



DEPARTMENT OF THE ARMY
HEADQUARTERS, U.S. ARMY MEDICAL COMMAND
2050 WORTH ROAD
FORT SAM HOUSTON, TEXAS 78234-6000

REPLY TO
ATTENTION OF
MCEE (690-600)

10 May 1999

MEMORANDUM FOR See Distribution

Subject: Interim Policy for Department of Defense (DoD)
Implementation of 10 U.S. Code Section 1561 and Interim Processing
Procedures

1. Reference SAMR-SFECD memorandum, dated 26 Mar 99, subject as
above (Enclosure 1).

2. Stan Kelley's guidance makes several points about which we
request you make sure action has been taken:

a. Each of your serviced commanders (commanding officers)
should be briefed on the requirements of Section 1561 as it covers
civilian employees.

b. Each of your serviced commanders should designate a POC
for the processing of sexual harassment (SH) complaints under
Sec. 1561. Note Mr. Kelley's statement that "commanders should
not name any individual assigned to an EEO office as the POC for
Sec. 1561 complaints".

c. Your EEO Counselors should be informed about what advice
to provide to complainants who raise SH issues. In this regard,
we are providing you our revised Rights and Responsibilities
Notice, item 2(3), to include information on Sec. 1561
(Enclosure 2).

3. If you have any questions, our POC is Mrs. Carmen Lopez, at
DSN 471-8170, Commercial (210) 221-8170, Fax (210) 221-8614 or
e-mail carmen_lopez@smtplink.medcom.amedd.army.mil.

2 Encls
as stated

DELIA RAMIREZ TRIMBLE
Director, Office of Equal Employment
Opportunity Programs

MCEE

Subject: Interim Policy for Department of Defense (DoD)
Implementation of 10 U.S. Code Section 1561 and Interim Processing
Procedures

CF:

MACOM EEO Offices



DEPARTMENT OF THE ARMY
EQUAL EMPLOYMENT OPPORTUNITY COMPLIANCE
AND COMPLAINTS REVIEW AGENCY
2ND FLOOR, 1941 JEFFERSON DAVIS HIGHWAY
ARLINGTON, VA 22202-4508

REPLY TO
ATTENTION OF

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

Stanley E. Kelley, Jr.

Director, Equal Employment Opportunity
Compliance and Complaints Review Agency



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



FEB 9 1999

FORCE MANAGEMENT
POLICY

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

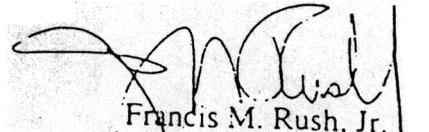
Section 591 of the National Defense Authorization Act for Fiscal Year 1998 is codified at Section 1561 of title 10, United States Code. Section 1561 establishes new requirements for the processing of complaints alleging sexual harassment that are filed by military personnel or civilian employees of the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

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 paragraph 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 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.

SAMPLE

(Letterhead)

(Office Symbol)

Memorandum for (Aggrieved's Name/Address)

1. The purpose of this letter is to advise you of your rights and responsibilities in pursuing an Equal Employment Opportunity (EEO) complaint.

2. Rights

a. If you believe you have been discriminated against because of your race, color, religion, sex, national origin, age, physical or mental disability and/or subjected to reprisal in an employment matter subject to the control of the Army, you have a choice of options to pursue your complaint and have it resolved.

(1) Options for Employees Outside of a Bargaining Unit. If you are not a member of a bargaining unit covered by a union contract, you have the right to select one of the following options:

(a) You may pursue a discrimination complaint under the procedures covered by Army Regulation (AR) 690-600. Your first step under this procedure is to contact an EEO counselor within 45 calendar days of the date of the matter alleged to be discriminatory or, in the case of a personnel action, within 45 days of the effective date of the action. The EEO counselor will attempt to resolve the problem to your satisfaction. If after the 20th day following the initial interview, the counselor is unable to resolve your complaint, the EEO Officer may offer you the opportunity to participate in the U.S. Army Medical Command (MEDCOM) EEO Alternative Dispute Resolution (ADR) Program. This program offers mediation as the ADR process to resolve EEO complaints at the informal part of the EEO Complaints Processing system. Complaints at this stage are termed precomplaints. Mediation, simply stated, is the intervention of a neutral/impartial party into the process who, by bringing the complainant and management together, assists in clarifying issues, identifying underlying causes, and arriving at mutually agreed upon actions to resolve the matter at issue.

