



# **US Army Corps of Engineers**

## **EQUAL EMPLOYMENT OPPORTUNITY (EEO) HANDBOOK FOR MANAGERS AND SUPERVISORS**

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# **I. Introduction**

Each manager and supervisor within the Federal government is charged with supporting the goals and objectives of equal employment opportunity (EEO) and affirmative employment. In order that these goals and objectives be met, it is necessary that managers and supervisors understand EEO and its processes.

## **A. Purpose**

This handbook is designed to assist managers and supervisors in their decision and policy making to facilitate equal opportunity in recruitment, hiring, promotion, retention, recognition, and disciplinary actions. This handbook is not designed to take the place of the advice, guidance, and EEO training that the EEO Office provides to supervisors.

## **B. Objectives**

The objectives of this handbook are to provide supervisors and managers with:

- ❑ A practical understanding of EEO and their responsibility to support EEO program goals and activities;
- ❑ An overview of the EEO laws and regulations;
- ❑ A practical understanding of affirmative employment;
- ❑ Tools to effectively manage a diverse workforce; and
- ❑ A guide to effective management from the EEO perspective.

## **C. Roles and Responsibilities**

Army Regulation 690-600 sets forth the following roles and responsibilities for the Commander, EEO Officer, Labor Counselor, the Civilian Personnel Official, and managers and supervisors in the EEO complaint process:

- ❑ The ***Commander*** will implement and enforce EEO policies as required by EEO laws; Presidential Executive Orders; EEOC, OPM, DoD, and Army regulations, policies, and directives; be personally responsible and accountable for the EEO climate within their area of responsibility; ensure that the EEO officer is organizationally placed in a direct reporting relationship with the head of the agency; ensure that managers and supervisors understand and meet their responsibilities in the discrimination complaint process; ensure that the following information is posted: the name, telephone number and address of the Army Director of EEO, the EEO Officer, and EEO counselors; ensure prompt implementation of remedies directed by EEOC or the Army Director of EEO; make timely recommendations or decisions on complaints; and promote the use of ADR to resolve disputes.

- ❑ The ***EEO Officer*** will administer a comprehensive EEO program; serve on the commander's direct staff as principal advisor to the commander on all EEO-related matters and issues; manage the discrimination complaint processing program in accordance with established Army procedures and EEOC guidelines; ensure every effort is made to resolve complaints at the earliest possible stage; administer the ADR program for EEO disputes; ensure counselors, investigators, and mediators are provided logistical support and access to personnel records and documents pertinent to the complaint; and, make the decision to accept or dismiss a complaint, subject to the final decision of the Army, after coordination with the labor counselor.
- ❑ The ***Labor Counselor*** will provide legal advice on EEO matters to the Commander, EEO officials, managers, and the appropriate civilian personnel officials; coordinate with the EEO Officer on acceptance or dismissal decisions; act as the Army's representative in investigations and EEOC hearings in individual and class complaints; draft and/or review proposed settlement agreements and offers of resolution; and notify and provide supporting documents to the EEO officer when litigation is initiated on a complaint.
- ❑ The ***Civilian Personnel Official*** will ensure that EEO Officers, EEO counselors, investigators, and agency representatives are given access to personnel records and copies of records and documents relevant to the complaint; retain relevant documents or records until notified by the EEO officer or agency representative that no further administrative or legal decision is pending on the complaint; and perform regulatory reviews and provide technical support to agency representatives, EEO counselors and EEO officers.
- ❑ ***Managers*** and ***supervisors*** at all levels will ensure all members of the workforce refrain from actions or comments that may be perceived as having a prohibited discriminatory tone; act promptly to prevent or correct situations that may give rise to complaints of discrimination; take corrective action against employees who have been found to have engaged in discriminatory practices; cooperate with the EEO official's requests for participation in EEO proceedings; ensure complainants and their representatives, if employees, are permitted reasonable time to work on their complaint; and participate in the ADR process.

## **II. Equal Employment Opportunity**

Equal Employment Opportunity (EEO) means eliminating barriers to ensure that all employees and applicants for employment are considered for the employment of their choice and have the chance to perform to their maximum potential. It means promoting a work environment that is free of unlawful discrimination and sexual harassment, is accessible to individuals with disabilities, ensures fair and equitable treatment for all employees, values workforce diversity, and fosters mutual respect to achieve the mission of USACE and the Army. EEO concerns all aspects of employment including recruitment, pay and other rewards, career development and work conditions.

