



South Dakota
DEPARTMENT OF THE MILITARY
OFFICE OF THE ADJUTANT GENERAL
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NGSD-TAG

8 June 2019

MEMORANDUM FOR All Personnel of the South Dakota National Guard (SDNG)

SUBJECT: South Dakota National Guard Command Equal Employment Opportunity Policy for all Federal Technician Employee's, to include Title 32 or 5, former Federal Employee's and Applicants for Federal Technician Employment in the South Dakota National Guard.

1. References and definitions: See Enclosure 1.

2. Purpose.

a. To ensure equal employment opportunity exists and is maintained in the South Dakota National Guard.

b. To ensure compliance with all applicable laws, regulations, and procedures regarding equal employment opportunity in the SDNG.

3. Policy.

a. The South Dakota National Guard will not tolerate, condone nor permit any form of discrimination or harassment in employment practices **for National Guard Title 5 or 32 Federal Technicians, former technicians or employees, or applicants for technician employment** on the basis of race, color, religion, sex (includes pregnancy, gender/gender identity and sexual harassment), national origin, age (over 40), disability (physical and/or mental), genetic information (GINA), marital status, sexual orientation, or reprisal for previous complaint activity or participation in the complaint process. Managers, supervisors or employees who engage in or permit unlawful discrimination and/or harassment without taking immediate positive corrective action, or fail to protect an employee/complainant during working hours, will be subject to appropriate disciplinary action.

b. Equal Employment Opportunity is the right and responsibility of all personnel. People are our most important and vital resource. All managers, supervisors and employees are responsible for the prevention of discrimination and harassment and allowing personnel to mature through positive affirmative and equal employment actions and practices. The South Dakota National Guard is committed to the Department of Defense and the state of South Dakota directives concerning the prevention of discrimination and harassment while ensuring equal employment opportunity to all.

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c. Personnel can report complaints directly to the SDNG Equal Employment Manager or one of the Equal Opportunity Counselors (EOC) at the contact information listed in Enclosure 2. All complaints will be processed per the SDNG Joint Civilian/Technician Discrimination Complaint Instruction Guide, DTD: 8JUN2019 and IAW with the 29 Code of Federal Regulations, Part 1614, "Federal Sector Equal Employment Opportunity" and the Equal Employment Opportunity Commission Management Directive 110, dated 5 August 2015, Federal Sector Complaints Processing Manual, by a trained EO Counselor under the direction of the SDNG Equal Employment Manager.

5. POC for this action is the SDNG Equal Employment Manager, Carstin Jerzak, (605)-737-6635 or DSN 747-6635, carstin.k.jerzak.mil@mail.mil.

6. This policy statement will be posted to all official bulletin boards, websites and filed in accordance with command policy guidance.

Enclosures:

1. References & Definitions
2. EO Contacts



JEFFREY P. MARLETTE
Major General (SD), SDNG
The Adjutant General

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SOUTH DAKOTA NATIONAL GUARD 



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Safe Helpline
Sexual Assault Support for the DoD Community

Live 1-on-1 Help Confidential Worldwide 24/7

Click: www.SafeHelpline.org
Call: 877-995-5247

Text: 55-247 (INSIDE THE U.S.)
202-470-5546 (OUTSIDE THE U.S.)

A confidential and anonymous sexual assault hotline for the DoD Community.

