



# CALIFORNIA MILITARY DEPARTMENT INSTRUCTION

NGCA-JSD-MP  
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CMDI 9600.01  
1 October 2019

## ANTI-HARASSMENT PREVENTION POLICY

Reference(s): See Enclosure B

1. Purpose. This instruction establishes the California Military Department's (CMD) Anti-Harassment Prevention Policy in accordance with (IAW) references found in Enclosure B.
2. Cancellation. None.
3. Applicability. This instruction applies to all CMD Title 5 and Title 32 federal employees to include job applicants for either status.
4. Policy. See Enclosure A.
5. Definitions. See Glossary.
6. Responsibilities. The Point of contact for this policy is the Equal Employment Opportunity Office (EEO) at (916) 854-3177 and at [ng.ca.caarng.mbx.eo-eeo@mail.mil](mailto:ng.ca.caarng.mbx.eo-eeo@mail.mil).
7. Summary of Changes. Updated CAL GUARD logo.
8. Releasability. This issuance is approved for public release; distribution is unlimited.
9. Effective Date. This instruction is effective upon publication.

JEFFERY C. KERNS  
COL, IN, CAARNG  
Director, Manpower and Personnel

Enclosures:  
A – Policy  
B – References  
GL – Glossary

ENCLOSURE A

POLICY

1. Commitment. The CMD is committed to providing all personnel (current and future) a work environment free from harassment and discrimination based on the protected categories of their race, color, religion, sex (including pregnancy), national origin, age (40 or older), disability or genetic information. All personnel are expected to uphold a culture which fosters a climate of professionalism, dignity, and respect.
2. Prohibited Conduct. The CMD will not condone inappropriate behavior by any personnel when such conduct can be reasonably considered to adversely or negatively affect the work environment or one's condition of employment status. All CMD personnel are prohibited from:
  - a. Unlawfully discriminating against, harassing, intimidating, or threatening another person due to their protected categories; or sexually harassing someone; or
  - b. Seeking retaliation against someone engaging in protected activity. Protected activity includes reporting misconduct; filing a discriminatory complaint or a grievance; and engaging in any investigation into a misconduct.
3. Commanders, Directors, Supervisors, and Managers. Will adhere to and comply with the Anti-Harassment Prevention policy. Also abide by EEO policy and procedure, IAW all TAG memorandum policies, directives, and regulations, as listed in Enclosure C.
  - a. May receive allegations and reports of harassment. If harassment is based upon an EEO protected category, may contact Equal Employment Opportunity Office for advice/action.
  - b. Promote use of Alternative Dispute Resolution to resolve disputes.
  - c. Conduct prompt, thorough, and impartial (fact-finding) investigations into EEO matter(s) to resolve harassment allegations.
  - d. Allow all personnel involved in harassment allegations reasonable amount of time from duties when involved in the complaint process.
  - e. Exercise confidentiality to the extent possible and take corrective/disciplinary actions for substantiated or false complaints.

4. Harassment. It is unwelcome behavior-- whether verbal or physical -- that is sufficiently offensive to alter the condition of a person's employment or status.

a. Harassment is a form of employment discrimination violating Title VII of the Civil Rights Act of 1964. Although not all acts of inappropriate behavior may meet the legal definition of harassment as prescribed by Title VII, such conduct may still violate the Merit Systems Principles found under Title 5, United States Code, Section 2302, Prohibited Personnel Practices.

b. Although the law does not prohibit simple teasing, offhand comments, or isolated incidents, harassment becomes unlawful when 1) enduring the offensive conduct becomes a condition of continued employment, or 2) the conduct is severe or pervasive enough to create a work environment that a reasonable person would consider intimidating, hostile, or abusive. A harasser may be anyone, including employees, coworkers, or supervisors regardless of employment status or duty assignments. Harassers may also be non-employees such as vendors, customers, or clients. Additionally, a victim does not have to be the person harassed but may be an individual affected by the offensive behavior.

c. Examples of harassment may include, but not be limited to, assaults/unwanted physical contact; threats and intimidation; offensive jokes; slurs; epithets/name calling; ridicule/mockery; insults/put-downs; displays of offensive objects/pictures; and interference with work performance.