## **A. Statutes**

- ❑ Title VII of the Civil Rights Act of 1964: prohibits employment discrimination based on race, color, religion, national origin, sex.
- ❑ The Equal Pay Act of 1963 (EPA): protects men and women who perform substantially equal work in the same establishment from sex-based wage discrimination.
- ❑ Age Discrimination in Employment Act of 1967 (ADEA): protects individuals who are 40 years of age or older.
- ❑ Sections 501 and 505 of the Rehabilitation Act of 1973: prohibits discrimination against qualified individuals with disabilities who work in the Federal government.
- ❑ The Civil Rights Act of 1991: provides monetary damages in cases of intentional discrimination; allows for complainants to have a jury trial, if requested, once complaint has reached the courts; and provides that complainants have 90 days to file court action after receipt of a final agency decision.
- ❑ Alternative Dispute Resolution Act of 1996: Provides for agencies to use alternative means for the resolution of disputes in the Federal administrative process.
- ❑ Section 301 of the No Fear Act of 2002: Requires each agency to post quarterly on its public Web site certain summary statistical data relating to equal employment opportunity complaints filed against them under 29 C.F.R. Part 1614, and notify current and former employees, and applicants for Federal employment of their rights and protection against discrimination, retaliation, and whistleblower actions.

## **B. Regulations**

- ❑ 29 Code of Federal Regulations (CFR), Part 1614: sets forth responsibilities and guidelines for establishing and maintaining an EEO program in the Federal government.
- ❑ Management Directive 110 (MD 110): developed by the Equal Employment Opportunity Commission (EEOC) to prescribe the procedures and guidelines for processing complaints of discrimination.
- ❑ Management Directive 715 (MD 715): developed by EEOC to prescribe requirements for developing a model EEO program through the identification of barriers to equal employment opportunity and the development of action items to eliminate such barriers.
- ❑ Army Regulation (AR) 690-600: sets forth the procedures for administering EEO program within the Department of the Army.

### **III. Affirmative Employment**

Affirmative employment is a conscious, deliberate effort to ensure qualified minorities, disabled and female employees are given a full and fair opportunity to be represented in, and succeed in the agency's workforce. In order to determine full representation of a group in an agency's workforce, affirmative employment program planning must be undertaken. Affirmative Employment Plans (AEPs) contain a detailed set of goals, objectives, and action items developed in response to an analysis of specific EEO program areas. This analysis is conducted by the EEO Officer with assistance of management, human resources, and members of the special emphasis program committees. The specific program areas that are analyzed are:

- Prevention of Sexual Harassment
- EEO Organization and Resources
- EEO Workforce Profile
- Discrimination Complaints
- Employee Development Programs
- Promotions
- Separations
- Recruitment and Hiring
- EEO Program Evaluation

EEO has oversight responsibility for the Affirmative Employment Plan for Women and Minorities, and in some organizations, the Affirmative Action Plan for Persons with Disabilities. The EEOC MD715 sets forth specific requirements for developing agency's AEPs to reflect actions for building and maintaining model EEO programs.

#### **A. Affirmative Employment Plan for Women and Minorities (AEP)**

The affirmative employment plan for women and minorities is a detailed analysis of the agency's workforce, using the most recent census data on the available civilian labor force as the framework. The analysis includes the number of women and minorities in identified occupational categories, job series, and grades compared to their representation in the available civilian labor pool. The plan requires managers to identify specific efforts to recruit qualified women and minorities, and to reevaluate selection criteria to ensure job-related requirements are reflected.

Barriers to affirmative employment of women and minorities are identified and action items, goals, and timetables for achieving goals are developed and assigned to the appropriate responsible management official. The EEO Officer monitors progress toward the achievement of the goals.

#### **B. Affirmative Action Plan for Persons With Disabilities**

The Affirmative Action Plan for Persons with Disabilities requires goals and timetables for accomplishment of those goals. Elements of the plan include:

- A policy statement, signed by the Commander, stating the organization's commitment to affirmative action for persons with disabilities and outlining affirmative action

responsibilities for each manager and supervisor.

- ❑ A statement on policy dissemination that should include all employees and union officials, where appropriate. Public and private recruitment sources, subcontractors, vendors, and suppliers must also be notified of the policy and their support of the policy requested.
- ❑ Appointment of a member of top management to implement, direct, and coordinate the plan.
- ❑ An internal auditing and reporting process to help monitor and measure progress in each aspect of the plan.
- ❑ A description of problem areas and the corrective action to be taken.

### **C. Management Directive 715**

This directive provides policy guidance and standards to all Federal agencies for establishing and maintaining effective affirmative action programs of equal employment opportunity under Section 717 of Title VII (Part A) and effective affirmative action programs under Section 501 of the Rehabilitation Act (Part B). Its objective is to ensure that all employees and applicants for employment enjoy equality of opportunity in the Federal workplace regardless of race, sex, national origin, color, religion, disability or reprisal. Managers should consult their EEO Office for further guidance and interpretation of this directive.

