



DEPARTMENT OF THE NAVY
OFFICE OF THE SECRETARY
1000 NAVY PENTAGON
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ASN (M&RA)

SECNAV INSTRUCTION 5300.26E

28 MAY 2020

From: Secretary of the Navy

Subj: DEPARTMENT OF THE NAVY POLICY ON SEXUAL HARASSMENT

Encl: (1) References
(2) Definitions
(3) Responsibilities
(4) Harassment Response Procedures for Commanders and Supervisors of DON Civilians
(5) Range of Behaviors which Constitute Sexual Harassment
(6) Informal Resolution Procedures for Military Members

1. Purpose. To provide a comprehensive Department of the Navy (DON) policy for all military and civilian personnel on the identification, prevention, and elimination of sexual harassment and to establish regulations to enforce policy in accordance with the references (a) through (q). This instruction is a complete revision of enclosures (1) through (6) and must be reviewed in its entirety.

2. Cancellation. SECNAVINST 5300.26D.

3. Definitions. See enclosure (2).

4. Applicability. This instruction applies to all DON personnel, specifically: active-duty military personnel, both Regular and Reserve; DON civilians including non-appropriated fund employees; cadets and midshipmen of the Naval Academy and of the Naval Reserve Officer Training Corps; and Reserve personnel when performing active or inactive duty for training, or engaging in any activity directly related to the performance of a Department of Defense (DoD) reserve duty or function.

5. Policy

a. The Navy-Marine Corps team must be composed of an optimally integrated group of men and women who are able to work together to accomplish the mission. Each member of the team is

entitled to be treated fairly, with dignity and respect, and must be allowed to work in an environment free of sexual harassment. Additionally, each member is expected to abide by the DON Core Values of Honor, Courage, and Commitment. Sailors, Marines, and Civilians who model the Core Values do not engage in negative behaviors such as sexual harassment as explained in enclosure (5), and do not condone those behaviors in others.

b. The DON is committed to a culture of dignity and respect, where sexual harassment is never tolerated, victims have access to comprehensive support, and offenders are held appropriately accountable. Sailors, Marines, and Civilians, at every level of leadership, are personally responsible for demonstrating professional and ethical behavior in all settings, and at all times – while on duty, at home, and online.

c. The DON is committed to maintaining a work environment free from sexual harassment. In support of this commitment, it is DON policy that:

(1) Sexual harassment is unacceptable conduct and will not be tolerated. Off-duty or non-duty behaviors, including those by Reserve component members that affect the workplace may also be considered to be sexual harassment.

(2) DON leaders are responsible for setting and enforcing an environment that is non-permissive to these destructive and demoralizing behaviors. All DON personnel, military and civilian, will be provided a work environment free of sexual harassment.

(3) DON personnel called upon to conduct or review investigations into alleged incidents of sexual harassment must receive training in DON policy on sexual harassment and investigative methods and processes.

(4) All DON personnel, military and civilian, who believe they have been sexually harassed must be provided the opportunity to seek resolution and redress. Commanders and those in supervisory positions will ensure that reports of sexual harassment can be made in a command climate that does not tolerate acts of retaliation or intimidation. All DON personnel will be made aware of the avenues of resolution and redress that are available.

(5) All reported incidents of sexual harassment must be investigated, resolved at the lowest appropriate level, and will meet the requirements of reference (a) where applicable. The nature of the investigation will depend upon the particular facts and circumstances and may consist of an informal inquiry where that action is sufficient to resolve factual issues. All incidents must be resolved promptly and with sensitivity. Confidentiality will be maintained to the maximum extent possible. Feedback will be provided to all affected individuals consistent with the requirements of references (b) and (c), and other pertinent laws, regulations, and negotiated agreements. For military members, both the complainant and the subject(s) of a sexual harassment complaint may appeal administrative findings.

