

29 JUNE 2005



Law

**HANDLING ALLEGATIONS OF SEXUAL
HARASSMENT BY CERTAIN CIVILIAN
EMPLOYEES**

COMPLIANCE WITH THIS PUBLICATION IS MANDATORY

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OPR: 35 FW/JA (Lt Col A. Eric Bee)

Certified by: 35 FW/CV (Col Michael L. Bartley)

Pages: 12

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This instruction describes the procedures by which Misawa Air Base will conduct Commander- Directed Investigations into claims of Civilian Sexual Harassment. It provides guidance for the implementation of a commander-directed investigation into civilian allegations of sexual harassment, as authorized by the FY 98 National Defense Authorization Act, codified at 10 U.S.C. §1561. The Equal Employment Office (35 FW/CCD), and the Installation Commander are responsible for executing this program.

1. Program Authority and Scope:

1.1. Section 591 of the National Defense Authorization Act for Fiscal Year 1998 is codified at Title 10, United States Code, Section 1561. It establishes requirements for the processing of complaints alleging sexual harassment that are filed by 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. At this time, no Department of Defense or Air Force instructions exist for implementing this program. See **Attachment 1** for relevant policy letters.

1.2. In addition to other long-standing avenues of redress for sexual harassment—to include EEO complaints, negotiated grievance procedures, and mixed case MSPB appeals—certain civilian employees can also request a commander-directed investigation. The test for determining whether a civilian employee is covered by 10 U.S.C. 1561 may be slightly different than the test for the Equal Employment Office (EEO) complaints. Contact the Legal Office for further guidance.

2. 35 FW/CCD Responsibilities:

2.1. 35 FW/CCD is appointed the Point of Contact to receive complaints under this instruction.

2.2. 35 FW/CCD will develop a publicity campaign educating the base population regarding these prescribed procedures.

2.3. The EEO counselor, during the initial EEO counseling process, will determine whether a complaint is covered by this policy, seeking JA advice if necessary, and ascertain the complainant's desire concerning a commander-directed investigation (CDI).

2.4. Once the EEO counselor has determined that the complaint is covered by this policy and that the complainant desires a CDI, he or she will forward a written description of the facts of the case to 35 FW/CC through 35 FW/JA within 48 hours. See [Attachment 2](#) for the format for the EEO Counselor's memorandum. The EEO counselor will continue to process the complaint under standards published by EEOC Regulations.

2.5. If the EEO counselor determines that processing under this instruction is not authorized, he or she will continue to process the complaint under standards published by EEOC Regulations.

3. 35 FW/JA Responsibilities:

3.1. 35 FW/JA will assist 35 FW/CCD determine whether the complaint is covered by this policy.

3.2. 35 FW/JA will assist the CDI investigator during his or her investigation.

4. 35 FW/CC Responsibilities:

4.1. 35 FW/CC will, within 72 hours of receipt of the written description from the EEO Counselor:

4.1.1. Provide 5 AF/CC with a copy of the written description from the EEO Counselor.

4.1.2. Direct a CDI into the truth of the allegation(s). The sample format for appointing an Investigating Officer (IO) is found at [Attachment 3](#).

4.1.3. Advise the complainant of the commencement of the investigation. The sample format for the notification letter to the complainant is found at [Attachment 4](#).

4.2. Fourteen calendar days after commencement of investigation, ensure the IO's report is complete, but if not, provide an interim report to 5 AF/CC on the 14th day and each subsequent fourteen calendar days thereafter until the investigation is complete.

4.3. Within three calendar days of receiving the IO's report, make a determination whether the allegation(s) are substantiated. Within six calendar days, notify the complainant in writing of the IO's findings and CC's determination as to whether the allegation(s) was(were) substantiated. Additionally, to the extent possible, in keeping with applicable privacy and security considerations, also advise the complainant about any corrective action taken.

4.4. Submit a final report to 5 AF/CC of the results of the investigation, including any action taken as a result of the investigation.

5. Time Standards:

5.1. Time standards outlined above are goals only, not measures merit. Failure to meet any of the above described time standards does not create any rights for the complainant.

WILLIAM J. REW, Brig Gen, USAF
Commander

Attachment 1

AIR FORCE POLICY GUIDANCE



DEPARTMENT OF THE AIR FORCE
HEADQUARTERS UNITED STATES AIR FORCE
WASHINGTON DC

10 January 2000

MEMORANDUM FOR ALL MAJCOM STAFF JUDGE ADVOCATES

FROM: HQ USAF/JAG
1420 Air Force Pentagon
Washington DC 20330-1420

SUBJECT: New Investigation and Reporting Requirements for Civilian Complaints of Sexual Harassment

All staff judge advocates should be aware of a new investigation and reporting requirement for sexual harassment complaints filed by civilian employees. The new requirement may have an impact on the processing of EEO and other types of complaints.

