

# Equal Employment Opportunity Newsletter - Equality is OK!



USAG FORT SILL

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## Manager's Inquiry into Allegations of Harassment



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On 30 October 2015 the Secretary of the Army issued **Army Directive 2015-40 (Implementing Procedures for Anti-Harassment Policy)** that provides guidance and implementing procedures for maintaining a workplace free from unlawful harassment. It establishes a system of accountability that ensures appropriate officials are afforded an opportunity to correct harassing conduct by immediate and thorough investigations. The excerpts below highlight the key procedural components, but you are encouraged to read the policy in its entirety.

**Unlawful Harassment:** 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.

Under Federal anti-discrimination laws, the agency is automatically 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 agency can avoid liability only if it can prove that:

- it reasonably tried to prevent and promptly correct the harassing behavior, and
- the employee unreasonably failed to take advantage of any preventative or corrective opportunities the agency provided.

The agency will be liable for harassment by nonsupervisory employees or nonemployees it has control over (for exam-

ples contractors or customers on the premises) if it knew or should have known about the harassment and failed to take prompt and appropriate corrective action.

**Responsibilities of Supervisors and Management Officials:** Supervisors and managers – both civilian and military supervisors of Army employees – have a responsibility to maintain a workplace free of harassment. Supervisors must show a reasonable effort to promptly prevent, respond to, and correct harassing behavior in the workplace. When an employee makes a complaint to a management official about alleged harassment, the law obligates management to investigate the allegation regardless of whether the harassment rises to the level of being severe or pervasive as required under Federal anti-discrimination laws. Complaints of harassment also do not need to conform to any particular format or be in writing.

Management must promptly address allegations of harassment with employees directly involved in the incident, along with any witnesses who might have firsthand information. It is very important to demonstrate that management takes the allegations seriously and will not condone

### Special points of interest:

- ARMY DIRECTIVE 2015-40 (IMPLEMENTING PROCEDURES FOR ANTI-HARASSMENT POLICY)
- FS REG 690-22 EEO DISCRIMINATION COMPLAINTS
- TIDBIT: LINKEDIN, LEADERSHIP & MANAGEMENT FEATURE ARTICLE

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## Manager's Inquiry into Allegations of Harassment Cont



Such conduct goes against the Army's core values and will not be tolerated.

MANAGEMENT OFFICIAL WILL CONDUCT A PROMPT, THOROUGH, IMPARTIAL, AND APPROPRIATE INQUIRY EVEN IN THE ABSENCE OF A COMPLAINT.



Employee should immediately report the matter to his/her immediate supervisor, the supervisor of the harasser, or any other management official in the chain of command.

offensive behavior. Management must take prompt preventative and corrective action, including discipline, as appropriate, in consultation with the servicing CPAC, Labor Management Employee Relations (MER) division.

**Responsibilities of Employees:** the law prohibits employees from engaging in any conduct that is discriminatory or harassing. Such conduct goes against the Army's core values and will not be tolerated. Any employee engaging in any such actions is subject to appropriate corrective action, including discipline.

Employees must report 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. DA expects employees to take advantage of any preventative or corrective opportunities the agency provides and to otherwise avoid or limit any further harm. Supervisors and managers cannot correct harassing behavior if they are not aware of it. When an employee unreasonably fails to report harassing conduct, the agency has a right to raise this as a defense against a claim of harassment.

All Army employees (supervisors and non-supervisors) are responsible for completing the mandatory "EEO, Anti-Harassment NoFEAR Act Training" course to gain an understanding of the Army's anti-harassment policy and procedures and their role in the complaint process.

**How to Report Harassment:** DA expects any person who

believes another person is subjecting them to unwelcome harassing conduct to inform the person(s) responsible for the conduct that it is unwelcome and offensive and request that it cease. 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/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. DA encourages employees who witness or become aware of harassing conduct directed at another employee to report the matter to the supervisor of the offending employee or other management officials in their chain of command.

### **Inquiries into Allegations of Harassing Conduct.**

**Initial Response:** A supervisor or management official who receives notice of an allegation or witnesses harassing conduct will immediately:

- make sure they conduct a prompt, thorough, impartial, and appropriate inquiry even in the absence of a complaint,
- contact the servicing EEO Office, CPAC, and servicing legal office within 1 business day for consultation and guidance, as appropriate,

- document efforts to promptly address and resolve the matters at issue.

**If Investigation is Required:** If the results of the 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 a further investigation IAW AR 15-6 (Procedures for Investigating Officer and Boards of Officers).

**Filing a Complaint of Discrimination or Harassment in Other Forums:** Filing a report under the DA Anti-Harassment Policy Implementing Procedures does not replace or satisfy the requirements for filing EEO complaints, union grievances, or complaints in other forums and obtaining remedies available through these forums. Filing a report also does not delay or waive the time limits for initiating claims in these forums. Any employee who chooses to pursue monetary or nonmonetary remedies for unlawful harassment can file in one of these forums:

- EEO;
- Negotiated Grievance Procedure;
- Merit Systems Protection Board (MSPB).

If an employee pursues a claim of harassment through the EEO process, the Negotiated Grievance Procedure or MSPB, the EEO Officer/MER representative will promptly notify the appropriate responsible management official. The management official will treat this notification as a report and follow procedures outlined in Sections 5 and 6 of the directive.