(6) Counseling support or referral services will be made available for all DON personnel alleging incidents of sexual harassment.

d. The rules in subparagraph 5d(1) are regulatory orders and apply to all DON personnel individually and without further implementation. A violation of these provisions by military personnel may be punishable per the Uniform Code of Military Justice (UCMJ), and may be a basis for disciplinary action with respect to civilians. The prohibitions in subparagraph 5d(1) apply to all conduct which occurs in or affects a DoD working environment, or otherwise meets the definition of sexual harassment, as defined in enclosure (2).

(1) DON personnel, military or civilian, will not intentionally or recklessly:

(a) Engage in conduct that constitutes sexual harassment, as defined in enclosure (2).

(b) Retaliate against a person who provides information on an incident of alleged sexual harassment, obstruct an investigation of sexual harassment, or act to prevent a victim or witness from reporting sexual harassment.

(c) Make a false accusation of sexual harassment.

(d) While in a supervisory or command position, condone or ignore sexual harassment or allegations of sexual harassment.

(2) The appropriate action to resolve a substantiated incident of sexual harassment will depend upon the circumstances surrounding that incident. Incidents of sexual harassment cover a wide range of behaviors, from verbal comments to physical acts, and can be subtle or overt. Likewise, the full range of administrative and disciplinary actions is available to address sexual harassment. In the case of military personnel, these include informal counseling, comments in fitness reports and evaluations, administrative separation, and punitive measures under the UCMJ. In the case of civilians, the range of penalties includes informal counseling and disciplinary action, including removal from the Federal Service.

(3) Military personnel of the Navy and Marine Corps must be processed for administrative separation on the first substantiated incident of sexual harassment involving any of the following circumstances (for the purposes of this subparagraph, an incident is substantiated if there has been a court-martial conviction or if the Commanding Officer determines that sexual harassment has occurred):

(a) Action, threats, or attempts to influence another's career or job in exchange for sexual favors.

(b) Rewards in exchange for sexual favors.

(c) Physical contact of a sexual nature which, if charged as a violation of the UCMJ, could result in punitive discharge.

(4) Commanders are not precluded from initiating administrative separation proceedings for reasons set forth in the appropriate service regulations for individuals whose conduct warrants separation not covered in subparagraph 5e (3).

6. Responsibilities. See enclosure (3).

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7. Records Management

a. Records created as a result of this instruction, regardless of format or media, must be maintained and dispositioned according to the records disposition schedules found on the Directives and Records Management Division (DRMD) portal page:

<https://portal.secnav.navy.mil/orgs/DUSNM/DONAA/DRM/SitePages/Home.aspx>

b. For questions concerning the management of records related to this instruction or the records disposition schedules, please contact your local Records Manager or the DRMD program office.

8. Information Management Control. The reporting requirements contained in enclosure (3), paragraph 3g and enclosure (4), paragraph 2g are exempt from information collection control, per reference (q), Part IV, paragraph 7n.



GREGORY J. SLAVONIC
Assistant Secretary of the Navy
(Manpower and Reserve Affairs)
Performing the Duties of the
Under Secretary of the Navy

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REFERENCES

- (a) 10 U.S.C. § 1561
- (b) 5 U.S.C. § 552
- (c) 5 U.S.C. § 552a
- (d) DoD Instruction 1020.03 of 8 February 2018
- (e) DoD Retaliation Prevention and Response Strategy Implementation Plan of January 2017
- (f) 29 C.F.R. § 1614
- (g) SECNAVINST 5370.7D
- (h) SECNAVINST 1752.4C
- (i) Title VII of the Civil Rights Act of 1964, as amended 42 U.S.C. 2000e
- (j) DoD Directive 1350.2 of 18 August 1995
- (k) DoD Directive 1440.1 of 21 May 1987
- (l) SECNAVINST 5800.12B
- (m) DoD Directive 7050.06 of 17 April 2015
- (n) SECNAV M-5210.1
- (o) DoD Instruction 5015.02 of 2 February 2015
- (p) DoD Instruction 6400.07 of 11 November 2013
- (q) SECNAV M-5214.1

