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DEPARTMENT OF THE ARMY
HEADQUARTERS UNITED STATES ARMY FORCES COMMAND
1777 HARDEE AVENUE SW
FORT MCPHERSON GEORGIA 30330-1062

REPLY TO
ATTENTION OF

AFPI-EE

MEMORANDUM FOR

COMMANDER USURC .
COMMANDER USASC
COMMANDERS, FORSCOM INSTALLATIONS

SUBJECT: Interim Policy for Department of Defense(DoD)Implementation of 10 U.S. Code Section 1561 Complaints

1. Reference memorandum, HQDA, SAMR-SFECR, 26 Mar 99, subject: Interim Policy for DoD Implementation of 10 U.S. Code Section 1561 and interim Processing Procedures.

2. On 9 Feb 99, DOD provided interim policy for implementation of Section 1561 and interim processing procedures for complaints filed by civilian employees alleging sexual harassment.

3. This code section requires commanders designate a point of contact (POC) to receive section 1561 complaints, set time limits for commencement and completion of investigations, and establish reporting requirements. Also, as discussed in Reference 1, employees may use the statute simultaneously with Title VII and 29 CFR 1614.

4. The referenced Department of the Army's memorandum states that, because of potentially conflicting responsibilities, commanders should not name any individual assigned to an Equal Employment Opportunity Office as the POC to receive Section 1561 complaints. Likewise, it is FORSCOM's policy that individuals from Equal Opportunity, Inspector General, and Staff Judge Advocate should not be assigned as the POC for the same reason.

5. It is recommended that your activity POC not be an individual lower than Major or civilian equivalent. The individual assigned as this command's POC is Ms. Charlotte Eady, Labor Relations Specialist. Request you provide her with your POC's name and telephone number as soon as possible. Ms. Eady can be reached at DSN 367-5627, Commercial 404-4645627, or e-mail eadyc@forscom.army.mil.

6. If you have any questions concerning the policy guidance, you should contact Mr. Stephen Malley, Command Labor Counselor, DSN 367-3604 or Commercial 404-464-3604.

FOR THE COMMANDER:

Encl
DA Memo, 26 Mar 99

/S/
GEOFEREY D. MILLER
Major General, USA
Deputy Chief of Staff
for Personnel and
Installation Management

CF:
Commanders, FORSCOM Installations, ATTN: EEO Officers and Staff Judge Advocates

DEPARTMENT OF THE ARMY
EQUAL EMPLOYMENT OPPORTUNITY COMPLIANCE
AND COMPLAINTS REVIEW AGENCY
2ND FLOOR, 1941 JEFFERSON DAMS HIGHWAY
- ARLINGTON, VA MOZ4508

March 26, 1999

SAMR-SFECR

MEMORANDUM FOR EQUAL EMPLOYMENT OPPORTUNITY (EEO)
OFFICERS

SUBJECT: Interim Policy For Department of Defense (DOD) Implementation of 10 U.S. Code Section 1561 and Interim Processing Procedures

The enclosed directive-type' memorandum contains the interim policy for DoD implementation of 10 U.S. Code section 1561 and interim processing procedures. Upon receipt of this policy you should immediately ensure that your commander is aware of and takes appropriate action in accordance with this guidance. Such action includes the designation of a point of contact to receive section 1561 complaints, ensuring that appropriate investigations take place, and preparing and forwarding through channels required reports of complaints and investigations.

The determination of whether an employee is covered by the provisions of section 1561 should ultimately be made by the command's designated point of contact for receipt of complaints of section 1561 sexual harassment. In making this determination, he or she should seek the advice of a servicing legal officer.

Note that your obligation to process EEO complaints of sex discrimination in the form of sexual-harassment, continues to be governed by Title VII and 29 Code of Federal Regulations (CFR) part 1614. You should continue to apply the definition of sexual harassment contained in 29 CFR section 1604.11 and applicable case law including **Equal Employment Opportunity Commission** opinions. You should also ensure that employees understand the time limits for filing discrimination complaints with the EEO office are unaffected by section 1561 and the processing of complaints thereunder. Because of potentially conflicting responsibilities, commanders should not name any individual assigned to an EEO office as the point of contact for section 1561 complaints.

Encl

/S/
Stanley L. Kelley, Jr.
Director, Equal Employment Opportunity
Compliance and Complaints Review Agency

ASSISTANT SECRETARY OF DEFENSE
4000 DEFENSE PENTAGON
WASHINGTON, DC 20301-4000

FORCE MANAGEMENT
POLICY

MEMORANDUM FOR SECRETARIES OF THE MILITARY DEPARTMENTS
CHAIRMAN OF THE JOD47 CHIEFS OF STAFF
ASSISTANT SECRETARY OF DEFENSE (RESERVE AFFAIRS)
CHIEF, NATIONAL GUARD BUREAU

SUBJECT: Interim Policy for Department of Defense (DoD) Implementation of 10 U.S.C. 1561: Sexual Harassment Investigations and Reports for Civilian Employees of the Military Services

Section 591 of the National Defense Authorization Act for Fiscal Year 1995 is codified at section 1561 of title 10, United States Code. Section 1561 establishes new requirements for the processing of complaints alleging sexual harassment that are filed by military personnel or civilian employees of the Military Services who are under the supervision of a "commanding officer or officer in charge of a unit, vessel, facility, or area of the Army, Navy, Air Force, or Marine Corps." Section 1561 directs specific actions by commanding officers, sets time lines for the commencement and completion of investigations, and establishes reporting requirements for Commanders, general courts-martial convening authorities, the Secretaries of the Military Departments, and the Secretary of Defense. On February 25, 1993, guidance to implement section 1561 for active duty military personnel was provided.

