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**KENDALL W. PENN**  
MAJOR GENERAL  
THE ADJUTANT GENERAL

NGAR-HRO-EEM

20 August 2021

MEMORANDUM FOR All Service Members and Employees Arkansas National Guard

SUJECT: The Adjutant General's Policy 2021-22, Anti-Harassment

1. References.

- a. Title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000e, et seq., as amended
- b. Equal Employment Opportunity in the Federal Government, 08 August 1969
- c. 29 CFR, Part 1614, Federal Sector Equal Employment Opportunity, 9 November 1999
- d. DOD Directive 1440.1, Department of Defense Civilian Equal Employment Opportunity Program, 21 November 2003
- e. U.S. Equal Employment Opportunity Commission, Management Directive 110, 05 August 2015, "Federal Sector Equal Employment"
- f. Public Law 107-17 4, 15 May 2002, "Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002"
- g. Army Regulation (AR) 600-20, Army Command Policy, 24 July 2020
- h. Air Force Instruction 1-1, Air Force Standards, 07 August 2012

2. This memorandum supersedes The Adjutant General's Policy 2020-27, Anti-Harassment, dated 23 September 2020.

3. As the Adjutant General, it is my policy to maintain a work environment in which people are treated with dignity and respect. I am committed to the Department of Defense (DOD) policies against harassment of any kind and have zero tolerance for

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these unlawful employment practices. The Arkansas National Guard's goal is to prevent and correct all behavior that violates this policy.

4. All employees (military, civilians, Title 5, and Title 32 Technicians) are subject to this policy. Appropriate disciplinary action will be taken against any employee who violates this directive. The disciplinary action will depend on the seriousness of the offense and may include verbal or written reprimand, suspension, or termination of employment.

5. I expect every supervisor and leader to be alert for instances of inappropriate harassment or discriminatory behavior. Supervisors who knowingly tolerate violations of this policy or fail to report acts harassment will be subject to discipline.

6. Harassment is unwelcome or offensive behavior that creates an intimidating, hostile, or offensive environment to a reasonable person. Harassment can be in the form of verbal or nonverbal communication or physical actions and can occur through electronic mediums, including social media, other forms of communication, and personal interaction. Harassment may include offensive jokes, epithets, ridicule or mockery, insults or put-downs, displays of offensive objects or imagery, stereotyping, intimidating acts, veiled threats of violence, threatening or provoking remarks, racial or other slurs, derogatory remarks about a person's accent, or displays of racially offensive symbols. The Arkansas National Guard's Anti-Harassment Program prohibits any of these types of behavior, including sexual harassment, and will take appropriate and immediate action in response to complaints and/or violations of this policy. The following examples of harassment are intended to be guidelines and are not exclusive when determining whether there has been a violation of federal law:

a. Verbal harassment includes comments that are offensive or unwelcome regarding a person's national origin, race, color, religion, gender, sexual orientation, age, body, disability or appearance, including epithets, slurs and negative stereotyping.

b. Nonverbal harassment includes distribution, display, or discussion of any written or graphic material that ridicules, denigrates, insults, belittles, or shows hostility, aversion, or disrespect toward an individual or group because of national origin, race, color, religion, age, gender, sexual orientation, pregnancy, appearance, disability, sexual identity, marital status, or other protected status.

7. Sexual harassment is a form of unlawful employment discrimination under Title VII of the Civil Rights Act of 1964 and is prohibited under the Arkansas National Guard's Anti-Harassment policy. The Equal Employment Opportunity Commission defines sexual harassment as unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when:

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a. Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment, or

b. Submission to or rejection of such conduct by an individual is used as a basis for employment decisions affecting such individual, or

c. 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.

8. Sexual harassment is not limited to supervisor-to-employee or employee-to-supervisor situations, and may take different forms. It may include actions of co-workers, actions of the same or opposite sex, and actions by individuals external to our organization who have contact with employees in our work environment. The following examples of sexual harassment are intended to be guidelines and are not exclusive when determining whether there has been a violation of this policy:

a. Verbal sexual harassment includes innuendoes, suggestive comments, jokes of a sexual nature, sexual propositions, lewd remarks and threats, requests for any type of sexual favor (this includes repeated, unwelcome requests for dates), and verbal abuse or "kidding" that is oriented toward a prohibitive form of harassment, including that which is sexual in nature and unwelcome.

b. Nonverbal sexual harassment includes the distribution, display, or discussion of any written or graphic material including calendars, posters, and cartoons that are sexually suggestive or show hostility toward an individual or group because of sex. It also includes suggestive or insulting sounds, leering, staring, whistling, obscene gestures, content in letters, notes, facsimiles, e-mails, photos, text messages, tweets, and Internet postings, or other forms of communication that are sexual in nature and offensive.

c. Physical sexual harassment includes unwelcome, unwanted physical contact, including touching, tickling, pinching, patting, brushing up against, hugging, cornering, kissing, fondling, and forced sexual intercourse or assault.