DEFINITIONS

1. Covered Employee. Pursuant to reference (a), a civilian employee who is an aggrieved person directly supervised by a Commanding Officer or Officer-in-Charge of a unit, vessel, facility or area of the Army, Navy, Air Force, or Marine Corps. A complaint from a covered employee implicates reference (a) regardless of whether the covered employee initiates a complaint pursuant to reference (f).
2. Fact Finder. A military member or civilian employee assigned by a proper authority to investigate and establish the veracity of allegations by a civilian employee of hostile work environment, harassment, or sexual harassment.
3. Harassment. Behavior that is unwelcome or offensive to a reasonable person, whether oral, written, or physical, that creates an intimidating, hostile, or offensive environment. Harassment can occur through electronic communications, including social media, other forms of communication, and in person. Harassment may include: offensive jokes; epithets; ridicule or mockery; insults or put-downs; displays of offensive objects or imagery; stereotyping; intimidating acts; veiled threats of violence; threatening or provoking remarks; racial or other slurs; derogatory remarks about a person's accent; or displays of racially offensive symbols. Activities or actions undertaken for a proper military or governmental purpose, such as combat survival training, are not considered harassment.
4. Management Official. A military member or civilian employee with authority to initiate and oversee an inquiry required to address allegations by a civilian employee of hostile work environment, harassment, or sexual harassment.
5. Reasonable Person Standard. An objective test used to determine if behavior meets the legal test for harassment. The test requires a hypothetical exposure of a reasonable person to the same set of facts and circumstances as reported in the complaint. The reasonable person standard does not rely upon subjective or stereotyped notions of acceptable behavior within that particular work environment.
6. Retaliation. Retaliation encompasses illegal, impermissible, or hostile actions taken by a Service Member's chain of command, peers, or coworkers as a result of making or being suspected of making a protected communication, or reporting or being suspected of reporting a criminal offense.

Retaliation can occur in several ways, including reprisal, ostracism, or maltreatment. For additional definitions on the full range of retaliatory behaviors, see references (d), (e), and (g).

7. Sexual Assault. Pursuant to reference (h), intentional sexual contact characterized by the use of force, threats, intimidation or abuse of authority, or when the victim does not or cannot consent. As used in this instruction, the term includes a broad category of sexual offenses consisting of the following specific UCMJ offenses: rape; sexual assault; aggravated sexual contact; abusive sexual contact; or attempts to commit these offenses.

8. Sexual Harassment. Sexual harassment is conduct that meets the conditions of either paragraph 8a or 8b below:

a. Harassment on the basis of sex is a violation of Section 703 of reference (i) which provides Equal Employment Opportunity (EEO) for civilian applicants and employees. Pursuant to references (a) and (k), 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 such individual.

(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.

b. For all military members and covered employees, sexual harassment means any of the following:

(1) Conduct that:

(a) Involves unwelcome sexual advances, requests for sexual favors, and deliberate or repeated offensive comments or gestures of a sexual nature when:

1. Submission to such conduct is made either explicitly or implicitly a term or condition of a person's job, pay, or career.

2. Submission to or rejection of such conduct by a person is used as a basis for career or employment decisions affecting that person.

3. Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creates an intimidating, hostile, or offensive working environment.

(b) Is so severe or pervasive that a reasonable person would perceive, and the victim does perceive, the environment as hostile or offensive.

(2) Any use or condonation, by any person in a supervisory or command position, of any form of sexual behavior to control, influence, or affect the career, pay, or job of a member of the armed forces or a civilian employee of the DoD.

(3) Any deliberate or repeated unwelcome verbal comment or gesture of a sexual nature by any member of the armed forces or civilian employee of the DoD.

