

NAWCWDINST 5300.1
734000E
13 Dec 2001

NAWCWD INSTRUCTION 5300.1

From: Commander, Naval Air Warfare Center Weapons Division

Subj: PREVENTION OF SEXUAL HARASSMENT

Ref: (a) SECNAVINST 5300.26C
(b) OPNAVINST 1211.4F
(c) NAVAIRINST 12713.1
(d) 29 CFR 1614
(e) Title 10 U.S.C. 1561

Encl: (1) Department of the Navy Definition of Sexual Harassment
(2) Glossary of Terms
(3) Range of Behavior that Constitute Sexual Harassment

1. Purpose. To provide the Naval Air Warfare Center Weapons Division (NAWCWD) policy on the prevention of sexual harassment, define the responsibilities of NAWCWD personnel, and to provide information regarding options for redress in compliance with references (a) through (c). This instruction has been revised in its entirety; therefore, margin symbols have been omitted.

2. Cancellation. NAWCWPNINST 5300.1.

3. Applicability. This instruction applies to all NAWCWD civilian and military personnel, including non-appropriated fund employees.

4. Background

a. The NAWCWD Team is comprised of an optimally integrated group of men and women working together to support the mission of the warfighter and the Department of the Navy (DON). Each civilian and military member of the team is entitled to be treated fairly, with dignity and respect, in a work environment free of unlawful discrimination.

b. The economic costs of sexual harassment are substantial. Additionally, sexual harassment can negatively impact productivity and readiness, including increased absenteeism, result in greater personnel turnover, lower morale, decreased effectiveness, and a loss of personal, organizational, and public trust. While not easily quantified, these costs are real and could seriously affect NAWCWD's ability to accomplish its mission.

5. Definition of Terms. Enclosure (1) defines sexual harassment. Interpretation of this instruction and enclosure (1) is governed by the definitions found in enclosure (2). Enclosure (3) is an outline of the three-tiered behavioral zone approach, explains the various forms of sexual harassment, and provides guidance by defining behavior that can be interpreted as sexual harassment.

6. Policy. The ability of NAWCWD to support the mission of the warfighter and DON depends on every member of the team. The NAWCWD is committed to providing all employees a work environment free from unlawful discriminatory practices and inappropriate behavior. As with all forms of unlawful discrimination, sound leadership is the cornerstone to eradicating sexual harassment. The following is NAWCWD policy on sexual harassment:

a. Sexual harassment in any form is prohibited and will not be tolerated. All NAWCWD personnel will be provided with a work environment free from sexual harassment.

b. The NAWCWD will educate and train all new personnel within 90 days of arrival at this activity and annually thereafter in the areas of identification, prevention, resolution, and elimination of sexual harassment.

c. The NAWCWD will advise individuals who believe they were sexually harassed of the different avenues to seek resolution and redress. Managers and supervisors will foster a Command climate that will not tolerate acts of harassment, reprisal, or intimidation.

d. All reported incidents of sexual harassment will be investigated and resolved at the lowest appropriate level. All incidents will be resolved promptly and with sensitivity. Confidentiality will be maintained to the extent possible. Feedback will be provided to all affected individuals consistent with Privacy Act requirements and other pertinent laws, regulations, and negotiated agreements.

e. Counseling support or referral services will be made available for all persons involved in incidents of sexual harassment.

7. Accountability

a. Individuals at NAWCWD will NOT:

(1) Engage in behavior that can be construed as sexual harassment as defined in enclosure (1).

(2) Take reprisal action against a person who files a complaint of sexual harassment or provides information on an incident of alleged sexual harassment.

(3) Knowingly make a false accusation of sexual harassment.

(4) While in a managerial or supervisory position, condone or ignore sexual harassment of which he or she has knowledge or has reason to have knowledge.

b. The Uniform Code of Military Justice (UCMJ) applies to military personnel if they violate the above provisions. Civilian personnel are subject to appropriate disciplinary action, according to civilian federal personnel policy, if found to be in violation of the stated provisions. The reasonable person standard as defined in enclosure (2) can be used to determine whether a violation of these provisions has occurred.

c. Incidents of sexual harassment cover a wide range of behaviors, from verbal comments to rape. Likewise, the full range of administrative and disciplinary action is available to address sexual harassment. For military personnel, these include informal counseling, comments in fitness reports and evaluations, administrative separation, and punitive measures under the UCMJ. For civilians, options include informal counseling and disciplinary action including written reprimand, suspension, and/or removal from the Federal Service.