Enclosure 1

References and Definitions

1. References:

- a. Title VII of the Civil Rights Act of 1964, as amended (42 U.S.C § 2000E-16).
- b. The Civil Rights Act of 1991 (P.L. 101-336) applicable to National Guard personnel.
- c. The Age Discrimination in Employment Act (ADEA) of 1967, as amended (29 U.S.C. § 633A).
- d. The Rehabilitation Act of 1973, as amended (29 U.S.C. 791 and 794a).
- e. The Equal Pay Act (EPA) of 1963 (29 U.S.C. 206 (d)).
- f. The Americans with Disabilities Act (ADA) of 1990 (42 U.S.C. § 12101 *et seq.*, P.L. 101-336).
- g. The ADA Amendments Act (ADAAA) of 2008 (42 U.S.C. § 12101 *et seq.*, P.L. 110-325).
- h. The Genetic Information Nondiscrimination Act (GINA) of 2008 (P.L. 110-233).
- i. Title 29 of the Code of Federal Regulations; Parts 1613 and 1614, including revisions (29 C.F.R. Parts 1613 and 1614).
- j. Equal Employment Opportunity Commission Management Directive 110 (EEOC MD-110).
- k. Department of Defense (DOD) directive 1440.1, the DOD Civilian Equal Employment Opportunity (EEO) Program, as changed; and related case law and decisions and interpretation of EEOC, November 21, 2003.
- l. Executive Order 13087 (28 May 1998) and Memorandum from Under Secretary of Defense Clifford L. Stanley Re: Repeal of “Don’t Ask, Don’t Tell” (20 September 2011).
- m. Public Law 114-328, 23 December 2016, “National Defense Authorization Act for Fiscal Year 2017”
- n. SDNG Joint Civilian/Technician Discrimination Complaint Instruction Guard, DTD: 01 October 2017

2. Definitions:

a. *Discrimination.* Any action unlawfully or unjustly resulting in unequal treatment of a person or group based on race, color, gender, national origin, age, disability, genetics, religion, sexual orientation or reprisal.

b. *Equal opportunity.* The right of all persons to participate in, and benefit from, programs and activities (for example, career, employment, educational, social) for which they are qualified. These programs and activities will be free from social, personal, or institutional barriers preventing people from rising to the highest level of responsibility possible. Persons will be evaluated on individual merit, fitness, and capability, regardless of race, color, gender, national origin, age, disability, genetics, religion or sexual orientation.

c. *Disparaging terms.* Terms used to degrade or connote negative statements pertaining to race, color, gender, national origin, or religion. Such terms may be expressed as verbal statements, printed material, visual material, signs, symbols, posters, or insignia. The use of these terms constitutes unlawful discrimination.

d. *Gender discrimination.* The action taken by an individual to deprive a person of a right because of their gender. Such discrimination can occur overtly, covertly, intentionally or unintentionally.

e. *Sexism.* Attitudes and beliefs one gender is superior to another.

f. *Hazing.* Any conduct whereby a person, regardless of service, rank, or position, and without proper authority, recklessly or intentionally causes another person to suffer or be exposed to any activity that is cruel, abusive, humiliating, oppressive, demeaning, or harmful. Soliciting or coercing another to participate in any such activity is also considered hazing. Hazing need not involve physical contact among or between military members or employees; it can be verbal or psychological in nature. Likewise, it need not be committed in the physical presence of the victim; it may be accomplished through written or phone messages, text messages, email, social media, or any other virtual or electronic medium. Actual or implied consent to acts of hazing does not eliminate the culpability of the perpetrator. Without outside intervention, hazing conduct typically stops at an identified end-point.

g. *Bullying.* Bullying is any conduct whereby a person(s), regardless of service, rank, or position, intends to exclude or reject another person through cruel, abusive, humiliating, oppressive, demeaning, or harmful behavior, which results in diminishing the other person's dignity, position, or status. Absent outside intervention, bullying will typically continue without any identifiable end-point. Bullying may include an abuse of authority. Bullying tactics include, but are not limited to, making threats, spreading rumors, social isolation, and attacking someone physically, verbally, or through the use of electronic media.

h. *Racism.* Any attitude or action of a person or institutional structure that subordinates a person or group because of skin color, ethnicity or race.

i. *Sexual Orientation.* Refers to an individual's emotional or physical attraction to the same and/or opposite sex (heterosexual, homosexual or bisexual).

j. *Ally.* A person who does not identify as lesbian, gay or bisexual, but supports the rights and safety of those who do identify as lesbian, gay or bisexual.

k. *Bisexual*. A person who is attracted romantically, physically or emotionally to both men and women.

l. *Gay*. A male-identified person who is attracted romantically, or physically or emotionally to another male-identified person.

