



South Dakota
NATIONAL GUARD 
2823 West Main Street
Rapid City, South Dakota 57702
(605) 737-6569



SDNG-TAG

1 December 2019

SUBJECT: Anti-Harassment Prevention and Response Program

References. See Enclosure 1

1. PURPOSE: This policy and the enclosed procedures establish the SDNG Anti-Harassment Prevention and Response Program (A-HPRP) in accordance with the references in Enclosure 1 and assigns responsibilities for implementing and maintaining the SDNG A-HPRP. Although harassment covered under Title VII is a subset of the harassment covered in this policy, there are specific policies and procedures in place for dealing with specific types of harassment not addressed in this program. Refer to Enclosure 3, paragraph 2b for clarification.

2. APPLICABILITY AND SCOPE: The policy and the procedures apply to:

- a. All civilian members of the SDNG serving in a Title 5 competitive or excepted service status.
- b. All military Title 32 dual-status technicians.
- c. All Title 32 AGR military personnel.
- d. All Commanders, supervisors and managers of full time employees of the SDNG, to include the reporting requirements and procedures outlined in this document.,

3. POLICY: It is the SDNG policy this agency will maintain a model workplace free from harassment (sexual or non-sexual) or harassing conduct and retaliation. As such, harassment or retaliation against an employee for reporting incident(s) of harassment or providing information will not be tolerated. Allegations of harassment and retaliation will be addressed immediately to ensure the harassment is stopped before it becomes severe or pervasive. Inquiries or investigations of claims of harassment will be conducted with the greatest degree of confidentiality and urgency and will be consistent with fair and thorough investigative procedures. Retaliation due to participation in an EEO activity is strictly prohibited. Specific definitions of harassment, harassing conduct and others are found in enclosure 4.

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4. RESPONSIBILITIES: See Enclosure 2
5. EFFECTIVE DATE: This instruction will be effective from the date of publication and will be reviewed annually.
6. PUBLICATION: This policy and the enclosed procedures will be posted on all SDNG units and facility bulletin boards, internal and external websites and made readily available to all employees and military members of the SDNG and provided during initial supervisor training and refresher courses, employee training and new employee orientations.
7. POINT OF CONTACT: The Human Resource Officer is the POC at 605-6760.

4 Enclosures:

1. References
2. Responsibilities
3. Reporting Procedures
4. Glossary
5. SDNG Harassment Complaint Form



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

DISTRIBUTION:

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Enclosure 1:

References

- a. 29 CFR, Part 1614, 12 July 1999, Federal Sector Equal Employment Opportunity Complaint Regulation
- b. EEOC MD 110 Federal Sector Complaint Processing Manual, 05 August 2015
- c. EEOC MD 715, Equal Employment Opportunity Management Directive 715, 01 October 2003
- d. Title VII, Civil Rights Act of 1964, as amended Executive Order 11478
- e. Public Law 107-174, 15 May 2002, "Notification and Federal Employee Anti-discrimination and Retaliation Act of 2002")"
- f. AR 690-12, 22 December 2016, Civilian Personnel Equal Employment Opportunity and Diversity
- g. AF Instruction 36-2706, 05 October 2010, "Equal Opportunity Program Military and Civilian
- h. DoD Directive 5105.77, 30 October 2015, "National Guard Bureau (NGB)"
- i. DoD Directive 1020.02E, Incorporated Change 2, 01 June 2018, "Diversity Management and Equal Opportunity in the DoD"
- j. 10, U.S.C., "Armed Forces"
- k. 36 CFR 1194 - Electronic and Information Technology Accessibility Standards
- l. DoDI 1438.06 DoD Workplace Violence Prevention and Response Policy, January 2016
- n. Technician Personnel Regulation (TPR) 752 Conduct Management, Discipline, and Adverse Action, 27 August 2010, or its successor
- o. SDNG - Administrative Grievance System dated 6 September 2019

Enclosure 2

Responsibilities

1. The Adjutant General (TAG): The head of the agency and senior responsible management official responsible for the SDNG Anti-Harassment Prevention and Response Program, charged to resolve any dispute or conflict involving the Director of Joint Staff, ANG or ARNG Commanders or Directors, or similar high-ranking officials to include the Human Resources Officer

2. Human Resources Officer (HRO) or designated representative:
 - a. Issue annual reminders to all employees on this policy and its requirements

 - b. Ensure training is provided to all managers and supervisors on this directive and its requirements

 - c. Receive and respond to reports of violations of this directive and initiate inquiries as necessary

 - d. Provide guidance and support to managers and supervisors to ensure compliance

 - e. Designates the organization's Anti-Harassment Prevention and Response Coordinator in writing per reference b and c.