The FY 98 National Defense Authorization Act established a new requirement, codified at 10 USC 1561. It was implemented as regards military complaints last year (see General Law Web Site, Base Problems). DoD has now developed and published its policy as regards civilian complainants (see attachment). It will be implemented at each installation following the completion of impact and implementation bargaining.

In a nutshell, Air Force implementation of this requirement provides that, in addition to other long standing avenues of redress for sexual harassment (EEO complaints, negotiated grievance procedures, mixed case MSPB appeals), civilian employees can request a commander directed inquiry. Upon completion, the commander will take appropriate corrective action. This policy is described in greater detail below. There are no monetary damages awarded, nor is there an appeal from the commander's decision. *The complainant can elect to choose this avenue of complaint while pursuing other available means of redress, either sequentially or simultaneously.*

This policy applies only to those employees "under the supervision of a commanding officer or officer in charge of a unit, facility, or area of the Air Force." (Message, DTG 230320Z Dec 99) Determining whether or not a prospective complaint is covered under the policy is the responsibility of the EEO counselor of the installation. Once the EEO counselor has determined that the complaint is covered, he/she will refer the complainant to the point of contact (POC) established by the installation commander for the receipt of these complaints.

Within 48 hours after initial contact by the complainant, the POC will provide the installation commander, in writing, a detailed description of the allegations. Within 72 hours of receipt of the written description, the installation commander will

- a. Provide the next superior officer in the chain who is a General Court-Martial Convening Authority (GCMCA) with a copy of the POC's written notification;
- b. Direct an inquiry into the truth of the allegation(s);

c. Advise the complainant of the commencement of the investigation.

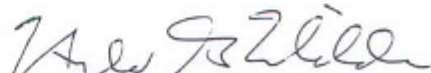
The investigation should be completed within 14 days after commencement. If it is not, the installation commander will provide an interim report to the GCMCA on the fourteenth day and each subsequent fourteen days thereafter until the investigation is complete. After completion, the installation commander will determine if the allegations are substantiated and will, within six days, notify the complainant in writing of the findings and decision on substantiation and, to the extent possible, on any corrective action taken. Finally the installation commander will submit a final report to the GCMCA.

Bear in mind that this system applies only to complaints of sexual harassment. It does not apply to other forms of illegal discrimination. Also, as stated above, this new system does not prevent a complainant from utilizing other means of redress. Therefore, the result of a commander-directed inquiry may have a significant effect upon the bargaining position of the Air Force in an EEO or other administrative or judicial proceeding. SJAs should note that the definition of sexual harassment utilized in the new policy (10 USC 1561 sec [e][2-3]) is broader than that employed by the EEOC (29 CFR 1614.11). Consequently, a substantiated allegation under the new policy will not be determinative in a subsequent EEO complaint but will obviously have an impact. The installation commander, in consultation with his/her staff judge advocate, should exercise care in the selection of an investigating officer to ensure that the allegation is thoroughly and intelligently investigated and evaluated. Bear in mind also that the time standards in this policy are goals only, not measures of merit. Therefore, a high quality investigation is to be preferred to one which merely achieves the time standards at the expense of quality.

Commanders should give thought as to whom they will appoint as POCs. While at some installations the EEO counselor will be an obvious choice, manning and budget constraints may render this unfeasible at others. A wing executive officer might be an acceptable alternative. Major Commands and subordinate units can determine what best fits their needs.

The Air Staff and DoD are aware that this policy appears somewhat cumbersome. However, it is mandated by law. Installation commanders and DP personnel, with the advice and assistance of the legal office, can make it work.

Our POC is Lt Col Jim Moody. He can be reached at DSN 224-4075.


HARLAN G. WILDER
Chief, General Law Division
Office of The Judge Advocate General

Attachment:
DoD (FMP) Directive Memo w/Atch



FORCE MANAGEMENT
POLICY

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

FEB 9 1998



MEMORANDUM FOR SECRETARIES OF THE MILITARY DEPARTMENTS
CHAIRMAN OF THE JOINT 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

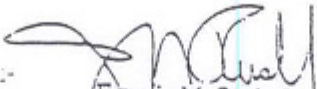
Section 591 of the National Defense Authorization Act for Fiscal Year 1998 is codified at section 1561 of title 10, United States Code. Section 1561 establishes new requirements for the processing of complaints alleging sexual harassment that are filed by military personnel or civilian employees of the 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, 1998, 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, 1994, 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.



Francis M. Rush, Jr.
Acting Assistant Secretary

Attachment:
As stated

I

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 of 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 1614 [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 employee 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, EO-MD-110, and employing organization implementing guidelines.
5. If sexual harassment is the 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 can 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 CFR 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.