## **IV. The EEO Complaint Process**

### **A. What is Discrimination?**

Discrimination can be simply defined as unfavorable or unfair treatment of a person or class of people in comparison to others who are not members of the same protected class. Protected class includes race, color, religion, sex, age, national origin, and disability. There are two types of discrimination recognized by the courts:

- ❑ **Disparate Treatment** is the most common allegation a supervisor may confront. Employees may claim they were treated differently because of their race, color, sex, age, nationality, religion, and/or disability. This claim usually follows some form of personnel action.
- ❑ **Disparate Impact** focuses on a system (such as promotion, training, or entrance examination) that appears to treat everyone alike, but has the effect of harming a particular group. The claim may be made by an individual or a group. If the claim is filed by a group, it is called a **class action complaint**.

Employees may claim discrimination based on eight specific bases:

- **RACE:** Refers to a group of people who are united by a common history, nationality, or tradition.

- **COLOR:** Refers to the actual shade of one's skin and may constitute a separate factor regardless of race. It may also refer to a preference for or bias against people of a particular race who are darker or lighter in skin color.
- **SEX:** It is unlawful to discriminate against any employee or applicant for employment because of his/her sex with regards to hiring, terminating, promoting, compensating, job training, or any other term or condition of employment.
  - a. Sexual Harassment:** Refers to behaviors that are unwelcome, deliberate, repeated, and are sexual in nature.
  - b. Equal Pay Act:** Compensating men and women differently for equal work.
- **RELIGION:** Refers to a person's religious beliefs or affiliation, lack of either or strongly held beliefs or creed. Religious discrimination can be used as a basis for a complaint when either the employee is treated differently or if the organization fails to make reasonable accommodation of needs required by the person's religion.
- **NATIONAL ORIGIN:** Is a basis for discrimination involving employment decisions or treating a person differently because of his/her country of origin, ethnicity, accent, or because it is believed that he/she has a particular ethnic background, and treating someone less favorably at work because of marriage to or association with someone of a different nationality.
- **AGE:** Age discrimination involves individuals who are age 40 and older.
- **PHYSICAL AND MENTAL DISABILITIES:** Defined by the Rehabilitation Act of 1973 as any person who has a physical or mental impairment which substantially limits one or more of such person's major life activities, has a record of such impairment or is regarded as having such impairment. The same law requires reasonable accommodation of these persons. It also covers treating people as though they had a disability when they do not, and treating people based on a record of having had a disability (i.e., someone who had a disability and has recovered or who was once incorrectly classified as having a disability).
- **REPRISAL:** The unlawful restraint, coercion, interference, intimidation or discrimination against complainants, representatives, witnesses, EEO staff officials or any other agency official responsible for processing complaints during any stage in the presentation and processing of the complaint or because of any opposition to any unlawful EEO employment discrimination. In order to be considered reprisal, the current incident of discrimination must have occurred within a relatively current period of time, e.g., within one year, from the previous Title VII activity.