3. Anti-Harassment Prevention and Response Coordinator:
 - a. The A-HPRC is responsible for training both supervisors and employees on the A-HPR program policy and complaint procedures to include periodic or refresher training.

 - b. The A-HPRC will manage the agency's unlawful harassment complaint process and track the complaint until completed or referred.

 - c. Establish, track and maintain all complaint forms, case records and a database of all complaints and conduct data analysis to identify organizational climate trends.

 - d. Provide the State SEEM a copy of the annual trend analysis for incorporation in the agency's Part G, Self-Assessment report in the EEOC MD-715 annual report.

 - e. Ensure complaint timelines are adhered to as established in Enclosure 3.

 - f. Prepare and submit annual anti-harassment reports as required.

4. Supervisors/Managers/Leaders or the Responsible Management Official (RMO):

- a. Ensure a workplace free of harassment and retaliation
- b. Post this directive in a common area visible to all employees and ensure employees acknowledge the policy during initial and annual counseling.
- c. Respond to any and all allegations of harassment and or retaliation expeditiously:
 - (1) Act promptly and expeditiously to stop any and all hostile or retaliatory acts once they are made aware
 - (2) Investigate allegations of harassment and/or retaliation, and take corrective and/or disciplinary action
 - (3) Notify appropriate officials of reported and/or observed harassment or retaliatory conduct
 - (4) Notify employee(s), complainant and accused, of the status of any investigation
 - (5) Protect employees, who present claims and/or information from retaliation, and their confidentiality, to the greatest extent possible
- d. Complete mandatory EEO, Anti-harassment, and NO FEAR training IAW published timelines.

5. Staff Judge Advocate (SJA) or also referred to as General Counsel:

- a. Provide legal support as necessary
- b. Acknowledge receipt and notify appropriate officials when an allegation of harassment or retaliation is made directly to the SJA or SJA office.

6. SDNG Employees:

- a. Report incidents of harassment or retaliation, include those personally experienced or those witnessed, to the supervisor of the offender, their supervisor (if different), or the Human Resources Office.
- b. Act professionally and refrain from acts that can be considered harassing or retaliatory.
- c. Understand their rights and responsibilities under this directive
- d. Cooperate fully in any investigation. An employee's rights will not be violated

and union representation will be allowed if requested, consistent with contractual and statutory requirements.

e. Promptly report incidents of harassment or perceived harassment or retaliation that violate this Instruction.

f. Be protected for their union activities consistent with terms of the Federal Services Labor-Management Relations Statute.

g. Complete mandatory EEO/EO, Anti-harassment, and NO FEAR Act training IAW published timelines.

Enclosure 3

Reporting Procedures

1. Reporting of Harassment or Retaliation:

a. Any person who believes they have been subjected to harassment or retaliation, in violation of this policy, should immediately report the behavior to the supervisor (if known) of the employee engaging in the harassing or retaliatory conduct. Employees can also report to their own supervisors, the HRO, or the A-HPRC.

b. Employees who witness harassing or retaliatory conduct directed towards others should report the conduct to the supervisor (if known) of the employee engaging in the harassing or retaliatory conduct, their own supervisor, the HRO or the A-HPRC.