Attachment 2

SAMPLE MEMO ADVISING 35 FW/CC OF EEO'S DETERMINATION

(Appropriate letterhead)

MEMORANDUM FOR 35 FW/CC

FROM: EQUAL EMPLOYMENT OPPORTUNITY COUNSELOR

SUBJECT: Counselor's Determination: Sexual Assault Allegation(s) of _____

1. In accordance with Section 591 of the 1998 National Defense Authorization Act (10 U.S.C. 1561), I have reviewed the complainant's allegation(s) and find that (1) the complainant is a civilian employee under the supervision of a commanding officer or officer in charge of a unit, facility, or area of the Air Force and (2) sexual harassment is an issue in this case.

2. The following is a factual basis for the complaint. [Enter facts explaining the complaint].

3. Based on the foregoing, this complaint meets the requirements of 10 U.S.C. 1561 and is referred to you for further action. Under 10 U.S.C. 1561, you must take the following actions:
 - a. Forward a copy of this memo to 5 AF/CC;

 - b. Direct an investigation into the truth of the complainant's allegation(s); and

 - c. Advise the complainant that an investigation has begun.

3. If you have any questions or concerns, please contact me at X-XXXX or at [e-mail address]..

SIGNATURE BLOCK

EEO Counselor

Attachment 3**SAMPLE MEMO APPOINTING INVESTIGATING OFFICER**

(Appropriate letterhead)

MEMORANDUM FOR INVESTIGATING OFFICER

FROM: 35 FW/CC

SUBJECT: Appointment as Investigation Officer, Allegation(s) of Sexual Harassment

1. You are hereby appointed as the investigating officer detailed to investigate the sexual harassment allegation(s) of (complainant). Your investigation will include an examination into all salient aspects of this matter. In conducting your investigation, you should follow the guidance contained in the IG *CDI Guide*, dated 1 Apr 01, which is available electronically at <http://www.ig.hq.af.mil/igq/Downloads/IGQDownloads.htm>.
2. All persons subject to the jurisdiction of my command, and all civilian employees of the Air Force and its instrumentalities who you contact, are hereby ordered to cooperate with you, to answer your questions, and to provide other information that you request, unless they properly claim the right against self-incrimination under Article 31, Uniform Code of Military Justice, or the Fifth Amendment to the Constitution of the United States.
3. You are authorized to interview people, to take oral or written statements, or both. You are also authorized to examine records. In this regard, the appropriate records custodian will make all records, files, and other relevant documentation available to you. This letter is authorization for the custodian to release any unclassified documents that you request.
4. Here are your procedural instructions:
 - a. You will read and ensure that you understand the definition of sexual harassment found at 10 U.S.C. Section 1561. You will also read over the detailed description of the allegations prepared by the EEO Counselor, [name].
 - b. Prior to initiating your investigation, consult the Staff Judge Advocate for guidance.
 - c. With my advance approval, go to any place necessary for the proper execution of this duty.
 - d. This investigation is directed under the authority of 10 U.S.C Section 1561.
 - e. Your investigation should be completed in 14 calendar days from the date of this appointment letter. If your investigation is not completed within 14 calendar days from the date of this letter, submit an interim report to me and subsequently provide me an updated report every fourteen calendar days thereafter until your investigation is complete.

f. Report facts, opinions, and your recommendations to me in writing by [date], unless I grant an extension. Follow the report format described in the *IG CDI Guide*.

g. As a rule, have your witnesses make written statements after you have interviewed them. Ensure they address their statements to the relevant matters of this inquiry. Avoid making summarized statements. Make a summarized statement (in addition to taking a witness' written statement) only when the written statement contains excessive matter that is irrelevant or immaterial to the investigation. The Staff Judge Advocate will tell you which, if any, written statements need to be summarized.

h. Consult with the Staff Judge Advocate as needed throughout your investigation and let him or her review your report for completeness before you submit it to me.

5. Conducting this investigation and writing your report will be your primary duty until completed.

SIGNATURE BLOCK, USAF
Commander

cc: 35 FW/JA

Attachment 4**SAMPLE MEMO NOTIFYING COMPLAINANT THAT A CDI HAS BEEN INITIATED**

(Appropriate letterhead)

MEMORANDUM FOR COMPLAINANT

FROM: 35 FW/CC

SUBJECT: Commander-Directed Inquiry

1. This is to inform you that under 10 U.S.C. Section 1561, we have begun an investigation into your allegations of sexual harassment. (Rank, Name) has been appointed as the investigating officer. Command decisions under 10 U.S.C. Section 1561 are final, with no right of appeal. Also no compensatory damages are available.
2. Understand that you may also file a complaint under 29 CFR Section 1614 and that this investigation does not exhaust any administrative remedies you may have under that law. When the investigation is complete, you will be notified of the findings, the decision made on substantiation of the allegations, and to the extent allowed by law, the corrective actions taken.
3. Upon receiving the results you may elect either to continue with any complaint filed under 29 CFR Section 1614, or you may withdraw your complaint. Also, if you receive a decision under 29 CFR Section 1614, before you receive the results of this complaint, you may continue with or withdraw this complaint.
4. If you have any questions, you can contact the Equal Employment Office Counselor at X-XXXX.

SIGNATURE BLOCK, USAF

Commander