A leaflet further explaining the ADR/mediation program is provided to you as an attachment to this memorandum. If you choose to participate in the ADR/mediation program, the precomplaint period is extended an additional 60 calendar days to accomplish mediation. If you choose not to participate in the ADR/mediation program or not all of your issues are resolved through mediation, the EEO counselor will continue counseling, conduct the final interview and issue the Notice of Right to File. You may file a formal complaint upon receipt of this Notice. The counselor will tell you with whom to file your complaint and will explain complaint procedures. These include an investigation by the Department of Defense Office of Complaint Investigations (OCI), a hearing by the Equal Employment Opportunity Commission (EEOC) if a nonmixed case and if you so choose, and a final decision by the Army.

(b) You may pursue a discrimination complaint under the Merit Systems Protection Board (MSPB) appeal procedure. This procedure is available to you only if the alleged discriminatory action can be appealed to the MSPB. Examples of personnel actions that are appealable to the MSPB include, but are not limited to, removal or suspension for more than 14 days of a non-probationary competitive service employee. If you are subject to a personnel action that is appealable to the MSPB, you will be notified in writing of your right to appeal to the MSPB. The time limit for appeal to the MSPB is 20 calendar days after the effective date of the personnel action that you believe discriminated against you. Under such an appeal, you are entitled to a hearing by the MSPB. In addition, you may petition the EEOC to review the final decision of the MSPB on the allegation(s) of discrimination.

(2) Options for Employees Within a Bargaining Unit. If you are a member of a bargaining unit covered by a union contract, and if the negotiated grievance procedure in that contract does not specifically exclude discrimination issues, you have the right to select one of the following options:

(a) You may pursue a discrimination complaint under the procedures covered by AR 690-600 as described in paragraph 2.a.(1)(a) above. This includes the option to participate in MEDCOM EEO ADR Program during the precomplaint process if offered by the EEO Officer.

(b) You may pursue a discrimination complaint under the Merit Systems Protection Board (MSPB) appeal procedure as described in paragraph 2.a.(1)(b) above.

(c) You may pursue a discrimination complaint under the negotiated grievance procedure. Your union contract outlines the grievance steps including review by the EEOC. Note that decisions in actions covered by 5 USC Section 7512 or 4303 cases are not appealable to the Federal Labor Relations Authority (FLRA). In actions not covered by 5 USC Section 7512 or 4303, but otherwise appealable to MSPB, you have access to the MSPB procedures only if such actions are excluded from the grievance procedure. If they are covered by the negotiated grievance procedure, the option is between the discrimination complaint procedure, under Title VII of the Civil Rights Act of 1964, as amended, hereinafter referred to as EEO complaint procedure, or the negotiated grievance procedure. If you choose the negotiated grievance procedure, you have the right to appeal the final decision, whether it be an Army decision, arbitration award, or FLRA decision, to the EEOC or MSPB, as appropriate. A bargaining unit employee who raises a claim of discrimination in connection with an appealable Reduction in Force (RIF) action may choose to appeal to the MSPB. Note that in actions not appealable to the MSPB, but covered by the negotiated grievance procedure, you may choose between the grievance procedure or the EEO complaint procedure under AR 690-600.

(d) You may not seek redress under the EEO complaint procedure and the negotiated grievance procedure. When you select the negotiated grievance procedure by filing a written grievance, your decision is considered to be final and you cannot seek redress under the EEO complaint procedure.