m. *Lesbian*. A female-identified person who is attracted romantically, physically or emotionally to another female-identified person.

n. *Unlawful harassment*. Includes but isn't limited to, unwelcome conduct, intimidation, ridicule, insult, offensive comments or jokes, or physical conduct based on any of the other bases such as race, color, religion, etc, when an employee's acceptance or rejection of such conduct explicitly or implicitly forms the basis for a tangible employment action affecting the employee or the conduct is sufficiently severe or pervasive as to alter the terms, conditions or privileges of the person or otherwise create a hostile or abusive work environment. This type of harassment does not involve discrete personnel actions such as a denial of promotion.

o. *Hostile Work environment*. Discriminatory conduct or behavior in the workplace that is unwelcome and offensive to an employee or group of employees based on any of the protected bases. The conduct or behavior must be pervasive and constitute a pattern rather than consist of one or two isolated incidents. The pattern of behavior has to be of a degree severe enough to cause disruption beyond a reasonable degree in the work of the targeted person such as when the person becomes disturbed because of intimidation or due to fear of loss of employment. The complainant must have reason to believe such behavior patterns are likely to continue indefinitely. Offensive conduct may include, but are not limited to offensive jokes, slurs, epithets or name calling, physical assaults or threats, intimidation, ridicule or mockery, insults or put-downs, offensive objects or pictures and interference with work performance. The harasser can be the victim's supervisor, a supervisor from another section, an agent of the harasser, a co-worker or a non-military person. The victim does not have to be the person harassed, but can be anyone affected by the offensive conduct.

p. *Sexual Harassment*. Sexual harassment is a form of gender discrimination involving unwelcome sexual advances, requests for sexual favors and other verbal or physical conduct of sexual nature when:

- The sexual harassment or conduct is made a term or condition of an individual's employment or career, job or pay/salary, or
- The sexual harassment or conduct is used as the basis for career or employment decisions, or
- The sexual harassment or conduct unreasonably interferes with an individual's work performance, or
- The sexual harassment or conduct creates an intimidating, hostile, or offensive work environment.

q. *Sexual Orientation*. An emotional or physical attraction to the same and/or opposite sex (homosexual, heterosexual, bisexual). Complaints may be based on actual or perceived sexual orientation, as well as associated with an individual or affinity group associated with a particular sexual orientation.

r. *Transgender*. A person who has initiated or completed the medical care to transition from one gender to another or is stable in the preferred gender.

Enclosure 2

South Dakota National Guard Equal Employment Contacts and Counselors

EO Counselors are available to all employees, applicants for employment and supervisors to discuss/advise and counsel on issues related to equal opportunity, discrimination or sexual harassment (includes gender, non-sexual or hostile work environment related). The following personnel have attended the EO counselors training and receive eight hours of refresher training on an annual basis and they are available to assist you with the types of issues mentioned above.

<u>EO Counselor (EOC)</u>	<u>Phone</u>	<u>Email</u>
Rapid City (605) 737-		
Sean R. Fletcher	extension 6275	robert.s.fletcher4.civ@mail.mil
Sioux Falls (605) 988-		
Matt Sly	extension 5651	matthew.d.sly.mil@mail.mil
Nicole Franklin	extension 5407	nicole.r.franklin.civ@mail.mil

SDNG Equal Employment Manager (EEM)

Rapid City & Sioux Falls (605) 737-

Carstin Jerzak	extension 6635	carstin.k.jerzak.mil@mail.mil
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The SDNG Equal Employment Manager is available for all employees, applicants and supervisors to discuss and advise on issues related to equal opportunity, discrimination or sexual harassment (includes gender, non-sexual or hostile work environment related). The SDNG EEM attends the EO counselors training, conducts the eight hour annual refresher training and attends annual refresher training conducted by the Equal Employment Opportunity Commission (EEOC).

Contact information is to be posted on all facility and unit/wing bulletin boards and its recommended posting the information in locker rooms/latrines/restrooms and unit websites.

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