8. Responsibilities

a. The Commander, NAWCWD, and managers/supervisors will:

(1) Set the example in treating all people with mutual respect and dignity, fostering a climate free from all forms of discrimination and eliminating sexual harassment.

(2) Be committed to preventing sexual harassment within the Command.

(3) Neither ignore nor condone sexual harassment.

(4) Take required action to ensure that a recipient of sexual harassment is not also the victim of reprisal or retaliation.

(5) Take appropriate corrective and disciplinary action when conduct is disruptive, provoking, discriminatory, or otherwise unprofessional.

b. Individuals who believe they were sexually harassed are encouraged to address their concerns or objections regarding the incident directly with the person demonstrating the harassing behavior.

c. Persons who are subjected to or observe objectionable behavior should promptly notify the chain of command if:

(1) The objectionable behavior does not stop.

(2) The situation is not resolved.

(3) Addressing the objectionable behavior directly with the person concerned is not reasonable under the circumstances.

(4) The behavior is clearly criminal in nature.

d. An individual, who was subjected to or observes objectionable behavior, should inform his or her supervisor. If the person demonstrating the objectionable behavior is a direct superior in the chain of command, or the chain of command condones the conduct or ignores a report or complaint, individuals who were subjected to or who observed objectionable behavior should report the incident to the Equal Employment Opportunity Division, Code 734000E. Military personnel should report the incident to the Command Managed Equal Opportunity Officer (CMEO), Equal Opportunity Advisor (EOA), Code 810000D, or use the Navy Advice Line (Toll free 1-800-253-0931 or commercial 901-874-2507).

9. Processing Sexual Harassment Complaints. Complaints of sexual harassment may be processed through the following procedures per references (d) and (e):

a. Civilian procedures:

(1) Management Inquiry

(a) Complainant notifies management chain of sexual harassment allegations. (First supervisory level not involved with complaint.)

(b) Management conducts a fact finding inquiry to gather information, conducts interviews on allegations raised, and attempts to resolve the complaint at the lowest level possible.

(2) The EEO Discrimination Complaints process 29 CFR 1614 (reference (d)). Individuals must contact an EEO counselor within 45 days of the date of the alleged incident of sexual harassment. The EEO counselor will conduct a fact finding into the allegations and attempt to resolve the complaint at the lowest possible level.

(3) Title 10 U.S.C. 1561 complaint (reference (e)). An investigator, specially trained to investigate sexual harassment allegations conducts a thorough and impartial management inquiry. Title 10 U.S.C. Section 1561 allows an employee to file a complaint of sexual harassment under both sections 1561 and 29 CFR 1614, and that they may do so simultaneously. Filing under section 1561 will not serve to exhaust administrative remedies with respect to 29 CFR 1614. Command decisions under section 1561 are final, with no right of appeal to courts and compensatory damages are not available under section 1561. Complaints filed under U.S.C. 1561 will commence within 2-3 days after an employee requests to have their sexual harassment claim processed via 1561 procedures.

b. Military Procedures. Complaints must be filed in the following manner and sequence:

(1) Informal process – Informal Resolution System (IRS), military members should use the IRS to handle problems at the lowest level possible. Confront the individual, inform their supervisors and the CPO Division Officer and up the chain until the problem is resolved. The final step in the informal process is to request Captain’s Mast (also known as Request Mast). If the problem is not resolved then the member can proceed to the formal complaint procedure.

(2) Formal Complaint process (primary) – The military member files a complaint using the NAVPERS 5354/2, Navy EO/Sexual Harassment Formal Complaint (available at the CMEO Office). The NAVPERS 5354/2 must be filed through the complainant’s chain of command. (May be filed with a CMEO or EOA.)

(3) Complaints not resolved through the primary method can be addressed by filing a Redress of Wrong Committed by a Superior (NAVREGS ART 1150, available at the CMEO Office), and must be routed through the chain of command to the Commanding Officer. Redress of Wrong Committed by a Superior can only be used if it is against a superior other than the Commanding Officer.