9. Work Environment. The workplace 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.

Responsibilities

1. The Assistant Secretary of the Navy (Manpower and Reserve Affairs (ASN (M&RA)) will:

a. Establish a civilian sexual harassment prevention and response program that meets the requirements of reference (k).

b. Provide oversight of Navy and Marine Corps sexual harassment prevention and response programs.

(1) Review annual reports submitted as required by paragraphs 2a, 2b, and 3c of this enclosure.

(2) Monitor prevalence as measured in available survey data (e.g. Workplace and Gender Relations Surveys).

(3) Review and take appropriate action in response to annual command climate reports submitted as required by paragraph 3g of this enclosure.

2. The Naval Inspector General will:

a. Provide a summary of hotline allegations involving sexual harassment for the previous fiscal year by 15 December annually to the ASN (M&RA). The summary must include total number of sexual harassment reports; race, sex, and ranks of the complainant(s) and alleged offender(s); number of substantiated or unsubstantiated reports; and if substantiated, the administrative or disciplinary action that resulted.

b. Provide a summary of allegations against Flag and General Officers and Senior Executive Service (SES) officials relating to sexual harassment for the previous fiscal year by 15 December annually to ASN (M&RA). The summary must include the total number of sexual harassment reports; race, sex, and ranks of the complainant(s) and alleged offender(s); number of substantiated or unsubstantiated reports; and if substantiated, the administrative or disciplinary action that resulted. The Naval Inspector General is normally the investigative authority for all sexual harassment reports against Flag Officers and some SES officials in accordance with reference (1).

c. Include specific assessments of sexual harassment prevention and response programs in all command inspections and area visits, and ensure that subordinate inspector generals

include sexual harassment program prevention and response assessments in their own unit-level inspection programs.

3. The Chief of Naval Operations and Commandant of the Marine Corps will:

a. Establish military sexual harassment prevention and response programs that meet the requirements of references (d) and (j). These programs must ensure that:

(1) Service Members and Civilians are treated with dignity and respect.

(2) Leaders at all levels are held appropriately accountable for fostering a climate of inclusion within their organizations that supports diversity, is free from sexual harassment, and does not tolerate retaliation for reporting sexual harassment allegations.

(3) Formal and informal resolution procedures are established.

(4) Sexual harassment complaints are investigated in an impartial and timely manner and that all reports of investigation of formally resolved complaints are reviewed for legal sufficiency. References (a) and (d) includes timelines for initiating and completing an investigation for complaints submitted by military members and covered employees. A complaint that alleges facts that, if true, would not constitute sexual harassment, need not be investigated using sexual harassment procedures. However, where the facts alleged, if true, would constitute unlawful harassment under another protected basis, that matter must be investigated under procedures established for investigations under those other protected bases, which may include the harassment procedures outlined in enclosure (4) for some civilians. Claims that are identical to claims previously filed and resolved may be dismissed as duplicative.

(5) Complainants receive access to available victim services and support, and are afforded an opportunity to provide input regarding disposition.

(6) Complainants receive ongoing timely information regarding the status of their complaints, commencement of the investigation, and notice of disposition.

b. Oversee Military Service programs, which will include:

- (1) Information regarding how to identify sexual harassment.
- (2) Information regarding how to identify sexual assault under Article 120 of the UCMJ and sexual assault reporting procedures.
- (3) Information regarding reporting options, procedures, and applicable timelines to submit sexual harassment complaints, including complaints submitted anonymously, and complaints involving a Service Member's commander or supervisor, to the appropriate commander or supervisor, the Inspector General's office, Military Equal Opportunity (MEO) office, or staff designated by the Military Service to receive harassment complaints.
- (4) Procedures for commanders and supervisors to receive, respond to, investigate, and resolve sexual harassment complaints, including those made in Joint Service environments consistent with paragraph 4.5 of reference (d). These procedures will include forms for the documentation of each step in the formal complaint process, including pre-decision updates and post-decision follow-ups with the complainant consistent with reference (c) and implementing DoD guidance. Complaint forms and reporting systems should clearly identify the duty status involved in Reserve component cases. Service Members should be encouraged to file complaints promptly, normally within 60 days of the incident.
- (5) Training and education requirements for commanders, supervisors, Service Members, and any other appropriate personnel (e.g., chaplains, judge advocates, investigating officers, inspectors general, MEO personnel, and staff designated by the Service to receive complaints). In addition to requirements in Section 6 of reference (d), training will include, at a minimum, training modules and materials provided by Defense Equal Opportunity Management Institute (DEOMI). Service developed training plans for such personnel will be submitted to DEOMI for review before implementation.
- (6) All DON personnel, military and civilian, must be educated and trained upon accession (within 90 days to the extent possible) and periodically thereafter (including throughout professional military education systems) in the areas of identification, prevention, resolution, and elimination of