2. Filing a Complaint:

a. Complaints of harassment, not based on Title VII protected basis actionable before the Equal Employment Opportunity Commission (EEOC), should be filed under either the SDNG Administrative Grievance Program, the applicable union grievance program, with the Inspector General's Office, the Merit Systems Protection Board (MSPB), or the Office of Special Council (OSC).

b. Complaints of harassment based on the Title VII protected basis of: sex (including pregnancy and gender/ or gender identity), race, color, national origin, age (40 years or older), religion, disability, sexual orientation, genetic information or retaliation, are filed as EEO complaints with the Office of Equality, Diversity, and Inclusion (EDI) within 45 calendar days from the date of the alleged discriminatory harassment or the date they become aware of the discriminatory harassment.

c. Complaints made under this policy **do not** replace, substitute, or otherwise satisfy the separate obligations or requirements of an EEO complaint or grievance actionable before the EEOC, SD Administrative Grievance Program, and applicable union negotiated grievance, MSPB, OSC or other statutory process.

d. All complaints of harassment taken under this policy and procedure will be documented on the SDNG Harassment Complaint Form for South Dakota National Guard Employees.

3. Agencies Response to Reports of Harassment or Retaliation:

a. An RMO who becomes aware of alleged harassing or retaliatory conduct involving subordinates within their supervisory chain must contact the HRO, A-HPRC and SJA **within 1 Business Day** for guidance.

b. RMO's must promptly ensure the safety of all employees and **initiate a management inquiry/investigation within 5 Business Days** of the allegations of harassment or retaliatory conduct involving subordinates within their supervisory chain. Normally, the lowest level RMO who is not implicated or otherwise involved, directly or indirectly, in the allegation will conduct the inquiry/investigation.

c. The inquiry/investigation must result in a record sufficient enough to support corrective or disciplinary action taken or to indicate there is not sufficient evidence to support corrective or disciplinary action. The investigator must contact the SJA for guidance prior to conducting an inquiry/investigation. This includes how to take sworn statements; accessing and obtaining appropriate personnel information and records; maintaining confidentiality during the course of the investigation; and meeting all labor relations obligations while conducting the inquiry/investigation and the possibility of being officially appointed as the Investigating Officer if needed.

d. When a complaint is made to the A-HPRC or received from an RMO, the A-HPRC will:

(1) Immediately acknowledge receipt of the complaint and ensure the employee is counseled of their rights to file an EEO complaint and the potential to file using other grievances simultaneously with the EEO Office based on governing procedures and current policies or union agreements. The A-HPRC will consult with the SEEM prior to making a determination as to how to counsel the employee in this regard.

(2) Brief the complainant regarding confidentiality and privacy will be kept to the greatest intent possible.

(3) Immediately notify the HRO, ARNG Chief of Staff or the ANG Wing Commander, and the Director of Joint Staff of the complaint. If an employee chooses not to file a formal harassment complaint, leadership is still informed of the situation. If an anonymous complaint is received, leadership is still informed of the situation, however no disclosure of names is made.

(4) Advise the RMO to take appropriate action and, at a minimum, to conduct a management inquiry/investigation per para 4.

(5) Notify the appropriate official in the activity/directorate implicated in the report; and

(6) Recommend how the investigation should proceed.

e. Alternative Dispute Resolution program can be considered during the A-HPR program if the complainant agrees to participate and the cases qualifies for the ADR program. Management will participate in ADR mediation or facilitation. Refer to HRO or the SDNG SEEM and CNGBI/M 0402.01 to request ADR mediation or facilitation

services. The agreement to utilize ADR may extend the time lines for processing complaints under this policy/procedures, but doesn't authorize a delay in reporting or filing complaints or grievances through other programs or agencies – see paragraph 2.

4. Conducting Investigations/Inquiries:

a. The HRO, A-HPRC, in conjunction with SJA, must advise RMO's on appropriate courses of action.

b. All investigations must be thorough, impartial, and complete in a timely manner appropriate to the allegations(s). An internal management inquiry/investigation should begin within five (5) business days of receiving the harassment/retaliation report.

c. All efforts should be taken to ensure **the inquiry/investigation is completed in no more than 30 calendar days** of receiving the harassment/retaliation report.