(4) Complaints against the Commanding Officer must be filed under NAVREGS ART 138 (available at the CMEO Office) with legal assistance and must be routed via the chain of command to the person authorized to exercise a court martial over a Commanding Officer. A report of the proceedings must be sent to the Secretary of the Navy for review and final decision.

10. Action

a. The Commander, NAWCWD, will:

- (1) Take action to ensure that all NAWCWD personnel comply with this instruction.
- (2) Ensure that a counseling support or referral network exists and is advertised.
- (3) Ensure all personnel receive annual prevention of sexual harassment training.

b. Managers and supervisors will:

- (1) Provide a working environment free of sexual harassment.
- (2) Ensure that all their employees are aware of the provisions of this instruction.
- (3) Ensure that all their employees complete the required training on the prevention of sexual harassment.

(4) Investigate all sexual harassment complaints and promptly take appropriate corrective action.

(5) Ensure all incidents of sexual harassment are reported to the Equal Employment Opportunity Division, Code 734000E, or to the Equal Opportunity Advisor for military personnel.

c. The Equal Employment Division, Code 734000E, will:

(1) Keep the Commander, NAWCWD, apprised of reported incidents of sexual harassment while maintaining confidentiality.

(2) Provide guidance and advice to managers, supervisors, and employees on the prevention of sexual harassment.

(3) Provide employees with confidential, objective counseling, advice, and information regarding sexual harassment.

(4) Prescribe appropriate training in the prevention of sexual harassment and monitor such training to ensure the training is working effectively to remove sexual harassment from the working environment.

(5) Ensure Command policy on sexual harassment is widely publicized and distributed.

(6) Keep organizational management apprised of reported instances of sexual harassment and work with managers to investigate and resolve sexual harassment problems in the work place.

(7) Ensure processing of sexual harassment complaints expeditiously.

(8) Ensure all reporting requirements are met.

d. The Command Managed Equal Opportunity (CMEO) Officer, Code 810000D, will:

(1) Keep the Commander, NAWCWD, Commanding Officers, and Officers in Charge apprised of reported instances of sexual harassment while maintaining confidentiality.

(2) Employ resources and identify and resolve sexual harassment problems and concerns as required by reference (b).

(3) Provide advice to all military personnel on sexual harassment issues.

(4) Conduct a preliminary inquiry of all allegations of sexual harassment.

(5) Assign a sexual harassment advocate to a complainant of sexual harassment who will assist the complainant through the complaint process.

(6) Keep organizational management apprised of reported instances of sexual harassment and work with managers to investigate and resolve sexual harassment problems in the work place.

11. Directive Responsibility. The Deputy Equal Employment Opportunity Officer, Code 734000E, is responsible for keeping this instruction current.

/s/
M. J. SWANEY

DEPARTMENT OF THE NAVY
DEFINITION OF SEXUAL HARASSMENT

1. Sexual harassment is a form of sex discrimination that involves unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when:
 - a. Submission to or rejection of such conduct is made either explicitly or implicitly a term or condition of a person's job, pay, or career.
 - b. Submission to or rejection of such conduct by a person is used as a basis for career or employment decisions affecting that person.
 - c. Such conduct interferes with an individual's performance or creates an intimidating, hostile, or offensive environment.
2. Any person in a supervisory or Command position who uses or condones explicit or implicit sexual behavior to control, influence, or affect the career, pay, or job of a military member or civilian employee is engaging in sexual harassment. Similarly, any military member or civilian employee who makes deliberate or repeated unwelcome verbal comments, gestures, or physical contact of a sexual nature is also engaging in sexual harassment.