sexual harassment. The frequency of periodic training will be no less than every two years. Periodic training will include the application of pertinent, anonymous reporting as well as informal and formal resolution procedures.

(7) Criteria for the appeal of administrative findings of formally resolved complaints of sexual harassment. The sole mechanism for appealing the disposition of an informally resolved complaint will be to file a complaint using the formal resolution process. Appeal procedures will be per reference (j).

(8) Information on the policies and procedures for filing a complaint of reprisal under reference (m) and the policies and procedures for filing complaints of other types of retaliation, such as maltreatment and ostracism.

(9) Mechanisms to collect, track, assess, and analyze data and information related to sexual harassment complaints per Section 7 of reference (d).

(10) Mechanisms to maintain data regarding sexual harassment complaints in a manner that will ensure adequate tracking of complaints from or against Service Members assigned, detailed, or otherwise working in a DoD Component, other than the parent Military Service, consistent with Service specific record retention policies and procedures, references (n) and (o).

(11) Requirements to prominently post and publicize information regarding DON and Service sexual harassment prevention and response policies and programs, including information regarding how to identify sexual harassment.

c. Respond to the DoD Office of Diversity, Equity and Inclusion (ODEI) data calls, via the ASN (M&RA), per Section 7 of reference (d), including data and reports to support annual Congressional and DoD fiscal year reports. Data and reports on sexual harassment will be submitted to the ASN (M&RA) by 15 January of each year, in support of 31 January requirement to provide DON data to ODEI.

d. Ensure that a minimum of one 24-hour toll-free or local hotline (or advice line) provides information on sexual harassment policies and procedures covered within this issuance, including how and where to file complaints, and the behaviors that constitute sexual harassment. Service Members should also

be made aware of other resources such as Military One Source and information about the DoD-wide hotline for Sexual Assault at <https://www.safehelpline.org>.

e. Ensure appropriate administrative or disciplinary action is taken against Service Members in cases involving substantiated sexual harassment complaints.

f. Mandate that substantiated complaints are annotated on fitness reports or performance evaluations for those DON personnel, military or civilian, against whom a complaint is substantiated.

g. Verify that commanders conduct climate assessments and take appropriate action as required. Provide an annual report (fiscal year basis) to the ASN (M&RA) on the compliance rate for completing command climate assessments. Include the number of command climate assessments conducted compared to the number required, trend data with regards to sexual harassment related questions (subject to and consistent with any restrictions the DoD Office of People Analytics places on the aggregation of command climate data), and a narrative report of any actions taken in response to revelation of poor command climates via the assessments.

h. Assist and support sexual harassment complainants per references (j), (k), and (p). Complainants should be provided adequate protection and care, and be informed about available support resources, including:

(1) Military and civilian emergency medical and support services.

(2) Public and private programs that are available to provide counseling, treatment, and other support.

(3) Organizations and entities on- and off-base that provide victim and witness services and support.

4. Leaders at all levels will:

a. Clearly communicate that sexual harassment will not be tolerated.

b. Demonstrate through actions and words that a hostile work environment will not be tolerated.

c. Discourage and actively intervene if they observe any sexist behaviors, including sexual jokes, gestures, etc. in the workplace.

d. Encourage Service Members and Civilians to report all instances of sexual harassment.