## **B. The Complaint Process:**



## **1. The Pre-complaint**

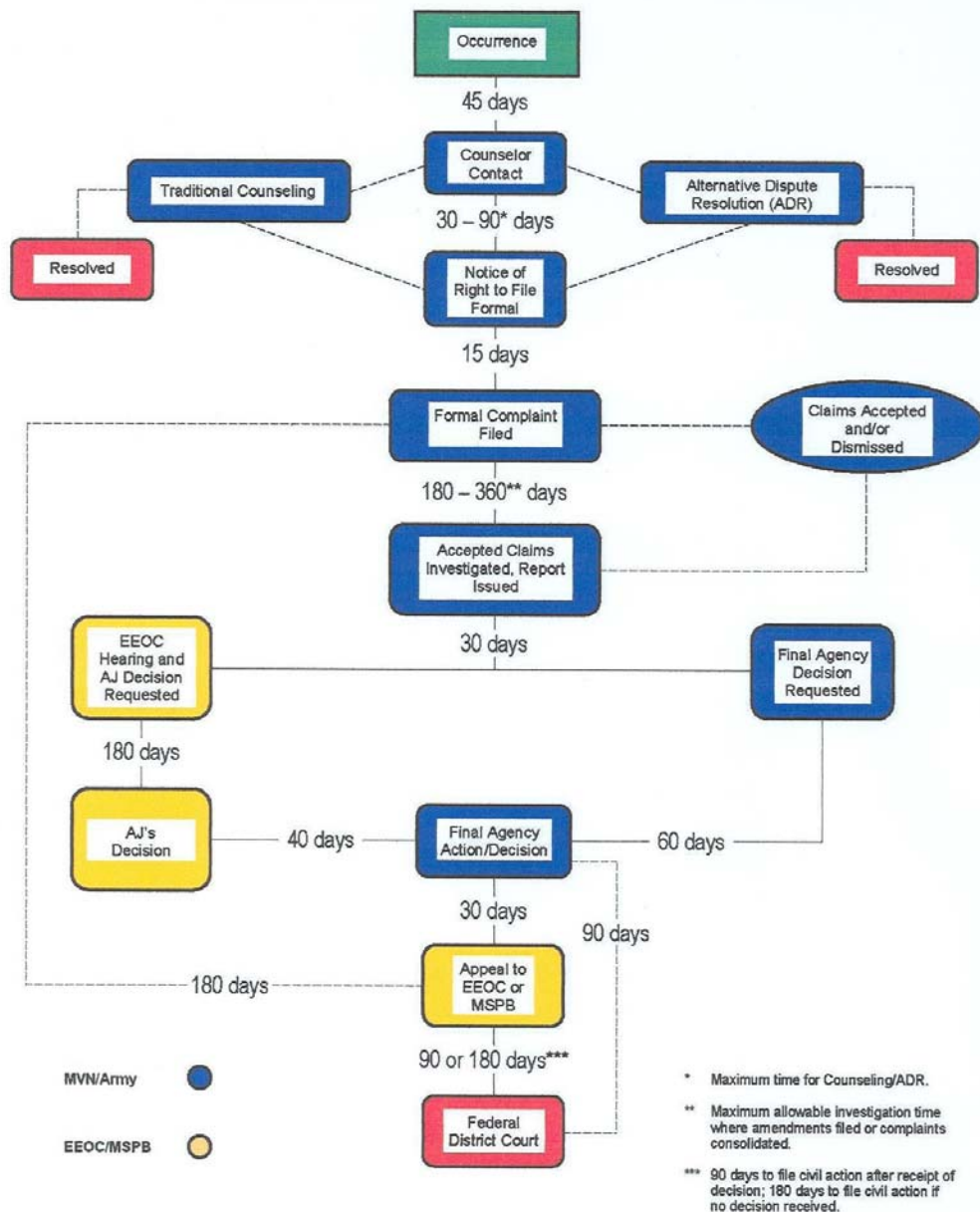
The EEO Office is the first point of contact for employees and applicants for employment who believe they have been subjected to employment discrimination. This contact must be made within 45 calendar days of the alleged act of discrimination; within 45 calendar days of the time when the complainant first became aware of the alleged act of discrimination, or if it is a personnel action, within 45 calendar days of its effective date.

The EEO Officer assigns an EEO counselor to conduct an informal inquiry into the matter that gave rise to the allegation of discrimination. The counselor's primary responsibility is to gather facts and make every effort to resolve complaints in the earliest possible stages. While the counselor does not determine whether or not discrimination actually took place, counselors often will make recommendations for resolution based on the information that they have gathered.

The Counselor has 30 calendar days, from the date of contact with the complainant, to attempt an informal resolution. Early in the informal counseling stage, the Counselor will explain USACE's Alternative Dispute Resolution (see section below) process to the complainant. Participation in ADR is voluntary for the complainant. If ADR is offered to the complainant, and the complainant agrees, management has an obligation to participate.

The following is a chart that depicts the complaint process from informal through formal stages. This chart shows the steps in the pre-complaint stage, including use of ADR, and the steps in the formal stage. This chart will assist you in understanding the process to include process timelines, the various steps included in properly handling a complaint of discrimination, and the Federal agencies and entities other than the Department of the Army involved in the complaint process. **Please note that MVN/Army • is used in the chart only for the purpose of indicating actions taken by districts. It is not intended to be construed to mean that MVN is the processor for all USACE complaints of discrimination.**

## OVERVIEW OF EEO COMPLAINT PROCESS



### 2. Formal Complaint

If an individual decides to file a formal complaint he/she has 15 calendar days from the date the counselor gives them the “Notice of Right-to-File”. The complaint must be in writing (use DA Form 2590-R available in the EEO Office) and may be filed with the Secretary of the Army, the EEO Officer or the Commander. If the aggrieved individual chooses to file with an official other

than the EEO Officer, they should also submit a copy of the complaint to the EEO Officer since the complaint will be processed by the officer.

Upon receipt and acceptance of a formal complaint, the EEO Officer will request an investigation from the Department of Defense Civilian Personnel Management Service Office of Complaints Investigation (OCI). Sworn or affirmed testimony will be taken from the complainant, any witnesses, and the responsible management official. All parties in the dispute will be notified, in advance, of the date and time of the investigation and must be available to meet with the investigator.

**a. You have being named in an EEO complaint:**

If you are named in a discrimination complaint as the supervisor or manager responsible for the alleged discriminatory act(s), you will be given an adequate opportunity to respond to the allegations made by the complainant and to any documentation or witness statements presented to support the allegations. You will also have an opportunity to respond to any documentation collected by the OCI Investigator that names or implicates you. As a responsible management official, you are entitled to a representative, as long as the selection does not present a conflict of interest. The Corps' Labor Counselor/Agency Representative represents the Army and can not serve as a personal representative.

**b. Your responsibility in the complaints process:**

The following information provides guidance to assist you in fulfilling your responsibility to the EEO process if you are named as a responsible management official in a discrimination complaint.