## FS Reg 690-22 EEO Discrimination Complaints

### 2-6. Managers and Supervisors.

- a. Ensure that all members of the work force refrain from actions or comments that may be perceived as discriminatory.
- b. Act promptly to prevent or correct situations that may give rise to meritorious complaints of discrimination.
- c. Take corrective action against military members and

- d. Provide employees, assigned as collateral EEO counselors or mediators, reasonable time to adequately perform their EEO function.
- e. Participate in the ADR process when appropriate.
- f. Cooperate and ensure subordinates' full cooperation with ADR neutrals and media-

- tors, EEO counselors, labor counselors, EEO officers, investigators, and EEOC administrative judges involved in the EEO complaints process.
- g. Throughout the administrative process of an EEO complaint, ensure that complainants and their representatives are permitted to use a reasonable amount of duty time to work on their complaints.
- h. Insure that employees are

informed of discrimination complaint procedures, and are free to exercise their right to use them without fear of reprisal or coercion.



## Case Law: Unprofessional, Uncivil, & Somewhat Boorish

Employees may suffer an unpleasant work environment for reasons other than unlawful discrimination. Although this is unfortunate, and addressing poor working relationships through other means may actually have a positive impact on the number of EEO complaints filed, an EEO claim of hostile work environment can only be successful if the alleged harassment is because of the employee's membership in a protected group. Allegations of harassment are not automatically actionable

under Title VII antidiscrimination laws as depicted in the following case law claims. Likewise, proactive organizations avoid liability by addressing harassment complaints.

1) An appeals court handed bad news to an employee of the Merit Systems Protection Board, agreeing with the lower court that her claims did not add up to race or sex discrimination. (Brooks v. Grundmann, CADC No. 12-5171 (4/15/14)) The appeals court upheld the

ruling in favor of the agency. While not entirely complimentary of the actions of MSPB officials, the district court opines that it takes something much worse than "the ordinary tribulations of the workplace," to make out a case of hostile environment discrimination: "We conclude that, while the supervisors' actions may have been unprofessional, uncivil and somewhat boorish, they did not constitute an adequate factual basis for the Title VII claims presented here."

HARASSMENT: AN AGENCY IS LIABLE IF IT KNOWS OR SHOULD HAVE KNOWN OF THE CONDUCT, UNLESS IT CAN SHOW THAT IT TOOK IMMEDIATE AND APPROPRIATE CORRECTIVE ACTION.

### *"ordinary tribulations of the workplace"*

2) In *Balderas v. Department of Justice*, [112 LRP 50642](#), EEOC No. 0120110222 (EEOC OFO 2012), the EEOC found that even though the alleged comments by coworkers were "offensive and disturbing," and included some based directly on national origin, the conduct at issue in the complainant's harassment claim did not rise to the level of creating a hostile work environment where some of the incidents occurred in 2001, others occurred in 2002 and

2005, and the complaint was not filed until 2006.

3) The agency avoids liability even if the complainant was subjected to a hostile work environment by a coworker's use of profane language and slurs during a work related disagreement. It quickly investigated the incident and separated the offending coworker from the complainant, placed him on administrative duty, reassigned him to a different facility, and eventually suspended him. The agency pro-

vided EEO training and issued a memo about discriminatory language. *Meza v. Department of Homeland Security*, [106 LRP 65326](#), EEOC No. 0120063706 (EEOC OFO 2006).

4) An appropriate response to discriminatory harassment depends on the facts of each particular case. *Henderson v. U.S. Postal Service*, [109 LRP 609](#), EEOC No. 0120083298 (EEOC OFO 2008).





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**Have an EEO question? Access via EEO website.**

<http://sill-www.army.mil/USAG/eeo/index.html>



Jose F. Saucedo  
EEO Specialist



This LinkedIn article is featured under Leadership & Management. Written by Bruce Kasanoff

## MISSION

Promote an inclusive work environment that ensures equal employment opportunity, fosters a culture that values diversity and empowers individuals to participate constructively to their fullest potential in support of IMCOM's mission. The Garrison EEO Officer serves as the principle advisor to the Garrison Commander on all EEO related issues and concerns.

## VISION STATEMENT

The installation leadership is committed to respect, fairness, and equality for all civilian employees by ensuring a professional work environment free from unlawful discrimination. Equal Employment Opportunity is provided to all qualified persons. Discrimination based on an individual's race, color, religion, gender, national origin, age (40 and above), mental and physical disabilities, reprisal for participating in a protected activity and genetic information is unlawful.

Hours of Operation Monday-Friday 7:30 a.m. — 4 p.m.

## Tidbit Corner: Do YOU Bring Out Talent in Other People?

Yes, yes, I know that you have many fine skills. You are intelligent and hardworking, and you probably "exceeded expectations" on your last job review. But enough already with your talents.

What really matters is the degree to which you bring out talent in other people.

I have a friend - let's call him Craig - who does this without thinking. He walks into a room and starts asking questions. He wants to know the most interesting things you know, so he listens intently to your answers. He does this for a while, then he starts making connections... "Wow, I had no idea you were so interested in sketching. Jane - the creative director down the hall - teaches a

Sprint class at The New School and she helps people of all skill levels visualize out-of-the-box solutions."

He'll do this all afternoon:

- exhibit curiosity
- ask probing questions
- compliment initiative and experimentation
- connect people and ideas

Craig seeks pleasure, not credit. His reward is an interesting day, week, month, and life. He delights in finding the best that you have to offer. You don't have to act like Craig, but you absolutely should develop your own ways of bringing out talent in other people.

To be 100% clear, I'm not telling you to "manage" other people. You can bring out talent in neighbors, friends, relatives, or the clerk at your local store.

Next time you dine in a restaurant, ask your waitress what she recommends, and see if you can shift her mindset from order taker to trusted advisor.

Now let me ask you a tough question: how do you bring out talent in other people? I'm not asking you for a theoretical answer. I'm asking you to pause, take a close look at your own behavior, and see if you can provide yourself - and me - with at least one specific answer.