

# Investigation Manual

## CHAPTER 11 - DISCRIMINATION/SEXUAL HARASSMENT

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### CHAPTER 11 - DISCRIMINATION/SEXUAL HARASSMENT

1101 **INTRODUCTION:** Employment discrimination in the private sector based on race, color, religion, sex or national origin was made unlawful by Title VII of the Civil Rights Act of 1964 (see 42 USC 2000e-2(a)). Coverage was extended to civilian employees of federal agencies in 1972. Although Congress has never made Title VII applicable to military members, the DoD prohibits such discrimination and generally follows the development of Title VII as interpreted by the Equal Employment Opportunity Commission (EEOC) and courts charged with deciding cases alleging discrimination against private and public sector civilian personnel. Return to Chapter Table of Contents.

1102 **SEXUAL HARASSMENT:** Although Title VII does not refer to sexual harassment, the EEOC issued guidelines in 1980 that defined sexual harassment and declared it a form of sex discrimination that violates Title VII (see 29 CFR

1604.11). The EEOC position was affirmed by the Supreme Court in *Merritor Savings Bank v. Vinson* (106 S.Ct. 2399 (1986)). Over the years, a number of federal agencies, including the DoD, have expanded upon the basic guidelines set forth by the EEOC. For example, the DoD and DoN have expanded the EEOC definition of sexual harassment by including supervisors and those in command positions who use or condone implicit or explicit sexual behavior to affect another's career, pay, or job. Nonetheless, the EEOC definition and guidelines remain central to the investigation of sexual harassment in the government and private sector. Thus cases that construe those guidelines are important to an understanding of sexual harassment in the DoD and the DoN. For example, the Supreme Court's 1993 decision in *Harris v. Forklift Systems, Inc.* (114 S.Ct. 367) resulted in the issuance of a 22 August 1994 SECDEF memo stating that "abusive work environment" harassment need not result in concrete psychological harm to the victim in order to be actionable within the DoD. The memo reiterates that DoD policy is the same for both military members and civilian personnel. Return to [Chapter Table of Contents](#).

**1103 THE COMMANDER'S HANDBOOK FOR PREVENTION OF SEXUAL HARASSMENT:** In recent years, the DoN has taken many steps to eliminate sexual harassment, including the issuance of SECNAVINST 5300.26B, "DoN Policy on Sexual Harassment," updated 6 January 1993, a complete overhaul and substantial expansion of the previous instruction. For the purpose of this IG investigations manual, the most important subsequent action was the issuance of "The Commander's Handbook for Prevention of Sexual Harassment" (The Commander's Handbook) in March 1994. Chapter 2 of the Commander's Handbook sets forth the definition of sexual harassment within the DoN and related terms. The Commander's Handbook also discusses DoN policy regarding sexual harassment, prevention, training, and grievance procedures (also known as the "Informal Resolution System"). Most important, Chapter 4 and Appendix M of the Commander's Handbook contain a detailed guide for the investigation of sexual harassment complaints at the unit level. This material applies to both civilian and military complainants and subjects. Return to [Chapter Table of Contents](#).

**1104 DISCRIMINATION INVESTIGATIONS:** The standards for the conduct of military discrimination investigations are contained in the Navy Equal Opportunity Manual, OPNAVINST 5354.1C. Similar to the Commander's Handbook, this reference is essential for the conduct and review of racial and other discrimination investigations, but applies only to military complainants and subjects. For DoN civilian employees, see paragraph 1109. See the following paragraph for reporting requirements for discrimination cases. Return to [Chapter Table of Contents](#).

**1105 COMMAND RESPONSIBILITY FOR INITIAL SEXUAL HARASSMENT INVESTIGATION:** Under current DoN policy, a local command bears the primary responsibility for investigating and resolving allegations of sexual harassment, and must act as quickly as possible.

Investigations should be started within one calendar day of the receipt of a complaint, and must be started within three calendar days. An OPREP-3 Navy Blue is required if the sexual harassment complaint is not resolved within 14 days, with status reports by UNIT SITREP every 14 days thereafter (60 and 30 days, respectively for reservists not on active duty). Thus, DoN IG organizations that receive complaints of sexual harassment should quickly determine whether the complainant has sought relief through the foregoing process. Complainants who have not yet done so should be encouraged to give the chain of command an opportunity to investigate and resolve the matter. Note that although the policy of mandatory reporting by message when time standards are not met in sexual harassment cases received more publicity than the reporting requirements for other discrimination cases, the "Navy Equal Opportunity/Sexual Harassment Complaint Form," used for all discrimination cases for military members (unless resolved under the Informal Resolution System), imposes the same reporting requirements for all discrimination cases, including those not alleging sexual harassment. Return to [Chapter Table of Contents](#).

