEO complaints of sexual harassment until resolution.

17.1. To the extent practicable, within 72 hours after receipt of a formal complaint of sexual harassment, the MEO office will:

17.1.1. Forward a synopsis of the formal complaint, outlining each specific allegation to the installation commander, KAFB POC for Sexual Harassment Allegations, HQ AFMC/DP, and other HQ Personnel Offices for associate units, as applicable. NOTE: Synopses, initial and follow-up reports will not contain the identities of the complainant(s) or alleged offender(s).

17.1.2. Commence a clarification or investigation of the complaint.

17.1.3. Inform the complainant that the clarification or investigation has been initiated.

17.1.4. Complete a complaint clarification and/or investigation within 14 days and submit a final report to the installation commander within 20 days after receipt of the complaint. When these time standards cannot be met, MEO will submit a progress report to the installation commander within 20 days after receipt of the complaint and every 14 days thereafter, until the final report is submitted. Status reports will include reasons for the delay and estimated completion date. The installation commander must approve all extensions beyond established time standards specified above.

17.1.5. Include in the final report findings showing allegations were substantiated or unsubstantiated. If substantiated, the report will also include the identities of the offender(s) as well as complainant(s). Personal identifying data will not be released outside of official government channels except in compliance with the Freedom of Information Act (FOIA), Privacy Act and applicable Air Force directives. The privacy of individuals involved should be protected according to law and Air Force instructions.

17.1.6. Out-brief complainant and advise him/her of other avenues of redress, should the complainant be dissatisfied with the outcome. In unresolved cases, determine if referral to the IG is warranted. Please note: IAW Privacy Act of 1974, the complainant is not entitled to be told of what actions, if any, were taken against the offender(s).

17.1.7. Provide follow-up reports to the installation commander when an IG or commander-directed investigation into a formal complaint of sexual harassment is directed.

17.1.8. Report final disposition of the complaint to the AFMC Military Equal Opportunity office, AFMC/DPQ.

17.2. Additional details concerning the MEO complaint process are within AFI 36-2706, *Military Equal Opportunity and Treatment Program*.

18. Responsibilities of the IG:

18.1. Forward all active duty military allegations of sexual harassment to the MEO office. Immediately refer all allegations of sexual assault to AFOSI Det 116 at DSN 246-0999 or commercial (505) 846-0999, for action. Sexual harassment complaints against senior officials (O-6 selects and above and senior executive service civilians) will be handled through IG channels and reported IAW SAF/IG requirements. Complete senior official reporting requirements IAW AFI 90-301.

18.2. C ommander-directed i nvestigators w ill request assistance of the local MEO office, provide periodic updates to MEO upon request, and notify the MEO office of the results of the investigation. MEO will document assistance rendered, outcome of the case, and actual time spent providing assistance.

18.3. Since sexual assault is a criminal offense, all such allegations will be immediately referred to AFOSI Det 116 at DSN 246-0999 or commercial (505) 846-0999, for action.

Section C: Civilian EEO Complaints

19. In addition to other long-standing avenues of redress for sexual harassment allegations, to include EEO complaints, negotiated grievance procedures and mixed case Merit System Protection Board (MSPB) appeals, civilian employees can request a Section 1561 investigation. This policy applies only to those Kirtland AFB civilian employees who allege sexual harassment and fall under the supervision of a commanding officer or officer in charge of a unit, facility, or area of the Air Force. Determining whether or not a prospective complaint is covered under this policy is the responsibility of the EEO Manager of the installation who has been designated as the POC for Civilian Sexual Harassment Allegations. The EEO Manager or counselor will inform c omplainants covered by Section 1561 of their right to file a complaint under Section 1561.

20. Civilian employees eligible for pre-complaint counseling under this procedure have the following rights: (a) filing under one of the existing complaint procedures (as noted above), and (b) filing a sexual harassment complaint under Section 1561. They may do so simultaneously if they choose. Filing under Section 1561 will not serve to exhaust administrative remedies with respect to 29 CFR 1614 (the regulation implementing Title VII EEO complaint procedures for federal employees) or other employee grievance or appeal procedures. Command decisions regarding Section 1561 complaints are final, with no right of appeal to court, and compensatory damages are not available under Section 1561.

21. If an aggrieved civilian employee first initiates contact with an EEO Counselor for pre-complaint counseling, the EEO Counselor shall determine if sexual harassment is one of the issues to be addressed. If not, the EEO Counselor will continue with implementing EEOC regulations, management directives, and employing organization guidelines.

22. Within 48 hours after the filing of a Section 1561 complaint, the Section 1561 Point of Contact shall submit a detailed description of the allegations to the Installation Commander. To the extent practicable, within 72 hours of receipt of a Section 1561 complaint, a commanding officer, officer in charge, or civilian equivalent shall:

22.1. Forward a copy of the point of contact's written notification to the next superior officer in the chain of command who is authorized to convene a general court-martial.

22.2 Commence, or cause the commencement of, a Section 1561 investigation of the allegations (Attachment 2); and

22.3. Advise aggrieved person of the commencement of the investigation (Attachment 3).

23. If the complainant has requested a Section 1561 investigation, a commanding officer or officer in charge shall ensure, to the extent practicable, that the investigation of the allegation is completed not later than 14 days after the date on which the investigation commenced. If the investigation is not completed within 14 days after the investigation began, the commanding officer or officer in charge shall submit at that time an interim report to the next superior officer in the chain of command who is authorized to convene a general court-martial and every subsequent 14 day period until the investigation is completed. Upon receipt of the investigation results, the commanding officer or officer in charge shall:

23.1. Determine, within three days of receipt of the investigation report, if the allegations have been substantiated.

23.2. Notify the aggrieved person in writing within six days of receipt of the investigation findings of: (1) the outcome of the investigation; (2) the decision made on substantiation of the allegations; and (3) to the extent practicable, the decision on corrective actions taken or proposed.