5. Matters requiring further investigation: If the results of an initial inquiry/investigation are insufficient to determine whether the issue requires corrective action, the RMO for taking disciplinary action against the alleged harasser may request further investigation; all investigations must be **completed within 14 days** from the date the request was made. RMO's should make such requests on a case-by-case basis and in consultation with their A-HPRC and SJA. After completion and approval of the investigation, the RMO may use the information obtained, including the findings and recommendations, in taking corrective and or disciplinary action against the alleged harasser as appropriate.

6. Confidentiality: The A-HPRC will maintain all reported information, including results of inquiries/investigations, on a confidential basis. The identity of the employee alleging the violation will remain confidential, except as necessary to conduct an appropriate investigation into the alleged violations or when the law or regulation requires otherwise. Management cannot guarantee complete confidentiality because it cannot conduct an effective investigation without disclosing certain information to the alleged harasser and potential witnesses. Management may have to disclose information to an employee being disciplined as a result of an inquiry or investigation. Also, the agency may have to disclose the information as part of any litigation for which the information may be relevant and necessary. However, the maintenance of investigative records and any disclosures of information from those records will be in compliance with the Privacy Act (5 USC 552a).

7. Allegations against a Leader, Director, Commander, or Similarly High-ranking SDNG Official:

a. If a Director or similarly high-ranking RMO is implicated in the alleged harassing or retaliatory conduct, the Director of the Joint Staff, in coordination with the HRO, SJA and A-HPRC, are responsible for conducting the preliminary inquiry/investigation and directing any further actions is warranted.

b. The Director of the Joint Staff will resolve any dispute or conflict arising from an inquiry/investigation between the Leader, Director, Commander, or similarly high-ranking official and the Human Resources Officer.

8. Corrective or Disciplinary Action:

a. If the inquiry/investigation determines harassing or retaliatory conduct occurred, the findings will be reported to the RMO of the appropriate level for any necessary action.

b. The appropriate RMO's in the directorate or section, in coordination with the HRO, the Labor Relations Specialist (LRS), the SEEM and the SJA, will ensure immediate and appropriate corrective or disciplinary action is initiated **within 2 Business Days**.

9. Action to take after an inquiry:

a. Upon completion of the inquiry/investigation, the management official who is responsible for taking disciplinary action against the alleged harasser refer to paragraph 8 above. This action normally rests with the first-line supervisor of the employee alleged to have engaged in the harassing conduct, unless the supervisor is involved in the allegation. In those cases, the case information will be provided to the senior RMO in the supervisor's chain of command for action.

b. When the inquiry/investigation establishes an employee engaged in harassing conduct, the employee is subject to appropriate discipline. If the alleged harasser is a military member, the individual is subject to the provisions of the South Dakota Uniform Code of Military Justice or State Laws. If the alleged harasser is a Federal Military or Civilian employee, the individual is subject to the provisions in the applicable Technician Personnel Regulation, and any state and or federal statutes as applicable. This behavior is considered inappropriate behavior which falls under the terms of Conduct Unbecoming. When the inquiry establishes a RMO did not properly carry out their responsibility as provided in these procedures, the RMO is subject to appropriate disciplinary or other corrective action. Performance Appraisals and military personnel evaluations will be annotated appropriately based on SDNG PAM 431.

c. When the harassment behavior has been substantiated, **the RMO must complete the corrective actions within 45 days from the date of the allegations**. If additional time is required extensions can be requested through the A-HPRC to the HRO. Extensions cannot exceed 15 calendar days.

d. Beyond any appropriate disciplinary or adverse action, no further action is required under these procedures once management, in consultation with the SJA, HRO, LRS, SEEM and A-HPRC, are satisfied the corrective action has stopped or mitigated

the harassing conduct and deterred the potential for recurrence.

10. Maintaining Confidentiality, Keeping Records, and Monitoring Procedural Compliance:

a. Confidentiality: all reports of harassment or retaliatory conduct and related information are maintained on a confidential basis to the fullest extent possible, consistent with the requirements of the applicable complaint process, adverse action procedures, or investigative practices.

b. Writing Reports and Maintaining Records: consistent with the requirements regarding other alleged misconduct, a written report must be made regarding harassment allegations, including resolution or attempted resolution of the complaint, with a copy provided to HRO and the A-HPRC.