(e) A grievance under the negotiated procedure will be rejected if you have filed a timely appeal with the MSPB or if you have filed a formal discrimination complaint under the EEO complaint procedure.

(f) Allegations of discrimination that are subject to final administrative review by the EEOC may not be raised by an employee in the administrative grievance procedures (see AR 690-700, chapter 771).

(3) Additional Option for Sexual Harassment Complaints. In addition to filing a complaint under this regulation, under Section 1561 of Title 10, United States Code,

you have the option of also filing a sexual harassment complaint with the point of contact (POC) designated by the commander. Upon your request, the EEO Counselor will provide you the name of the POC who will be able to explain the procedures required by Section 1561. You are reminded that, even if you elect to file a complaint under Section 1561, you may, at the same time, continue the processing of your sexual harassment complaint in the EEO Complaints Processing System.

(4) Additional Option for Age Discrimination Complaints (age 40 and over). In addition to filing a complaint under this regulation, a mixed case appeal with MSPB (if applicable) or a negotiated grievance (if applicable) as described above, you may elect to bypass the administrative procedure and file a civil action directly in an appropriate U.S. District Court, after first filing a written notice of intent to file a civil action with the EEOC within 180 calendar days of the date of the alleged discriminatory action. Once a timely notice of intent to sue is filed with the EEOC, you must wait at least 30 calendar days before filing a civil action.

(a) You must be aware that, if you elect to file an administrative complaint rather than filing directly in U.S. District Court, you must exhaust your administrative remedies before you can file a civil action. You will have exhausted your administrative remedies when one of the following occurs: 90 calendar days after receiving notice of the final Army decision on your complaint, if no appeal has been filed; or, after 180 calendar days from the date you filed your complaint with the Army and the Army has failed to issue a final decision and no appeal has been filed; or 90 calendar days after receiving the EEOC's final decision on your appeal; or after 180 calendar days from the date you filed an appeal with the EEOC and the EEOC has not issued a final decision on the appeal.

(5) Equal Pay Act (EPA) Option. If you are alleging sex-based wage discrimination under the EPA, you have the right to go direct to the U.S. District Court even though such claims are cognizable under Title VII. A civil action must be filed within 2 years of the date of the occurrence, or within 3 years of this date if the violation is alleged to be willful. The filing of an administrative complaint does not toll the time for filing a civil action.

b. You have the right to remain anonymous during the counseling. The counselor will refrain from revealing your

identity except by your authorization. The right of anonymity does not extend to the ADR/mediation process during the precomplaint stage if you choose to participate in the MEDCOM EEO ADR Program.

c. You have the right to a representative of your choice throughout the complaint process including counseling. This right to choice of representation is limited when there would be a conflict of interest as defined in AR 690-600. Your right to representation is extended to the mediation process if you choose to participate in the MEDCOM EEO ADR Program. However, the mediator will decide the extent to which the representative actively participates in mediation. The complainant, nonetheless, will have sufficient time to discuss resolution and review any settlement with his/her representative prior to finalizing any agreement.

d. You have the right to a hearing before an EEOC administrative judge in a non-mixed case after 180 calendar days from the filing of a formal complaint or after completion of the investigation, whichever comes first.

e. You have the right to go to U.S. District Court 180 calendar days after filing a formal complaint or 180 calendar days after filing an appeal with EEOC.

f. You have the right to receive in writing within 30 calendar days of the first counseling contact (unless you agree in writing to an extension or you choose to participate in the MEDCOM EEO ADR Program) a notice terminating counseling and informing you of: (a) the right to file a formal individual or class complaint within 15 calendar days of receipt of the notice, (b) the appropriate official with whom to file a formal complaint, and (c) your duty to immediately inform the agency if you retain counsel or a representative. Any extension of the counseling period may not exceed an additional 60 calendar days. Where notice is not provided and no extension is secured, you have the right to file a formal complaint after the 30th day. Exception: Where you agree to participate in the MEDCOM EEO ADR Program, the written notice terminating the counseling period will be issued upon completion of the mediation process, if resolution is unsuccessful, if some issues remain unresolved, or within 90 calendar days of the first contact, whichever is earlier.