GLOSSARY OF TERMS

1. Career or Employment Decision. The decision must concern some aspect of the employment, career, pay, duty assignment, benefits, or privileges of another.
2. Condition. To make some aspect of another's employment, career, pay, duty assignment, benefits, or privileges contingent on fulfillment of some requirement the maker has no right to impose.
3. Discrimination. For purposes of this instruction, discrimination means the illegal treatment of a person or group based on handicap, race, color, national origin, age, religion, or sex. Sex discrimination refers to the practice of wrongfully treating men and women differently in the work place, solely because of their sex. The Supreme Court has held that sexual harassment of both men and women is a form of sex discrimination.
4. Hostile Environment. A type of sexual harassment that occurs when the unwelcome sexual behavior of one or more persons in a work place produces a work atmosphere that is offensive, intimidating, or abusive to another person using the reasonable person standard (see paragraph 6 below).
5. "Quid Pro Quo" or "This For That". A type of sexual harassment that occurs when submitting to or rejecting such behavior is used as a basis for decisions affecting any person's employment, job, pay, or career. This could be a promise of employment, a promotion, training, a threat of or an actual demotion, a duty assignment, or a positive or negative performance evaluation.
6. Reasonable Person Standard. An objective test used to determine if behavior constitutes sexual harassment. This standard considers what a reasonable person's reaction would be under similar circumstances and in a similar environment. The reasonable person standard considers the recipient's perspective and not stereotyped notions of acceptable behavior. For example, a work environment in which sexual slurs, the display of sexually suggestive calendars, or other offensive sexual behavior abound can constitute sexual harassment even if other people deem it to be harmless or insignificant.
7. Recipient. Anyone subjected to sexual harassment as defined in this instruction.
8. Reprisal. The wrongful threatening or taking of either unfavorable action against another or withholding favorable action from another solely in response to a report of sexual harassment or violations of this instruction.
9. Severe Pervasive. These terms derive their meaning in the context of the conduct engaged in and the surrounding facts and circumstances. Obvious examples of severe conduct include indecent assault or offensive requests for sexual favors. Pervasive conduct is that which is repeated or widespread, or evidences a pattern.

10. Sexual Favors. Sexual privileges that are granted or conceded in the work environment.
11. Sexual Nature. Conduct that a reasonable person would find sexual in nature in light of the relevant facts and circumstances. Behavior does not need to be overtly sexual if it creates an offensive work environment. Examples include, but are not limited to, e-mail of a sexual nature, sexist remarks or slurs, sexual advances, displays or pornographic material, touching, language, gestures, mannerisms, and similar behavior.
12. Unwelcome. Conduct that is not solicited and which is considered objectionable by the person to whom it is directed and which is found to be undesirable or offensive using a reasonable person standard.
13. Work Environment. The work place or any other place that is work connected, as well as the conditions or atmosphere under which people are required to work. Examples of work environment include, but are not limited to, an office, an entire office building, a DOD base or installation, DOD ships, aircraft, or vehicles, anywhere when engaged in official DON business, as well as Command sponsored social, recreational, and sporting events, regardless of location.

RANGE OF BEHAVIOR THAT CONSTITUTE SEXUAL HARASSMENT

1. Introduction. This enclosure explains and illustrates behavior that could constitute sexual harassment by describing in lay-person's terms what sexual harassment is and how it occurs in the work environment. Use this enclosure as a guide to develop training programs and to assist military members and civilian employees in distinguishing between acceptable and unacceptable behavior in the work environment. The NAWCWD policies and prohibitions governing sexual harassment are contained in the basic instruction and enclosures (1) and (2).

2. Sexual Harassment. Basically, sexual harassment means bothering someone in a sexual way. In the context of this instruction, it is behavior that is unwelcome, is sexual in nature, and is connected in some way with a person's job or work environment. A wide range of behavior can meet these criteria and constitute sexual harassment. Even with this rather simplistic way of explaining it, trying to determine exactly what kinds of behavior constitute sexual harassment often is not easy. The policy established by this instruction is not intended to prevent the types of behavior that are appropriate in normal work settings and contribute to camaraderie.

3. Discussion. For a person's behavior to be considered sexual harassment, it must meet three criteria: it must be unwelcome; be sexual in nature; and occur in or have impact on the work environment.

a. Unwelcome behavior is behavior that a person does not ask for and which that person considers undesirable or offensive. Not everyone has the same perception of "undesirable or offensive". What is acceptable for some people is not acceptable for others. So whose perception should be used? Since the person being subjected to the behavior (the recipient) is the one being affected, it is the recipient's perception that counts. As long as the recipient is a reasonable person and not overly sensitive, behavior which the recipient finds unwelcome should be stopped. Using this "reasonable person standard", from the perspective of the recipient, is really no more than using "common sense".