- ❑ Gather all documents related to the complaint, make copies, & file them where you can easily retrieve them.
- ❑ Exercise your right to have a representative. The EEO and Human Resource Officers and their staffs are neutral advisors and may not serve as your representative. Also, the Labor Counselor may not serve as your personal representative.
- ❑ Gather your thoughts and review the decision and your actions leading to it.
- ❑ During the investigation, keep your statements factual. Do not offer opinions. Provide factual information relevant to the issues and/or allegations.
- ❑ If you have any questions regarding your rights and obligations or the discrimination complaint process, contact the EEO Office.
- ❑ Do not discuss the complaint with individuals who do not have a “need to know.” Do not discuss the complaint directly with the complainant unless the discussion is a part of the EEO counseling and/or ADR procedures.
- ❑ Above all, keep calm. Try not to take the complaint personally.

If you are named as a responsible management official, you will be required to give a statement regarding why you made the decision that is in dispute. When called to give a

statement to an EEO official, make sure that you are prepared. You have the right to request that the interview does not take place until you have had time to prepare.

### **3. The EEOC Administrative Hearing**

In formal EEO complaint processing, a complainant may request a hearing before an EEOC Administrative Judge (AJ). An EEOC AJ is a neutral full-time official of the EEOC who presides over hearings and listens to both sides of the complaint. The **hearing conference** is informal and conducted telephonically. The **hearing** is very formal and conducted in a manner similar to a trial.

Management officials, the complainant and others who have observed the dispute or have pertinent information may be called to testify as witnesses. The presentation of the Army's case is done by the Agency Representative/Labor counselor. A complainant may present their own case and/or they may have a representative.

The Administrative Judge must make a recommended finding based on the evidence presented in the record. The Department of Army EEO Office may either reject or accept the finding. If the allegation of discrimination is found to be supported, the organization must then provide the remedy that makes the employee whole. If the allegation is found to be unsupported, the complainant may then appeal the Army's decision. The complainant may also appeal if dissatisfied with the remedy.

If the agency has not made a final decision within 180 days of filing a formal complaint, the complainant may initiate action in a Federal District Court.

### **C. The USACE Alternative Dispute Resolution Program (ADR):**

Alternative Dispute Resolution is a term used to describe the method for resolving conflict in a collaborative framework with a neutral third party. The Corps of Engineers has selected **mediation** as the ADR method to be used to resolve employment-related disputes.

**Mediation** is the intervention in a dispute of an impartial and neutral third party, who has no decision-making authority. The objective is to assist the parties to voluntarily reach an acceptable resolution of the issues in dispute.

Confidentiality is essential to the success of all ADR proceedings. By statute at 5 U.S.C. Section 574, Congress has provided for the preservation of confidentiality of information provided during ADR proceedings. Information obtained in ADR proceedings may not be used later by or against the aggrieved individual.

Participants in ADR include the complainant, the responsible management official, the mediator, and the agency designated resolution official. The disputing parties have the right to bring a representative, if they choose; however, the disputing parties, not their representatives, will be expected to speak on their own behalf during mediation.

The resolution officials are commanders, or their designees, who are authorized to engage in mediation

and have the authority to execute settlement agreements. The resolution official will have no direct involvement in the dispute.

## **D. Sexual Harassment**

Sexual harassment is a form of sex discrimination that violates Title VII of the Civil Rights Act of 1964. DoD, HQDA, HQUSACE, USACE Division and District policies further define what is considered sexual harassment and establish the parameters for handling such allegations. Supervisors and employees need to be made aware that the Army promulgates a zero tolerance policy for behaviors that are construed as sexual harassment. The EEOC defines sexual harassment as... unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when this conduct explicitly or implicitly affects an individual's employment, unreasonably interferes with an individual's work performance, or creates an intimidating, hostile, or offensive work environment. It is important to remember that:

1. The victim as well as the harasser may be a male or a female. The victim does not have to be of the opposite sex. Also, the victim does not have to be the person harassed but could be anyone affected by the offensive conduct.
2. Allegations or potential problems must be immediately reported to the Commander and the EEO Officer
3. The investigation and processing of sexual harassment complaints are expedited under 10 U.S.C. Section 1561.
4. If sexual harassment is alleged, an AR 15-6 investigation should be conducted to determine culpability.

Sexual harassment may take several forms: verbal; non-verbal; and physical. Verbal harassment includes telling risqué jokes; asking for sexual favors; comments about one's sexual anatomy; pursuing an unwanted relationship; and unwanted compliments with sexual overtones. Non-verbal harassment includes leering; staring at one's sexual anatomy; elevator eyes; and displaying sexually-suggestive photos, magazines, calendars. Physical harassment includes touching, patting, rubbing against someone, hugging, and standing too close.