(1) Reports must identify the individuals involved in the complaint: complainant, the accused person(s), inquiry officer/investigator; the conduct involved; and the corrective action taken, if any. Records must be sufficient to aid the HRO or designee in determining how to address any future incidents.

(2) If requested by the HRO, LRS or SEEM, written reports may also include a detailed description of the inquiry/investigation, an explanation of any conclusions, the reasoning for any corrective action issued or not taken, and documents or other evidence from the investigation.

(3) All reports should be maintained in a secure location and are protected by the provisions of the Privacy Act.

11. Monitoring the Work Environment:

Leaders, directors, supervisors, and managers must comply with the requirements of this instruction. This includes monitoring the work environment following a report alleging a violation of this policy to ensure that there are no further violations, or retaliation against individual(s) who have reported harassment or participated in the investigation.

12. Conclusion of an Investigation:

Once an investigation is completed, the appropriate RMO with guidance from the HRO will notify the employee(s) who filed the complaint or was subject to harassment/retaliation of the findings of the investigation.

13. Filing a Statutory Complaint, Grievance under a Negotiated Union Procedure, Equal Employment Opportunity, Merit System Protection Board or the Office of Special Council:

a. Reporting harassment or retaliation to a RMO or filing a complaint

under the provisions of this instruction, **does not** satisfy the filing requirements for an EEO complaint, negotiated union grievance, MSPB appeal, IG or OCS procedure or obtaining remedies pursuant to them; **nor does it delay the time limits for initiating those procedures.** Thus, an employee who chooses to pursue statutory or collective bargaining remedies for harassment or retaliation **may** elect one of the following:

(1) EEO Complaint filed pursuant to 29 C.F.R. Section 1614: contact the OEDI, at 605-737-6635 within **45 days of the date of the alleged discriminatory harassment or act,** .

(2) Grievances under a negotiated procedure: File a written grievance in accordance with the provisions of the Collective Bargaining Agreement (CBA). Bargaining unit employees should review the applicable negotiated grievance procedure to determine if it is the appropriate vehicle to proceed with their complaint

(3) For appeal to the MSPB pursuant to 5 C.F.R. Section 1201, as required in Section 1201.22, **file a written appeal with the Board within 30 days of the effective date of an appealable adverse action** as defined in 5 C.F.R. Section 1201.3, or within 30 days of the date of receipt of the agency's decision, whichever is later.

(4) Contact the Office of Special Council by calling toll free at 1-800-872-9855 or going to www.osc.gov.

b. The HRO and the A-HPRC will provide the written report and documents and any other evidence taken under this instruction to the office handling a parallel complaint or collective bargaining claim.

Enclosure 4

Glossary:

1. **Affirmative employment and affirmative action:** Those actions appropriate to overcome the effects of past or present practices, policies, or other barriers to equal employment opportunity.
2. **Age discrimination** involves treating someone (an applicant or employee) less favorably because of his or her age. The Age Discrimination in Employment Act only forbids age discrimination against people who are age 40 or older. Age discrimination can happen even when the victim and person who inflicted the discrimination are both over 40.
3. **Alternative Dispute Resolution:** Any non-statutory, or non-traditional procedure that is used to resolve issues in controversy including but not limited to the services of a neutral third party through facilitation, mediation, fact-finding, mini-trial, arbitration, or any combination.
4. **Bullying** -- A form of harassment that includes acts of aggression by NG members (including military or civilian employees), with a nexus to official duties, with the intent of harming a NG member or civilian employee either physically or psychologically, without a proper military or other governmental purpose. Bullying may involve the singling out of an individual from his or her coworkers, or unit, for ridicule because he or she is considered different or weak. It often involves an imbalance of power between the aggressor and the victim. Bullying can be conducted through the use of electronic devices or communications, and by other means including social media, as well as in person. Bullying is evaluated by a reasonable person standard and includes, but is not limited to the following when performed without a proper military or other governmental purpose:
 - a. Physically striking another person in any manner or threatening to do the same.
 - b. Intimidating, teasing, or taunting another person;
 - c. Oral or written berating of another person with the purpose of belittling or humiliating.
 - d. Encouraging another person to engage in illegal, harmful, demeaning or dangerous acts.
 - e. Playing abusive or malicious tricks.