5. Service Members and Civilians will:

a. Treat others with dignity and respect.

b. Promote a positive command climate.

c. Report acts of sexual harassment.

d. Be accountable for their actions and behavior.

HARASSMENT RESPONSE PROCEDURES FOR COMMANDERS AND SUPERVISORS OF DON CIVILIANS

1. Background

a. Sound leadership must be the cornerstone of the effort to eliminate sexual harassment. It is not the intent of this instruction to impair commanders and supervisors in their ability to take appropriate actions to carry out leadership responsibilities. They must set the example in treating all people with dignity and respect, and fostering a climate free of sexual harassment. Such a climate is essential to maintain high morale, discipline, and readiness. Commanders and supervisors are responsible for, and must be committed to, preventing sexual harassment in their commands and work environments. They must not ignore or condone sexual harassment in any form, and they must take whatever action is required to ensure that a recipient of sexual harassment is not subsequently also the victim of retaliation. Retaliation, as further described in enclosure (2), is prohibited under this instruction whether the command, alleged perpetrator, or peers of the complainant originated it. These responsibilities regarding sexual harassment are part of the broader responsibility of commanders and supervisors to foster a positive climate and take appropriate corrective action when conduct is disruptive, provoking, discriminatory, or otherwise unprofessional.

b. Unwelcome verbal or physical conduct that is based on race, color, religion, sex (including sexual harassment, pregnancy, sexual orientation and gender identity), national origin, age (40 or older), disability (mental or physical), genetic information, or retaliation (based on opposition to discrimination or participation in the discrimination complaint process) can result in a form of harassment that amounts to employment discrimination and violates Title VII of the Civil Rights Act of 1964 and/or other applicable laws.

c. The DON strives to prevent and correct unlawful harassment. These procedures describe the responsibilities of commanders and those in supervisory positions who are accountable for promoting, supporting, and enforcing anti-harassment policies and programs for civilian employees. Supervisors must recognize harassing conduct and take immediate and appropriate action if they observe harassment, receive a report or complaint of harassment, or otherwise have knowledge of an allegation of harassment. All feasible steps to prevent

harassing conduct must be taken as early as possible, before it becomes pervasive or severe.

d. Although petty slights and annoyances in and of themselves will not constitute unlawful harassment, commanders and those in supervisory positions must be aware that claims of Hostile Work Environment (HWE) are viewed based on the totality of the circumstances rather than piecemeal. In isolation, an offhand comment may not constitute unlawful harassment, but may if it is severe, or if those same acts are repeated and go unaddressed. Supervisors will contact EEO, Human Resources (HR), and/or legal officials if there is any doubt concerning any behavior.

e. These procedures are separate and apart from any collective bargaining agreement or statutory complaint process that also covers harassment, such as the EEO complaint process in accordance with reference (f).

2. Procedures

a. Allegations of HWE, including sexual harassment and other unlawful harassment, received by commanders, those in supervisory positions, HR, or EEO must be appropriately investigated at the lowest appropriate level.

b. Supervisors should immediately document in writing all harassment observed or reported to include: specific nature of the incident, date and place of the incident, names of all parties involved, and all other pertinent facts.

c. Supervisors will contact EEO officials, HR, and/or legal upon receiving a report of HWE, including sexual harassment and other unlawful harassment. If the supervisor is uncertain if the allegations rise to the level that should be reported, the supervisor must report the incident.

d. Confidentiality will be maintained to the greatest extent possible in accordance with reference (f).

e. Civilian employees should be advised of their right to pursue the matter through the federal EEO complaint process by contacting an EEO counselor.