3. Responsibilities

a. You are responsible for cooperating with the EEO counselor, the EEO officer, and investigator in processing your EEO complaint.

b. You are responsible for assuring that the activity EEO officer is advised, in writing, of your current mailing address, at all times during the processing of your EEO complaint in the administrative procedure. Failure to keep the agency informed of your current address may result in dismissal of your complaint.

c. If you choose to participate in the MEDCOM EEO ADR Program, you are responsible for notifying the EEO officer of your decision within 3 calendar days from the date of the offer and are responsible for cooperating with the mediator during the process.

d. If you file a formal complaint, you are responsible for informing the EEO officer if you are represented, by whom and the address and telephone number of same. You must also inform the EEO officer of any change in representation.

e. You must also be aware that you have a legal obligation to mitigate damages, regardless of whether it is later determined that you were a victim of unlawful discrimination. A successful complainant claiming back pay will be paid the amount he/she would have earned had it not been for discrimination, less any amount he or she actually earned or could have earned with due diligence, plus interest. Interest on back pay is not payable to Federal employees or applicants who prevail on employment discrimination claims brought under the Age Discrimination in Employment Act (ADEA) of 1967, as amended, or the EPA.

f. You are responsible for informing the EEO office of your election of redress. Whichever formal action you file first (an MSPB mixed case appeal, a discrimination complaint under the EEO complaint procedure or a written grievance under the negotiated grievance procedure) is considered to be an election to proceed only in that forum as to the alleged discrimination. Thus you should be aware that:

(1) An appeal to the MSPB will not be accepted if you have filed a timely formal complaint in writing under the EEO complaint procedure or a timely written grievance under the negotiated procedure.

(2) A discrimination complaint filed under the EEO complaint procedure will be dismissed if you have filed a timely appeal to the MSPB or a timely-written grievance under the negotiated procedure on the same matter.

g. You are responsible for filing a formal EEO complaint within 15 calendar days of receipt of the counselor's notice of right to file a discrimination complaint, in the event that you wish to file a formal complaint at the conclusion of counseling.

h. You are responsible for serving notice of appeal and a copy of the brief (if any) on the agency should you elect to appeal an agency decision to the EEOC, Office of Federal Operations.

i. Should you elect to bypass the administrative procedure in an age discrimination complaint set forth in section a.1.(c) above, you are responsible for providing the following information in your notice of intent to sue:

The date prepared

(2) Statement of intent to file a civil action under Section 15(d) of the ADEA.

Your name, address, and telephone number

(4) Name, address, and telephone number of your designated representative, if any.

(5) Name and location of the Federal agency or installation where the alleged discriminatory action occurred

(6) Statement of the nature of the alleged discriminatory action(s).

Date(s) the alleged discriminatory action occurred

(8) Your signature or the signature of your designated representative.

j. Notices of Intent to Sue under the ADEA must be submitted to the EEOC at the following addresses:

Delivered: Equal Employment Opportunity Commission
Office Of Federal Operations
Federal Sector Programs
1801 L Street, N.W.
Washington, D.C. 20507

Mailed: Equal Employment Opportunity Commission
Office of Federal Operations
Federal Sector Programs
P. O. Box 19848
Washington, D.C. 20036

Or sent by facsimile (if no more than 10 pages) to:

(202) 663-7022

4. You are advised that only matters raised in precomplaint processing or issues like or related to issues raised in precomplaint processing may be alleged in the formal complaint filed with Army. If during the processing of your complaint you identify like or related new issues, your current complaint will be amended to include these additional claims.

5. If you have any other questions on this matter, you may contact the Employee Relations Division of your servicing Civilian Personnel Advisory Center (CPAC), your union representative, or this EEO office.

(Insert EEO official's signature block data here)

ACKNOWLEDGEMENT OF RECEIPT:

Signature of Aggrieved

Date