- f. Branding, handcuffing, duct taping, tattooing, shaving, greasing, or painting another person.
- g. Subjecting another person to excessive or abusive use of water.
- h. Forcing another person to consume food, alcohol, drugs, or any other substance.
- i. Degrading or damaging another's property or reputation.
- j. Soliciting, coercing, or knowingly permitting another person to solicit or coerce acts of bullying.
- k. Bullying does not include properly directed command or organizational activities that serve a proper military or other governmental purpose, or the requisite training activities required to prepare for such activities (e.g., command-authorized physical training).
- l. NG members and civilian employees may be responsible for an act of bullying even if there was actual or implied consent from the victim and regardless of the grade or rank, status, or Service of the victim.
- m. Bullying is prohibited in all circumstances and environments, including off-duty or "unofficial" unit functions and settings.

5. Disability discrimination can occur when management treats a qualified individual with a disability unfavorably in any aspect of employment, including hiring, firing, pay, job assignments, promotions, layoff, training, fringe benefits, and any other term or condition of employment because of their disability; when management fails to make a reasonable accommodation (modifications or adjustments to the work environment) for a known disability; or when management treats an applicant or employee with a disability less favorably because they have a history of a disability (such as cancer that is controlled or in remission), or because management believes they are physically or mentally impaired. The law requires a Federal agency to provide reasonable accommodation to an employee or job applicant with a disability, unless doing so would cause significant difficulty or expense for the agency ("undue hardship").

6. Discriminatory Harassment – A form of harassment that is unwelcome conduct based on race color, religion, sex (sexual or non-sexual an example - gender identity or sexual orientation), national origin, and disability for civilian personnel. This type of harassment may become unlawful when there is a civilian employee nexus.

7. Diversity: A collection of individual attributes that together help agencies pursue organizational objectives efficiently and effectively. These include, but are not limited to, characteristics such as national origin, language, race, color, disability, ethnicity,

gender, age, religion, sexual orientation, gender identity, socioeconomic status, veteran status, and family structures. The concept also encompasses differences among people concerning where they are from and where they have lived and their differences of thought and life experiences

8. Equal Employment Opportunity: The right of all persons to work and advance on the basis of merit, ability, and potential, free from social, personal, or institutional barriers of prejudice and discrimination.

9. Harassment or Harassing Conduct: is a form of employment discrimination that violates Title VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act of 1967, and the Americans with Disabilities Act of 1990. Harassing is 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.

a. **Harassment is unwelcome conduct** based on race, color, religion, sex/gender (including pregnancy, sexual or non-sexual (gender based) harassment), national origin, age (40 or older), disability or genetic information. **Harassment becomes unlawful where:**

(1) Enduring the **offensive conduct** becomes a condition of continued employment, and/or

(2) The conduct is severe or pervasive enough to create a work environment that a reasonable person would consider intimidating, hostile, or abusive.

b. Anti-discrimination laws also prohibit harassment against individuals in retaliation for filing a discrimination charge, testifying, or participating in any way in an investigation, proceeding, or lawsuit under these laws; or opposing employment practices that they reasonably believe discriminate against individuals, in violation of these laws.

c. It is unlawful to harass a person (an applicant or employee) because of that person's sex. Harassment can include "sexual harassment" or unwelcome sexual advances, requests for sexual favors, and other verbal or physical harassment of a sexual nature.

d. Harassment does not have to be of a sexual nature, however, and can include offensive remarks about a person's sex or gender. For example, it is illegal to harass a woman by making offensive comments about women in general. Both victim and the harasser can be either a woman or a man, and the victim and harasser can be the same sex/gender. Although the law doesn't prohibit simple teasing, offhand comments, or isolated incidents that are not very serious, harassment is illegal when it is so frequent or severe it creates a hostile or offensive work environment or when it results in an adverse employment decision (such as the victim being fired or demoted). The harasser can be the victim's supervisor, a supervisor in another area, a co-worker, or someone who is not an employee of the employer, such as a client or customer

e. Misconduct: Conduct which is found to be contrary to efficiency of the service. This would include conduct in violation of this document. The guide that is used by the South Dakota National Guard regarding misconduct is TPR 752 or its successor. Misconduct will be evaluated and, where appropriate, disciplinary or adverse action will be taken.