## **E. Hostile Environment**

A common form of harassment is hostile environment. In determining whether harassment has created a hostile environment, the harassment must be sufficiently severe or pervasive. The harasser's conduct should be evaluated from the objective standpoint of a "reasonable person." Thus, if the challenged conduct would not substantially affect the work environment of a reasonable person, no violation should be found; however, the "reasonable person" standard should consider the victim's perspective and not stereotyped notions of acceptable behavior.

1. **Some examples of hostile environment sexual harassment are:**

- ❑ A female employee complains to you that after refusing the sexual advances of a male supervisor, he made comments about her to other employees in the workgroup and she is now being excluded from workgroup activities. She states she is uncomfortable with the work environment and wants the comments and exclusion to stop.
- ❑ A female employee complains to you that a male coworker made repeated unwelcome sexual comments and unwelcome sexual advances toward her. She has asked the coworker to stop the behavior on several occasions. She states that the male coworker told her that if she complains, he will tell other coworkers that she is a flirt and a trouble maker who should be avoided. She complains that being labeled and avoided by the other coworkers has made it extremely difficult for her to accomplish tasks that involve group interaction.

## **2. What can you do about it?**

- ❑ Protect your employees, yourself, and the organization against incidents of sexual harassment by taking pro-active, assertive actions that can help prevent sexual harassment from occurring.
- ❑ Actively demonstrate intolerance for sexual harassment. Encourage employees to *assertively* respond to situations/behaviors that they find offensive so that the situation may be resolved at the lowest level. Challenge employees to remain consistent and persistent in the message they send-in words and in actions.
- ❑ Report any harassing behavior to the EEO Officer immediately.
- ❑ Recognize the signs of harassment and stop it before it becomes a problem; be proactive.
- ❑ When an employee makes an allegation, ask the employee to describe the behavior he/she finds offensive. Give status to an employee's allegation-take the allegation seriously.
- ❑ Do not judge the "merit" of the complaint based on your personal standards of "unwanted" or "of a sexual nature." If the perception of the behavior described by the employee is within the policy guidelines, then the complaint is legitimate.

## **V. Special Emphasis Program**

The Special Emphasis Program (SEP) was created to assist organizations in efforts to achieve a workforce in which women, minorities, and people with disabilities are fully represented throughout the organization. It provides an opportunity for more individuals to become involved and contribute to the organization's affirmative employment goals. It is an integral part of the overall Equal Employment Opportunity Program and strives to ensure equal opportunity in the hiring, advancement, training, and treatment of women and minorities. It provides a means of incorporating EEO goals into the Corps' everyday personnel relations.

The SEP committee maintains regular contact with local groups and organizations concerned with improving employment and career opportunities for women, minorities, and people with disabilities. Good community relations are built through the sharing of information and resources.

The District EEO Officer is responsible for managing the affirmative employment program and the Special Emphasis Program. By regulation, the SEP represents a unified commitment to those individuals serviced by the:

- Federal Women’s Program**
- Hispanic Employment Program**
- Black Employment Program**
- Disability Employment Program**
- Asian Pacific American Employment Program**
- Native American Employment Program**

However, unofficially, the program strives to meet all of the equal opportunity needs of the entire workforce. As a supervisor, you can demonstrate support of the SEP by chairing a committee, serving on one or more subcommittees (where applicable), or volunteering to assist with SEP activities, and attending and encouraging your subordinate staff to participate in SEP activities.

## **VI. Diversity**

Headquarters Department of the Army (HQDA) defines diversity as....."a workforce comprised of individuals from multiple segments of society who work in an environment in which all collaborate to achieve common organizational objectives, while succeeding individually. HQDA states the goal... "to improve the effectiveness of human resources, individually, and organizationally, so that all members contribute to their maximum potential."

Diversity also refers to the ways people differ from each other:

**Culturally**, we vary in:

- Gender
- Ethnicity
- Sexual orientation
- Educational background
- Physical/mental ability
- Age
- Race
- Religion
- Lifestyle
- Language

**Functionally**, we vary in the how we:

- Think
- Process information
- Respond to authority
- Learn
- Show respect
- Reach agreements

**Historically**, we vary in:

- Family make-up
- Political outlook
- Perspective

## **VII. Pitfalls for Supervisors**

Too often, managers and supervisors, whether consciously or unconsciously, make decisions that lead to complaints of discrimination. These decisions may be based on past experiences, lack of information, lack of adequate documentation to support action, or poor judgment. Below, you will find some pitfalls that become causes for action against supervisors and managers and that may give rise to complaints of discrimination.

### **a. Performance Appraisals:**

- ❑ Using the appraisal as a counseling statement. Inflating/deflating performance rating.
- ❑ Derogatory remarks on appraisals not related to the level of performance.
- ❑ Failing to take legitimate performance-based action.