5. Sexual Harassment. Sexual Harassment is a form of sex discrimination involving unwelcomed sexual advances; requests for sexual favors; and other verbal or physical conduct of a sexual nature when it affects a person's condition of employment, advancement, pay, or interferes with his/her work performance. Sexual harassment may also create an intimidating, hostile, or offensive work environment.

a. A person in a supervisory, management, or command position condoning sexually harassing behavior to control, influence, or affect an individual's condition of employment, advancement, pay, or career is engaging in sexual harassment.

b. A person who deliberately repeats unwelcomed verbal comments, gestures, or physical contact of a sexual nature is also engaging in sexual harassment.

c. Examples of sexual harassment may include, but are not limited to, unwanted physical, verbal, or non-verbal attention such as touching, grabbing, hugging, kissing, whistling, telling jokes with sexual connotations, cornering, leering/ogling, blowing kisses, winking, licking lips, and manipulation of body parts or clothing related to these anatomical areas.

6. Reporting. All personnel are responsible for acting professionally and taking preventive measures and corrective actions to eliminate harassment.

a. Any person who feels he/she is the victim of harassment (sexual or nonsexual) or is a witness to such conduct, is encouraged to confront the offender and tell him/her to stop the inappropriate behavior. If unsuccessful or unable to confront the offender, victims are encouraged to report it to their supervisor, manager, or other management official.

(1) EEO. Personnel may contact the EEO Office at (916) 854-3177 and at [ng.ca.caarng.mbx.eo-eeo@mail.mil](mailto:ng.ca.caarng.mbx.eo-eeo@mail.mil) for cases involving discriminatory acts based on race, color, religion, sex (including pregnancy), national origin, age (40 or older), disability or genetic information.

(2) Labor Relations. Personnel may contact the LR staff at (916) 854-3646 and at [ng.ca.caarng.list.j1-hro-lrs@mail.mil](mailto:ng.ca.caarng.list.j1-hro-lrs@mail.mil) for cases involving employment grievances.

b. The CMD will provide a prompt, thorough, and impartial investigation into the matter(s) to resolve allegations of harassment within 10 business days from the date of report. If the allegations are substantiated, the CMD will immediately enact corrective or disciplinary actions, as necessary.

c. Those reporting false/malicious harassment claims are subject to corrective/disciplinary actions.

7. Confidentiality. Reports of harassment, including identities of the victim, offender, and witnesses, are kept confidential to the extent possible without obstructing a thorough, impartial investigation into the allegations. All information regarding allegations is also kept confidential and only disclosed to officials on a “need-to-know” basis.

8. Reprisal or Retaliation. The CMD forbids any form of reprisal or retaliation against personnel who report harassment, complain about discrimination, or is/was involved in an investigation or lawsuit pertaining to a discriminatory complaint. Included are personnel who participate/assist in any investigation into allegations of harassment. All personnel found to reprise/retaliate against those involved in harassment claims are subject to immediate corrective and or disciplinary actions.

ENCLOSURE B

PART I. REFERENCES

- a. Title VII of the Civil Rights Act of 1964.
- b. Public Law 107-174, 15 May 2002, Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002.
- c. Title 5, United States Code (USC), Government Organization and Employees.
- d. Title 29, United States Code (USC) § 206 (d), Prohibition of Sex Discrimination.
- e. Title 32, United States Code (USC), National Guard.
- f. Title 29, Code of Federal Regulations (CFR), Part 1614.
- g. EEO MD-110, Equal Employment Opportunity Management Directive for 29 C.F.R. Part 1614.
- h. EEO MD-715, Equal Employment Opportunity Management Directive, Federal responsibilities under Section 717 of Title VII and Section 501 of the Rehabilitation Act.
- i. DoD Directive 1440.1, The DoD Civilian Equal Employment Opportunity (EEO) Program.
- j. CMD Manual 9600.02, Federal EEO Discrimination Complaint Process.

PART II. TAG POLICY MEMORANDUMS

- a. Policy Memorandum 2018-02, Equal Employment Opportunity, dated 1 October 2018.
- b. Policy Memorandum 2018-03, Prevention of Sexual Harassment, dated 1 October 2018.
- c. Policy Memorandum 2018-05, Workplace Consideration of Others, dated 1 October 2018.
- d. Policy Memorandum 2018-06, Diversity, dated 1 October 2018.
- e. Policy Memorandum 2018-07, Fair Treatment, dated 1 October 2018.

## GLOSSARY

### PART I. ABBREVIATIONS AND ACRONYMS

ADR	Alternate Dispute Resolution
CMD	California Military Department
EEO	Equal Employment Opportunity
EEOC	Equal Employment Opportunity Commission
IAW	In Accordance With
TAG	The Adjutant General

### PART II. DEFINITIONS

Age (Age Discrimination) -- Persons aged 40 or older.

Alternative Dispute Resolution (ADR) -- A method of settling disputes which provides an alternative to litigation. It equally values people in dispute and does not judge/blame. This process creates a safe, non-threatening atmosphere for both aggrieved/complainants and respondents of complaints.