10. Hazing -- A form of harassment that includes conduct through which NG members (military or civilian), without a proper military or other governmental purpose but with a nexus to military Service, physically or psychologically injures or creates a risk of physical or psychological injury to a NG member for the purpose of: initiation into, admission into, affiliation with, change in status or position within, or a condition for continued membership in any military or DoD civilian organization. Hazing can be conducted through the use of electronic devices or communications, and by other means including social media, as well as in person.

a. Hazing is evaluated by a reasonable person standard and includes, but is not limited to, the following when performed without a proper military or other governmental purpose:

(1) Any form of initiation or congratulatory act that involves physically striking another person in any manner or threatening to do the same.

(2) Pressing any object into another person's skin, regardless of whether it pierces the skin, such as "pinning" or "tacking on" of rank insignia, aviator wings, jump wings, diver insignia, badges, medals, or any other object.

(3) Oral or written berating of another person with the purpose of belittling or humiliating.

(4) Encouraging another person to engage in illegal, harmful, demeaning or dangerous acts.

(5) Encouraging another person to engage in illegal, harmful, demeaning or dangerous acts.

(6) Playing abusive or malicious tricks.

(7) Branding, handcuffing, duct taping, tattooing, shaving, greasing, or painting another person.

(8) Subjecting another person to excessive or abusive use of water.

(9) Forcing another person to consume food, alcohol, drugs, or any other substance.

(10) Soliciting, coercing, or knowingly permitting another person to solicit or coerce acts of hazing.

b. For military members only hazing does not include properly directed command or organizational activities that serve a proper military or other governmental purpose, or the requisite training activities required to prepare for such activities (e.g., administrative corrective measures, extra military instruction, or command-authorized physical training).

c. Service members may be responsible for an act of hazing even if there was actual or implied consent from the victim and regardless of the grade or rank, status, or Service of the victim.

d. Hazing is prohibited in all circumstances and environments including off-duty or “unofficial” unit functions and settings.

11. Hostile or offensive work environment -- Discriminatory conduct or behavior that adversely affect the workplace and it is unwelcome and offensive to an employee or group of employees based on but not limited to, race, color, religion, sex (including pregnancy) or sexual orientation, national origin, age (40 or older), disability or genetic information. An employment decision affecting the NG member (military or civilian) is based on his or her acceptance or rejection of such conduct.

12. Inclusion; A set of behaviors (culture) that encourages employees to feel valued for their unique qualities and experience a sense of belonging.

a. The Inclusion rate expresses the numerical proportion of various included groups, based on certain human capital characteristics, or the effects of employer policies or practices.

b. Such characteristics can reflect an employee’s level of work- related human capital status, or protected status on the bases of race, gender, ethnicity, age, or disability.

c. Measurable employer practices or policies refer to and include any outcomes affecting the terms and conditions of employment by the organization. Disproportional inclusion rates may reflect unlawful employment practices, unless attributed to legitimate, non-discriminatory reasons.

13. Disability: An Individual with disability who has a physical or mental impairment that substantially limits one or more major life activities or impairment (any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting any of the following body systems: neurological, musculoskeletal, special sense organs, respiratory (including speech organs), cardiovascular, reproductive, digestive, genitourinary, immune, circulatory, hemic, lymphatic, skin, and endocrine). Also included are mental or psychological disorders such as intellectual disability, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

a. Major life activities including, but not limited to, caring for one's self, performing manual tasks, walking, standing, hearing, speaking, breathing, learning, and working.

b. Also includes the operation of major bodily functions, including functions of the immune system, special sense organs and skin, normal cell growth, digestive, genitourinary, bowel, bladder, neurological, brain, respiratory, circulatory, cardiovascular, endocrine, hemic, lymphatic, musculoskeletal, and reproductive functions. Major bodily functions include the operation of an individual organ within a body system (for example, the operation of the kidney, liver, or pancreas).