23.3. Submit a final report on the results of the investigation, including any action resulting from the investigation, to the next superior officer in the chain of command who is authorized to convene a general court-martial.

24. Upon receipt of the results reported by the commanding officer or officer in charge, an aggrieved person may elect either to continue pursuant to 29 CFR 1614, if such a complaint has been filed, or to withdraw the complaint. Upon receipt of a decision under 29 CFR 1614, a complainant may elect to continue his or her Section 1561 complaint, if such a complaint has been filed, or to withdraw the complaint.

25. If a complainant is satisfied with the results of the Section 1561 investigation, he or she shall notify the EEO Counselor to withdraw any informal discrimination complaint or notify the

Civilian Personnel Office to withdraw any grievance or appeal alleging sexual harassment. If the complainant is not satisfied with the results of the Section 1561 investigation, he or she shall notify the EEO counselor within 5 days of the receipt of the report that he or she intends to pursue processing of the EEO complaint, grievance, or appeal.

Section D: Instructions For All Supervisors

If an employee alleges sexual harassment or sexual assault, a supervisor is not responsible to determine the validity of the allegation, but is responsible to treat the allegation seriously and follow this instruction and other policy mandates as appropriate. ***Taking no action is not an option.***

Henry L. Andrews, Jr.
HENRY L. ANDREWS, JR., Colonel, USAF
Commander

Attachment 1

SAMPLE MEMO ADVISING UNIT COMMANDER OF AN ALLEGATION OF SEXUAL HARASSMENT

MEMORANDUM FOR

FROM: 377 ABW/CCD

SUBJECT: Allegation of Sexual Harassment

1. In accordance with Section 591 of the 1998 National Defense Authorization Act 10 U.S.C., Section 1561, I have reviewed the complainant's allegations and determined that the complainant (is)(is not) a civilian employee under the supervision of a commanding officer or officer in charge of a unit, facility, or area of the Air Force and that sexual harassment (is)(is not) an issue in this case.

2. The complainant (did)(did not) request a 1561 investigation.

3. Based on the foregoing, this complaint (does)(does not) meet the requirements of 10 U.S.C. 1561 and is referred to you for (the following action) (informational purposes only):

a. Forward a copy of this memo to 377 ABW/CC.

b. Direct an investigation into the complainant's allegation(s).

c. Advise the complainant in writing that an investigation has begun.

d. Advise the complainant in writing of results of investigation and actions taken, as may be appropriate.

4. Atch 1 is the complainant's (summarized) (detailed) allegation. If you have any questions, please call me at 846-5369.

NAME
EEO Manager/POC for Civilian Sexual Harassment Allegations

Attachments:
1. Summary Description of Allegation
2. Sample Memo, Commander Appointment of Investigating Officer
3. Sample Memo, Notifying Complainant That an Investigation Has Been Initiated

Attachment 2

SAMPLE MEMO APPOINTING INVESTIGATING OFFICER TO CONDUCT A SECTION 1561 INVESTIGATION

MEMORANDUM FOR INVESTIGATING OFFICER

FROM: Unit Commander

SUBJECT: Commander Directed Investigation, RE: Allegation of Sexual Harassment

1. You are hereby appointed to inquire into allegations of sexual harassment made by (Name of Complainant) against (Name of Alleged Offender) that are employees of (Organization) located at (Building Number and Street Address).

2. You are directed to ascertain facts and develop conclusions regarding the allegations made by (Complainant). Prepare the case file according to the guidance contained in the Commander-Directed Investigation (CDI) Guide. Ensure that the findings and conclusions that you develop are appropriately characterized.

3. Consult with 377 ABW/JA, 846-4217, and 377 ABW/IG, 846-2411, prior to the start of the investigation for guidance in conducting and reporting this investigation.

4. This appointment order authorizes you all necessary assistance and cooperation from members of (Organization) to execute this tasking. You are authorized access to all records germane to this investigation.

5. You are directed to complete the investigation within 14 days of the date of this appointment letter, unless I approve an extension of time prior to the expiration of the original deadline. You are directed to submit a final report detailing the facts you have ascertained and the findings and conclusions you have developed within 20 days of the date of this appointment letter, unless I approve an extension of time.

NAME, Rank, USAF
Commander

cc:
377 ABW/JA
377 ABW/IG
377 ABW/CCD or ME (as appropriate)

Attachment 3

SAMPLE MEMO NOTIFYING COMPLAINANT THAT A 1561 INVESTIGATION HAS BEEN INITIATED

MEMORANDUM FOR COMPLAINANT

FROM: Unit Commander/Civilian Director Equivalent

SUBJECT: Commander Directed Investigation (CDI)

1. This is to inform you that under 10 U.S.C. § 1561, we have begun an investigation into your allegations of sexual harassment. (Rank, Name) has been appointed as the investigating officer. Command decisions under 10 U.S.C. § 1561 are final, with no right of appeal to the courts. Also, no compensatory damages are available.

2. This investigation does not exhaust any administrative remedies you may have under EEO Complaints Processing found in 29 C.F.R §1614. When the investigation is complete, you will be notified of the findings, the decision made on substantiation of the allegations, and, to the extent allowed by law, the corrective actions taken.

3. Upon receiving the results, you may elect either to continue with any complaint you have filed under 29 CFR §1614, or you may withdraw the complaint. Also, if you receive a decision under 29 CFR §1614, prior to receiving the results of this investigation, you may continue or withdraw your complaint.

NAME, Rank, USAF
Commander