### **b. Disciplinary Actions:**

- ❑ Failing to document conduct problems.
- ❑ Differential treatment in disciplinary actions.
- ❑ Providing personal negative feedback in front of peers or calling an employee in where everyone can hear that they are about to receive counseling.
- ❑ Failing to take a legitimate disciplinary action.

### **c. Selections:**

- ❑ Making selections for awards and/or promotions based on other than job-related factors.
- ❑ Making age-related comments in selections.
- ❑ Failing to give appropriate consideration because that candidate has a disability that may need to be accommodated.
- ❑ Failing to give appropriate consideration to candidates from underrepresented EEO groups when there is a numerical goal for that group in the affirmative employment plan.
- ❑ Demanding higher qualifications from minorities, women, or persons with disabilities.
- ❑ Refusing to give appropriate consideration to a qualified candidate because of their past involvement in the grievance, EEO, or other official complaint process; and, sharing such involvement with other selecting officials.
- ❑ The Refusing to select a minority, woman, or disabled person because of fear that that candidate would not fit in or that the work group would not accept that individual in the workplace.

### **d. Other Areas:**

- ❑ Providing derogatory comments to a prospective employer of selecting official when the information cannot be verified in the employee's official records.
- ❑ Yelling, screaming, cursing, using a raised voice, or verbally attacking an individual instead of discussing inappropriate behavior or addressing a specific performance deficiency.
- ❑ Failing to investigate and/or take appropriate action when an employee brings an allegation of harassment or abuse to the supervisor's attention' and, failing to bring closure back to the individuals, both the one(s) who made the allegation and the one(s) alleged to have engaged in the offending behavior.
- ❑ Failing to support EEO programs, goals, and objectives.



## **APPENDIX A**

### **Summary of the Federal EEO Laws and Orders**

#### **TITLE VII, CIVIL RIGHTS ACT OF 1964, AS AMENDED**

Prohibits discrimination on the basis of race, color, religion, sex, or national origin in the Federal government. Prohibits practices identified by statistically determined adverse impact as well as intentional unequal treatment. Personnel actions involving hiring, placement, training, promotion, termination, and layoff are covered. Title VII established the Equal Employment Opportunity Commission (EEOC) to enforce the law. The amendment in 1972 enables the EEOC to enforce Title VII through court action.

#### **SECTION 717 OF TITLE VII**

In the 1972 amendments to Title VII of the Civil Rights Act (Section 717, 42 U.S.C. 2000e-16), Congress required agencies to maintain affirmative employment programs to ensure enforcement of Federal equal employment opportunity policy; to apply the same legal standards to prohibited discrimination established for private employers to the Federal government; and to eliminate discrimination that Congress found existing throughout the Federal employment system.

#### **CIVIL RIGHTS ACT OF 1991 (CRA)**

Amended Title VII, Civil Rights Act of 1964 by authorizing the payment of compensatory damages for such things as emotional pain, suffering, and future economic losses. The amendment created the right to a jury trial and entitlement to attorneys' fees for successful pursuit of discrimination complaints.

Established the standard in adverse impact employment discrimination cases that, once the plaintiff makes a prima facie showing of discrimination, the burden of production/persuasion shifts to the agency.

#### **AGE DISCRIMINATION IN EMPLOYMENT ACT OF 1967, AS AMENDED**

Prohibits discriminating against persons between the ages of 40 and 70 in any area of employment because of age. Some retirement and/or benefit systems are exempt from these provisions.

#### **REHABILITATION ACT OF 1973, AS AMENDED** (Provisions of the Americans with Disabilities Act of 1990 are incorporated into this statute)

The purpose of this act is to make it easier for disabled persons to hold jobs, travel, use public communication services and integrate into society. The act prohibits discrimination based on disabilities in the areas of employment, public services, public transportation, public accommodations, and telecommunications. Disabilities include visual, speech,

hearing and orthopedic impairments, tuberculosis, HIV infection and AIDS, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, and psychiatric disorders.

### **FAMILY AND MEDICAL LEAVE ACT OF 1993 (5 U.S.C. Section 6382)**

Requires Federal agencies and departments to allow employees to take up to twelve weeks of leave without pay, provided that the employee or a member of his/her immediate family (spouse, son, daughter, or parent) has a serious health condition and the employee meets several other statutory criteria. The leave may be taken intermittently or on a reduced leave schedule when medically necessary. Agencies may require the employee to transfer temporarily to another position under certain circumstances.

### **REHABILITATION ACT OF 1973**

Section 501 prohibits employment discrimination against qualified individuals with disabilities in the Federal sector. The term "individual with a disability" means...any person who (i) has a physical or mental impairment which substantially limits one or more of such person's major life activities, (ii) has a record of such an impairment, or (iii) is regarded as having such an impairment. Section 505 contains provisions governing remedies and attorney's fees under Section 501. Section 508 requires Federal agencies to procure, use, maintain, and develop only accessible electronic and information technology, unless doing so imposes an undue burden. National security systems are exempt.