f. If a covered employee makes a sexual harassment allegation covered by reference (a), then that process must be utilized. An EEO Counselor is the point of contact for covered

employees who report an allegation of sexual harassment. The EEO Counselor upon receipt of an allegation and after consultation with the Deputy Director, EEO (DDEEO), or Director, EEO in the absence of a DDEEO, and the command's legal counsel must make a determination if the employee meets the definition of a covered employee. Whether or not an employee meets the definition of covered employee, the EEO office/counselor must advise the employee of their right to utilize the federal sector EEO complaint process, in addition to the process under reference (a).

g. For employees covered by reference (a), all allegations of HWE, sexual harassment, and other unlawful harassment must be reported by the EEO, HR, and/or legal officials within 72 hours of receipt to command leadership. At least one of the following must be informed: Commander, Vice Commander, Chief of Staff, Commanding Officer, or Executive Director. This will occur no matter the level at which the inquiry is occurring.

(1) Subject Matter Experts, such as the Labor and Employee Relations (LER) division and the Command's Legal Counsel, can help determine whether a preliminary inquiry is required or if a more in-depth management inquiry is required. If it is determined that an inquiry with a Fact Finder is required, the management official will assign a Fact Finder in consultation with the LER division and the Command's Legal Counsel.

(2) If an inquiry is deemed necessary, it should be initiated, and conclude with a written report. All inquiries should be completed within 45 business days of being initiated. The Fact Finder is responsible for regularly updating the management official on progress and any obstacles encountered. If an inquiry or completion of the written report is going to be delayed, the Fact Finder is responsible for promptly notifying the management official of the delay, the reasons for the delay, and the revised anticipated completion date. If an extension is needed, a request must be made to the Commanding Officer or Senior Supervisory Civilian.

(3) It may be necessary to take intermediate measures before completing the inquiry to ensure that further harassment does not occur. The individual who brought the allegations forward should not be involuntarily transferred or otherwise burdened, because such measures could constitute unlawful retaliation. Examples of intermediate measures include making scheduling changes to avoid contact between the parties;

transferring the alleged harasser; or placing the alleged harasser on administrative leave pending the conclusion of the investigation.

(4) The Fact Finder must objectively gather and consider the relevant facts. The alleged harasser must not have supervisory authority over the Fact Finder and must not have any direct or indirect control over the investigation. The command must ensure that there are no conflicts of interest between the Fact Finder and the subject of the inquiry. All reasonable efforts should be made to ensure the inquiry is performed in an objective and unbiased manner. The Fact Finder should receive training in the skills that are required for interviewing witnesses and evaluating credibility.

h. The LER division, Command's Legal Counsel, and EEO will provide advice and guidance to the command regarding whether the outcome of the inquiry supports the allegations. The LER division and Command's Legal Counsel will also provide advice and guidance on corrective actions, if necessary.

i. Individuals who report harassment will be provided timely information and notice of disposition in accordance with reference (c) requirements and other pertinent laws, regulations, and negotiated agreements.

j. Ensure employees who may be facing a personal or workplace concern are aware of the Navy Civilian Employee Assistance Program, DONCEAP, 1-844-DONCEAP (1-844-366-2327).

RANGE OF BEHAVIORS WHICH CONSTITUTE SEXUAL HARASSMENT

1. Introduction. This enclosure explains and illustrates behaviors that may constitute sexual harassment by describing in layperson's terms what sexual harassment is and how it occurs in, or impacts, the work environment. It is intended to be used as a guide for developing training programs and to assist military members and civilian employees in distinguishing between acceptable and unacceptable behavior. DON policy and prohibitions governing sexual harassment are contained in the basic instruction and enclosure (3).

2. Description. Sexual harassment is verbal or physical conduct that is unwelcome, sexual in nature, and affects the terms or conditions of employment and/or has the purpose or effect of unreasonably interfering with the employee's work performance and/or creating an intimidating, hostile, or offensive work environment. A wide range of behaviors can meet these criteria, and therefore, constitute sexual harassment. It can, at times, be difficult to determine whether or not a behavior constitutes sexual harassment. This enclosure is provided to assist in this process. The policy established by this instruction is not intended to prevent the types of behavior which are appropriate in normal work settings and which contribute to camaraderie.