9. The Arkansas National Guard will not tolerate retaliation against any employee for making a complaint, bringing inappropriate conduct to the agency's attention or for participating in an investigation of an alleged act of harassment. No hardship, loss, benefit or penalty may be imposed on an employee in response to:

a. Filing or responding to a bona fide harassment complaint.

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b. Appearing as a witness in the investigation of a complaint.

c. Serving as an investigator of a complaint.

10. Submitting a complaint will in no way be used against the employee or have an adverse impact on the individual's employment status. However, filing groundless or malicious complaints is an abuse of this policy and will be treated as a violation. Groundless or malicious complaints includes fabricated claims of harassment, as well as unsubstantiated claims intended to purposely disparage the reputation or credibility of the organization, supervisor, or another employee.

11. Procedures.

a. Anti-Harassment Program Administrator. The Arkansas National Guard has established the following procedures for reporting harassment complaints. The Equal Employment Opportunity (EEO) Specialist will serve as the Anti-Harassment Program Administrator. The agency will treat all aspects of the procedure confidentially to the extent reasonably possible.

b. Reporting Incidents of Harassment.

(1) Victims or witnesses of harassment will attempt to stop the unwanted behavior at the lowest possible level. If the harassment continues, the behavior should be reported to the victim's supervisor. The chain of command will take the necessary action to stop harassment at the lowest level. If the employee feels uncomfortable with reporting incidents of harassment through their chain of command, they may contact the Anti-Harassment Program Administrator directly in the EO/EEO office at 501-212-4222.

(2) All unresolved acts of harassment should be reported to the Anti-Harassment Program Administrator within three (3) days of the incident, and must be acknowledged in writing. Upon receiving notice that a violation of harassment has occurred, the Anti-Harassment Program Administrator will notify the complainant's supervisor within three (3) days and review the complaint. If the alleged offender is the supervisor or Office Director, the Director of the Joint Staff (DJS) will be notified. The alleged harasser and their supervisor, if different from the complainant, will be notified within five (5) days.

c. Notification of Procedures and Rights.

(1) Upon receiving a report or becoming aware of alleged harassing conduct, the supervisor or Anti-Harassment Program Administrator shall inform the complainant about the procedural steps pursuant to this policy.

(2) The Anti-Harassment Program Administrator or supervisor shall also advise the complainant of other avenues of redress, as set forth in the program procedures section, including the right to file a complaint under the EEO process or go through the Alternative Dispute Resolution (ADR) process, which includes informing the complainant of their respective deadlines.

d. Conducting an Inquiry.

(1) The Anti-Harassment Program Administrator or a designated official will be appointed as the Inquiry Officer to determine the scope and facts of the complaint. These determinations are fact-specific and shall be made on a case-by-case basis.

(2) The Inquiry Officer will contact the complainant within three (3) days of his/her appointment. The alleged harasser will be notified within five (5) days of Inquiry Officer's appointment. The Inquiry Officer is charged with determining, by a preponderance of the evidence, if the alleged violation of this policy occurred.

(3) A temporary reassignment of the alleged perpetrator or the victim will be processed if needed to protect employees or mitigate disruption in the workplace. The victim's wishes will be heavily considered when determining the best outcome for all parties and the organization involved.

(4) The Inquiry Officer will interview the complainant, the respondent and all key witnesses to determine whether the alleged harassment occurred. Inquiry Officers will complete an impartial and thorough inquiry within thirty calendar days.

(5) The Inquiry Officer will submit a written report of his or her findings to the appointing authority. The Director of the Joint Staff (DJS) withholds disciplinary authority over full-time employees who are the subject of a substantiated complaint. The DJS may take alternative preventive actions in the case of unsubstantiated or inconclusive inquiries. The following will be considered to determine the appropriate level of discipline:

- (a) The severity, frequency, and pervasiveness of the conduct.
- (b) Prior complaints made by the complainant.
- (c) Prior complaints made against the respondent.
- (d) The quality of the evidence (e.g., firsthand knowledge, credible corroboration).

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(6) The Human Resources Officer (HRO) will staff a review of the Inquiry Officer's report and provide a recommendation to the DJS for final review and decision. The HRO will consider input from the appropriate personnel including supervisors, the Anti-Harassment Program Administrator, the Labor Relations Specialist and the Judge Advocate General.

(7) The DJS will notify the HRO of the inquiry's final disposition. The HRO will notify the complainant and respondent's respective supervisors who will notify each employee of the inquiry findings and disciplinary decisions, if any.

12. The Anti-Harassment Program Administrator will take adequate steps to ensure that all complaints and inquiries are treated confidentially to the reasonable extent possible. All information pertaining to a complaint or inquiry under this policy will be maintained in secured files within the EO/EEO office.

13. The spirit and intent of this policy is to foster an environment free from unlawful harassment. The Arkansas National Guard is committed to the establishment of an environment where our military and civilian personnel can perform to their full potential.

14. A copy of this memorandum will be posted on all units' bulletin boards and in all work areas.

15. Point of contact for the Anti-Harassment Program is the Equal Employment Opportunity Specialist, 501-212-4222 or DSN 962-4222.



KENDALL W. PENN  
Major General  
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