Basis -- The "reason" alleged for discrimination. An aggrieved/complainant must assert a basis, or reason, when bringing forward a complaint of unlawful discrimination against a protected group.

Color -- A person's skin pigmentation (lightness or darkness of skin), complexion, shade, hue, or tone.

Complaint -- An allegation of unlawful discrimination based on a protected category and filed by an individual. Synonymous with the term "Report."

Complainant -- During the formal complaint stage, an employee, former employee, or applicant for employment who files a discrimination complaint or submits allegations of unlawful discrimination or sexual harassment. Synonymous with the term "victim."

Confidentiality -- Protection from voluntary or compulsory disclosure to certain dispute resolution communications given in confidence for the purposes of a dispute resolution proceeding.

Discrimination -- Any action resulting in unequal treatment of persons based on any of the covered protected categories.

Equal Employment Opportunity Commission (EEOC) -- The Commission is responsible for, among other things, conducting hearings and issuing decisions on complaints of discrimination in the federal sector. It also enforces compliance with section 717 of Title VII of the Civil Rights Act of 1964, as amended; sections 501 and 505 of the Rehabilitation Act of 1973, as amended; section 15 of the Age Discrimination in Employment Act of 1977, as amended; and the Equal Pay Act, section 6(d) of the Fair Labor Standards Act of 1938, as amended.

Fact Finding -- This process is not in the same scope as an inquiry. This process is designed to present basic facts to the commander, supervisor, or manager at the level the complaint is raised. Basic fact finding is used to facilitate resolution at the lowest level.

Harassment -- Behavior that is unwelcome or offensive to a reasonable person, whether verbal, written, or physical, which causes conditions which may interfere with work performance or creates a hostile work environment. Harassment may be sexual or nonsexual. It may occur in person or through other communications, including social media. Some examples of harassment are unwanted physical contact; offensive jokes; epithets/name-calling; ridicule/mockery; insults/put-downs, displays of offensive objects/imagery; stereotyping; intimidating acts; veiled threats of violence; threatening/provoking remarks; racial/other slurs; derogatory remarks about a person's accent; or displays of racially offensive symbols.

Hostile Work Environment -- A hostile work environment is a series of acts so severe or pervasive that they alter the terms and conditions of service or employment. The acts may be discreet or may be ones which taken alone, do not rise to the level of an adverse action.

Inquiry -- An impartial, fact finding process used to determine the validity and merit of discrimination allegations. It may involve the review of records and directives; examination of material evidence; and interviews of persons who may have direct knowledge of the facts. This process is appropriate when the commander receiving the complaint is not authorized to appoint an investigator. It is also appropriate at the lowest command level to help facilitate resolution of the complaint.

Investigation -- A duly authorized, systematic, detailed examination to uncover facts and determine the truth. It is a formal process which must produce sufficient detail to support either a finding of discrimination or no discrimination. Investigations of discrimination allegations are conducted under the authority of this directive.

**National Origin** -- An individual's or ancestor's place of origin. Also applies to a person who has physical, cultural, or linguistic characteristics of a national group.

**Neutral** -- An individual who, with respect to an issue in controversy, functions specifically to aid the parties in resolving the controversy without taking any side. This individual may be a Federal government employee or someone outside the government. To determine whether communications are confidential, the term "neutral" also includes ADR intake or other administrative personnel identified and designated by the ADR Manager as responsible for taking information from the party/parties of a dispute to assist them in deciding whether to use ADR.

**Protected Category** -- A specific basis associated with the discriminatory act.

**Race** -- A division of human beings identified by traits transmissible by descent which are sufficient to characterize persons possessing these traits as a distinctive human genotype.

**Religion** -- A personal set or institutionalized system of attitudes; morals; or ethical beliefs and practices held with the strength of traditional religious views; characterized by ardor and faith; and generally evidenced through specific religious observances.

**Reprisal/Retaliation** -- Unlawful retaliation against an individual for opposing employment practices that discriminate based on any of the protected categories, or for filing an unlawful discrimination charge, testifying, or participating in any way in an investigation, proceeding, litigation, or expressing opposition to a perceived discriminatory practice.

**Sex** -- Distinguished respectively as female or male, especially on the basis of their reproductive organs and structures.

**Sexual Harassment** -- Unwelcome sexual advances; requests for sexual favors; and other verbal or physical conduct of a sexual nature constitute sexual harassment when (1) submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment, (2) submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting that individual, or (3) 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.

Substantiated -- A substantiated finding occurs when a preponderance of evidence supports (more likely to have occurred than not occurred) the complainant's allegation of a violation of law, regulation, or policy/standards. The documented facts indicate a violation occurred.