### **EXECUTIVE ORDER 11246, AS AMENDED BY EXECUTIVE ORDER 11375**

Requires all Federal contractors and subcontractors with contracts over \$50,000 and 50 or more employees to develop and implement an Affirmative Action Plan to be monitored by the department of Labor. Revised Order 4 covers underutilization of females and minorities and Rule 410:2741 covers payment of dues in private clubs that discriminate on the basis of race, sex, religion, and national origin.

## **APPENDIX B**

### **ACRONYMS, TERMS AND DEFINITIONS**

**ADEA** -Age Discrimination in Employment Act  
**ADR** -Alternative Dispute Resolution  
**AEP** - Affirmative Employment Program  
**AEPP** - Affirmative Employment Program Plan  
**AI/AN** - American Indian/Alaskan Native  
**AI/ANEP** - American Indian/Alaskan Native Employment Program  
**AJ** -Administrative Judge  
**A/PAEP** - Asian/ Pacific American Employment Program  
**A/PAEPM** - Asian/ Pacific American Employment Program Manager  
**BEP** - Black Employment Program  
**BIG** - Blacks in Government  
**29 CFR 1614** - Code of Federal Regulations on Federal Sector Equal Employment Opportunity  
**CPAC** -Civilian Personnel Advisory Center  
**CPM** -Career Program Manager  
**CPOC** - Civilian Personnel Operations Center  
**DA** - Department of the Army  
**DCPDS**- Defense Civilian Personnel Data System  
**DCSPER** - Deputy Chief of Staff for Personnel  
**DoD** - Department of Defense  
**DVAAP** - Disabled Veterans Affirmative Action Program  
**EPA** -Equal Pay Act  
**EEO** - Equal Employment Opportunity  
**EEOC** - Equal Employment Opportunity Commission  
**EEEO** - Equal Employment Opportunity Officer  
**EEOCCRA** - Equal Employment Opportunity Compliance Complaints Review Agency  
**FAD** - Final Army Decision  
**FEORP** - Federal Equal Opportunity Recruitment Program  
**FWP** - Federal Women's Program  
**HBCU** - Historically Black Colleges and Universities  
**HEP** - Hispanic Employment Program  
**HIS** - Hispanic Serving Institutions  
**MACOM** - Major Army Command  
**MIS** - Minority Serving Institutions  
**MSPB** - Merit Systems Protection Board  
**NAACP** - National Association for the Advancement of Colored People  
**OCI** - Office of Complaints Investigation  
**OPM** - Office of Personnel Management  
**PIWD** - Program for Individuals with Disabilities  
**RNO** - Race or National Origin  
**SAMR-SFEOA** - Secretary of the Army (Manpower and Reserve Affairs) – Equal Employment Opportunity Agency  
**SEP** - Special Emphasis Program  
**SEPM** - Special Emphasis Program Manager

**Affirmative Employment:** Action taken to provide equal employment opportunity in hiring, promotion, training, recognition, and all other aspects of employment to minority group members, women, individuals with disabilities and disabled veterans.

**American Indian/Alaskan Native:** Used to describe the 510 Federally recognized tribes, including the 200 Alaskan Native groups such as Eskimos and the Aleuts.

**Asian/Pacific American:** A person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent, or the Pacific Islands.

**Discrimination:** Illegal treatment of a person or group based on race, color, national origin, religion, sex, age, or disability.

**Disparate Treatment:** Treating an employee of another race, religion, sex, color, or national origin differently.

**Equal Employment Opportunity:** The right of all persons to work and advance on the basis of merit, ability, and potential, free from social, personal, or institutional barriers of prejudice and discrimination.

**Individual with Disability:** An individual who has a physical or mental impairment that substantially limits one or more major life activity, has a record of such impairment, or is regarded as having such an impairment.

**Hispanic:** A person of Puerto Rican, Mexican, Cuban, Central or South American, or other Spanish culture or origin regardless of race.

**Minority:** A person having origins in Black racial groups of Africa; Mexican, Puerto Rican, Cuban, Central or South American or other Spanish culture or origin regardless of race; Asians; Pacific Islanders; American Indians or Alaskan Natives.

**Sexual Harassment:** Deliberate or repeated, unsolicited verbal comments, gestures or physical contact of a sexual nature that are unwelcome.

**Standard Deviation:** A measure of uncertainty in a random variable; a summary measure of the differences of each observation from the mean.

**Underutilization:** Having fewer minorities or women in a particular job group than would reasonably be expected by their availability in the job market.

**Disabled veterans:** Persons entitled to compensation for a disability incurred or aggravated in the line of duty that caused release or discharge from active duty.

**Qualified Disabled Veteran:** Disabled veterans capable of performing a particular job, with reasonable accommodations for the disability.