b. Behavior that is sexual in nature is fairly easy to determine. Telling sexually explicit jokes, displaying sexually suggestive pictures, and talking about sex are obviously "sexual in nature". Some people would consider other behaviors, such as touching, to be sexual in some cases but not in others. Not all touching is sexual in nature, but if the touching is to certain parts of the body or is done suggestively, it definitely is. Again, using common sense normally will be enough to determine whether or not a certain behavior is sexual in nature.

c. For sexual harassment to occur, unwelcome sexual behavior must occur in or have impact on the work environment:

(1) When recipients are offered or denied something that is work connected in return for submitting to or rejecting unwelcome sexual behavior, they have been subjected to a type of sexual harassment known as "quid pro quo" ("this for that"). Examples include: getting or losing a job, a promotion or demotion, a good or bad performance evaluation, etc. Basically, if

any work-connected decisions are made based on the submission to or rejection of the unwelcome sexual behavior, sexual harassment has occurred. Normally, this is from a senior to a junior, because the senior person has something to offer.

(2) When the unwelcome sexual behavior of one or more persons in a work place interferes with another person's work performance, sexual harassment has occurred. If the behavior produces a work atmosphere that is offensive, intimidating, or abusive to another person, whether or not work performance is affected, a type of sexual harassment has occurred called "hostile environment". The following are a few examples of behavior that could create a hostile environment:

- (a) Using sexually explicit or sexually offensive language.
- (b) Displaying sexually-oriented posters or calendars of nude or partially-clad individuals.
- (c) Touching someone in a suggestive manner (e.g., intentionally brushing against them or pinching).
- (d) Giving someone unwelcome e-mail, letters, cards, or gifts of a personal nature, when these items have sexual overtones.
- (e) Applying unwanted or uninvited pressure for dates.

(3) Certain types of unwelcome sexual behavior do not have to create a "hostile environment" to be considered sexual harassment. If the behavior occurs in the work environment and is unreasonable, such as fondling or groping, it is considered sexual harassment, even if it is displayed only once. Other less obvious behaviors can become sexual harassment if they are repeated.

4. Range of Behavior. There is a wide range of behavior, from leering to rape, which can be unwelcome, sexual, and work connected and can, therefore, constitute sexual harassment. Some behavior is unwelcome and work connected, but not sexual (for example, performance counseling). This behavior is not sexual harassment. To make it easier to understand, it is helpful to think of the entire range of possible behavior in terms of a traffic light. The traffic light has three colors, and behavior can be divided into three zones. Green on the traffic light means "go"; behavior in the green zone means "it's acceptable". It is not sexual harassment. Red on the traffic light means "stop"; the red behavior zone means "don't do it". It is sexual harassment. The third color on the traffic light, yellow, means "use caution". The yellow behavior zone could be sexual harassment. Just as with a traffic light, if in the yellow zone long enough, the light will turn red. If yellow-zone behavior is repeated enough, especially after having been told it is unwelcome, it becomes red-zone behavior, sexual harassment. The following examples illustrate these three types of behavior, but they are certainly not all-inclusive:

a. Green Zone. These behaviors are not sexual harassment: performance counseling, touching that could not reasonably be perceived in a sexual way (such as touching someone on the elbow), counseling on military appearance, social interaction, showing concern, encouragement, a polite compliment, or friendly conversation.

b. Yellow Zone. Many people would find the following behaviors unacceptable, and they could constitute sexual harassment: violating personal “space”, whistling, questions about personal life, lewd or sexually-suggestive comments, suggestive posters or calendars, off-color jokes, leering, staring, repeated requests for dates, foul language, unwanted letters or poems, sexually suggestive touching, or sitting or gesturing sexually.

c. Red Zone. These behaviors are always considered sexual harassment: sexual favors in return for employment rewards, threats if sexual favors are not provided, sexually explicit pictures (including calendars or posters) or remarks, sexually explicit e-mail, using status to request dates, or obscene letters or comments. The most severe forms of sexual harassment constitute criminal conduct, e.g., sexual assault (ranging from forcefully grabbing to fondling, forced kissing, or rape).

NOTE: Keep in mind that the above examples are used as guidance only, that individuals believe they are being sexually harassed based on their perceptions, that each incident is judged on the totality of facts in that particular case, and that individual judgment could vary on the same facts. Therefore, caution in this area is advised. Any time sexual behavior is introduced into the work environment or among coworkers, the individuals involved are on notice that the behavior could constitute sexual harassment.