3. Discussion. For a person's verbal or physical conduct to be considered sexual harassment, it must meet three criteria: it must be unwelcome, sexual in nature, and impact the work environment.

a. Unwelcome behavior is behavior that a person does not solicit or participate in and which that person considers undesirable or offensive. Not everyone has the same perception of "undesirable or offensive." Use of a "reasonable person standard," defined in enclosure (2) provides a common sense totality of the circumstances approach in determining which behaviors might be considered sexual harassment. In this regard, behavior which the recipient reasonably finds unwelcome should be stopped.

b. Behavior which 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. Assessing the totality of the circumstances will normally be

enough to determine whether or not a certain behavior is sexual in nature. Other non-verbal behaviors such as ogling, staring, and gestures can be sexual in nature.

c. For sexual harassment to occur, unwelcome sexual behavior must be related to the work environment:

(1) When recipients are offered or denied something that is work-related 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," or "this for that." Examples include: getting or losing a job, a promotion or demotion, a good or bad performance evaluation, etc. If any work-related 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 unreasonably interferes with another person's work performance, sexual harassment has occurred. If the behavior produces a work atmosphere which is offensive, intimidating, or hostile to another person, whether or not work performance is affected, a type of sexual harassment called "hostile environment" has occurred. This behavior does not need to occur in the normal workspaces to meet the hostile environment criteria. Unwelcome sexual behaviors off base, outside the workplace, or online can create a hostile work environment for the victim. Similarly, the offender does not need to work directly with the victim to create a hostile work environment or direct the conduct directly at the victim. The following are examples of behavior that could create a hostile environment:

- (a) Using sexually explicit or sexually offensive language.
- (b) Displaying sexually-oriented images, posters, or calendars.
- (c) Touching someone in a suggestive manner.
- (d) Giving someone unwelcome letters, cards, or gifts of a personal nature, particularly when these items have sexual overtones.
- (e) Unwanted or uninvited pressure for dates.

(f) Sharing intimate images or details of a sexual nature (to include sexual rumors) about a person with that person's co-workers or prospective co-workers.

**GUIDANCE ON INFORMAL RESOLUTION PROCEDURES FOR MILITARY SERVICE
MEMBERS**

1. References (d) and (j) require both formal and informal resolution procedures be available options for military Service Members. The purpose and intent of an informal resolution procedure is to put in place an effective system to resolve complaints of sexual harassment at the lowest appropriate level. References (d) and (j) provide wide latitude regarding informal resolution processes. In developing the informal resolution component of the military Service sexual harassment programs, the Services will adhere to the additional guidance in this enclosure.

2. The informal resolution system will:

a. Emphasize the individual accountability of the recipient, accused, co-workers, and the chain of command.

b. Clarify the roles for co-workers and the chain of command.

c. Teach interpersonal communications skills.

d. Incorporate the concepts of a retaliation free environment, timely resolution, and appropriate feedback and follow-up.

3. Individuals who believe they have been sexually harassed will be encouraged to address their concerns or objections regarding the incident directly with the person demonstrating the harassing behavior via the informal resolution procedures; however, informal resolution is not required. This informal resolution may be facilitated by a member of the chain of command or an equal opportunity professional with responsibility for the command (e.g. Navy Command Managed Equal Opportunity program manager, Command Climate Specialist, or Equal Opportunity Advisor or Marine Corps Equal Opportunity Representative).

a. Persons who are subjected to or observe objectionable behavior should file a formal complaint with 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) Quid pro quo sexual harassment is involved.

(5) The behavior is clearly criminal in nature.

b. 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, individuals who have been subjected to or who observe objectionable behavior are encouraged to promptly communicate the incident through other available means, such as the inspector general or sexual harassment hotline (or advice line).