**1106 IG RESPONSIBILITY FOR SEXUAL HARASSMENT INITIAL INVESTIGATION:** DoN policy also provides that complainants who do not feel comfortable with their chain of command may make their complaints directly to DoN IG organizations. Consequently, although it is appropriate initially to encourage a complainant to use the chain of command, a DoN IG organization must accept the complaint for action should the complainant insist upon IG investigative action. In that case, the reporting requirement mentioned in the foregoing paragraph rests with the IG organization that is tasked with the investigation. Note also that, even when the complainant initially takes the complaint to the local command, the commander has the authority to request that someone outside the command conduct the command inquiry, e.g., IG staff, command evaluator, EEO counselor, Equal Opportunity Program Specialist, etc. Return to [Chapter Table of Contents](#).

**1107 CONDUCT OF IG SEXUAL HARASSMENT INVESTIGATION:** When a DoN IG organization conducts an investigation into a complaint of sexual harassment, it should follow the guidance in this investigations manual as well as the guidance in Appendix M of the Commander's Handbook, which is reproduced in Appendix F of this investigations manual for convenience. Additional guidance for the conduct of more complex investigations, especially those alleging quid pro quo harassment (exchange of job benefits for sexual favors), may be found in the reading materials listed in the appendix to this investigations manual. Return to [Chapter Table of Contents](#).

**1108 MILITARY MEMBER FORMAL COMPLAINT FORM:** The DoN has created a four part "Navy Equal Opportunity (EO)/Sexual Harassment (SH) Formal Complaint Form" to record information concerning the filing, investigation, and resolution of equal opportunity and sexual harassment complaints. The form also provides advice to the complainant and command, and may be used to document allegations of reprisal for making complaints and

subsequent command action. This form is also reproduced in Appendix F. Although it is intended for use when the military member elects to have the chain of command investigate the complaint, it is also useful during IG investigations. IG investigators may review it with complainants and use it as a document in the IG investigation. For example, if a command inquiry was conducted prior to an IG investigation, the form is an essential document to review for actions taken prior to IG involvement. Return to [Chapter Table of Contents](#).

#### **1109 CIVILIAN DISCRIMINATION/SEXUAL HARASSMENT**

**COMPLAINT POLICY:** For guidance regarding the handling of civilian complaints at the local command level, see Chapters 4 and 7 of the Commander's Handbook, OCPMINST 12713.2, "Department of the Navy Discrimination Complaints," and OCPMINST 12720.1, "Equal Employment Opportunity and Affirmative Employment Programs." If the complaint of discrimination is not resolved during the informal stage, the formal complaint is now investigated by the DoD Office of Complaint Investigations. Consequently, there are few, if any, circumstances in which an IG investigation of civilian complaints of discrimination would be appropriate. One such instance would be when there is an allegation that appropriate local command procedures had not been followed. Return to [Chapter Table of Contents](#).

**1110 PROCESSING COMPLAINTS OF REPRISAL:** The October 1994 amendments to the Military Whistleblower Protection Act, discussed in [paragraph 1009](#), expressly prohibit reprisal against military members who file complaints of discrimination or sexual harassment. Thus, command and IG personnel who receive complaints of reprisal from a military member should provide the complainant the advice set forth at [paragraph 1013.2](#) and, if the complainant indicates a desire to file the complaint of reprisal with the DoDIG, offer assistance in doing so. Reprisal against civilian personnel is a prohibited personnel practice under the CSRA. See [paragraph 1013.1](#) for processing civilian cases of reprisal. Return to [Chapter Table of Contents](#).

**1111 SUGGESTED READING MATERIALS:** Essential references for DoN sexual harassment and equal opportunity policies for military and civilian DoN personnel are contained in Appendix J of the Commander's Handbook. See the appendix of this investigations manual for a list of other books concerning investigation of sexual harassment complaints. Return to [Chapter Table of Contents](#).