This directive-type memorandum provides interim DoD policy regarding the implementation of section 1561 with respect to covered civilian employees of the Military Services. A covered employee is one who is in an organization under the supervision of a commanding officer or a military officer in charge of a unit, vessel, or facility, or area of the Army, Navy, Air Force, or Marine Corps (Attachment).

This directive-type memorandum applies only to those covered civilian employees who file complaints in which sexual harassment as defined by Secretary of Defense Memorandum, "Prohibition of Sexual Harassment in the Department of Defense (DOD)," dated August 22, 1991, is an issue. This definition is broader than the definition in section 1561 and, therefore, encompasses all matters that could be raised under section 1561. Such complaints will also be processed in accordance with the existing Equal Employment Opportunity Commission regulations at Part 1614 of Title 29, Code of Federal Regulations. The Secretaries of the Military Departments and the Chief, National Guard Bureau shall immediately take steps necessary to implement the requirements of section 1561 as specified in the Attachment to this memorandum.

Under separate cover, within thirty days of the date of this memorandum, please provide an after actions report to me, through the Deputy Assistant Secretary of Defense (Equal Opportunity), on the steps you have taken to implement this memorandum. Your report should include a copy of any implementing instructions that you may issue, a discussion of any problems encountered in implementing the new procedures, and your recommendations for changes to the DoD interim policy.

/S/
Francis M Rush, Jr.
Acting Assistant Secretary

Attachment:
As stated

Interim Processing Procedures

1. Organizations with civilian employees covered by Section 1561, of Title 10; United States Code, shall take steps to ensure that personnel are aware that "covered civilian employees" now have another avenue for filing complaints of sexual harassment, in addition to that provided by Title VII of the Civil Rights Act of 1964, as amended. A covered civilian employee, as defined in section 1561(a), is a person who works under a commanding officer or officer in charge or a unit, vessel, facility, or area of the Army, Navy, Air Force, or Marine Corps. Information disseminated to civilian employees concerning their rights under section 1561 must include the following: (a) covered civilians may file a complaint under both section 1561 and 29 CFR 161 [the EEOC's regulations implementing Title VII as to federal employees] and that they may do so simultaneously if they so choose; (b) filing under section 1561 will not serve to exhaust administrative remedies with respect to 29 CFR 1614; and (c) command decisions under section 1561 are final, with no right of appeal to the courts, and compensatory damages are not available under section 1561.

2. When an aggrieved civilian employer initiates contact with a command-designated point of contact for section 1561 complaints, the steps in paragraphs 6 and 7 below shall be followed.

3. If an aggrieved civilian employee first initiates contact with an Equal Employment Opportunity (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 procedures established by EEOC regulation (29 CFR 1614), EEOC management directive (EEO-MD-110) and employing organization implementing guidelines.

4. If sexual harassment is one of the issues raised, the EEO Counselor shall determine if the aggrieved person is directly supervised by a military commanding officer or a military officer in charge of a unit, vessel, facility, or area of the Army, Navy, Air Force, or Marine Corps. If not, the EEO Counselor will continue with procedures established by 29 CFR 1614, EEO-MD-110, and employing organization implementing guidelines.

5. If sexual harassment is one of the issues raised; and the aggrieved person is directly supervised by a military commanding officer or a military officer in charge of a unit, vessel, facility, or area of the Army, Navy, Air Force, or Marine Corps; the EEO Counselor shall advise the aggrieved person that there are two statutes applicable to him or her (i.e., Title VII and section 1561) and that processes established under those statutes may be used simultaneously. The EEO Counselor shall inform the aggrieved person of the point of contact designated by the commander to receive section 1561-complaints and that he or she must contact this individual in order to file a complaint under section 1561. The EEO Counselor shall then continue with procedures established under Title VII and implementing EEOC regulations, management directives, and employing organization implementing guidelines.

6. Within 48 hours after initial contact by an aggrieved person, the section 1561 point of contact shall submit in writing as detailed a description as possible of the allegation to the appropriate commanding officer or military officer in charge. Within 72 hours of receipt of written notification from a designated Section 1561 point of contact, a commanding officer or officer in charge shall:

a. 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;

b. commence, or cause the commencement of, an investigation of the allegations; and

c. advise the aggrieved person of the commencement of the investigation.

7. A commanding officer or officer in charge shall ensure that the investigation of the allegation is completed not later than 14 days after the date on which the investigation is commenced. If the investigation is not completed within 14 days after the investigation was begun, 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 fourteen days until the investigation is completed. Upon receipt of the investigation results, the commanding officer or officer in charge shall:

a. determine if the allegations have been substantiated within 3 days of receipt of the investigation report:

b. notify the aggrieved person in writing within 6 days of receipt of the investigation findings of (1) the investigation findings; (2) the decision made on substantiation of the allegations; and (3) to the extent practicable, the decision on corrective actions taken or proposed.

c. submit a final report on the results of the investigation, including any action taken as a result of the investigation, to the next superior officer in the chain of command who is authorized to convene a general court-martial.

8. 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 CM 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.