14. A Model EEO Program effectively considers and addresses concerns arising under both Title VII and Section 501 of the Rehabilitation Act. When establishing a Model EEO Program, an agency should incorporate into the design a structure for effective management, accountability, and self-analysis which will ensure program success and compliance with EEO MD-715. Agency personnel programs and policies should be evaluated regularly to ascertain whether such programs have any barriers that tend to limit or restrict equitable opportunities for open competition in the workplace.

15. National origin discrimination involves treating people (applicants or employees) unfavorably because they are from a particular country or part of the world, because of ethnicity or accent, or because they appear to be of a certain ethnic background (even if they are not). National origin discrimination also can involve treating people unfavorably because they are married to (or associated with) a person of a certain national origin or because of their connection with an ethnic organization or group. Discrimination can occur when the victim and the person who inflicted the discrimination are the same national origin.

16. Pregnancy discrimination (also identified under the basis of sex or gender discrimination) involves treating a woman (an applicant or employee) unfavorably because of pregnancy, child- birth, or a medical condition related to pregnancy or childbirth. The Pregnancy Discrimination Act of 1978 forbids discrimination based on pregnancy when it comes to any aspect of employment, including hiring, firing, pay, job

assignments, promotions, layoff, training, fringe benefits, such as leave and health insurance, and any other term or condition of employment.

17. Race/Color discrimination involves treating someone (an applicant or employee) unfavorably because he/she is of a certain race or because of personal characteristics associated with race (such as hair texture, skin color, or certain facial features). Color discrimination involves treating someone unfavorably because of skin color complexion. Race/color discrimination also can involve treating someone unfavorably because the person is married to (or associated with) a person of a certain race or color or because of a person's connection with a race-based organization or group, or an organization or group that is generally associated with people of a certain color. Discrimination can occur when the victim and the person who inflicted the discrimination are the same race or color. The law forbids discrimination when it comes to any aspect of employment, including hiring, firing, pay, job assignments, promotions, layoff, training, fringe benefits, and any other term or condition of employment.

18. Reasonable accommodation; In general, an accommodation is any change in the work environment or in the way things are customarily done that enables an individual with a disability to enjoy equal employment opportunities. There are three categories of "reasonable accommodations:"

a. Modifications or adjustments to a job application process that enable a qualified applicant with a disability to be considered for the position such qualified applicant desires;

b. Modifications or adjustments to the work environment, or to the manner or circumstances under which the position held or desired is customarily performed, that enable a qualified individual with a disability to perform the essential functions of that position;

c. Modifications or adjustments that enable a covered entity's employee with a disability to enjoy equal benefits and privileges of employment as are enjoyed by its other similarly situated employees without disabilities.

19. Religious discrimination involves treating a person (an applicant or employee) unfavorably because of his or her religious beliefs. The law protects not only people who belong to traditional, organized religions, such as Buddhism, Christianity, Hinduism, Islam, and Judaism, but also others who have sincerely held religious, ethical, or moral beliefs.

a. Religious discrimination can also involve treating someone differently because that person is married to (or associated with) an individual of a particular religion or because of his or her connection with a religious organization or group.

b. The law requires an agency to reasonably accommodate an employee's religious beliefs or practices, unless doing so would cause more than a minimal burden on the

operations of the agency's business. This means the law may require an agency to make reasonable adjustments to the work environment that will allow an employee to practice his or her religion.

20. **Reprisal** is defined as taking or threatening to take an unfavorable personnel action, or withholding or threatening to withhold a favorable personnel action, for making, preparing to make, or being perceived as making or preparing to make a protected activity/communication. It can occur when supervisor/manager treats and takes actions with negative consequences (demote, fire, negative administrative actions, not given same opportunities as peers) because they are, or were, involved in a protected activity. Protected activities include seeking or participating in the A-HPR program, EEO counseling, IG Complaint, providing testimony in an investigation or at a hearing, filing a discrimination complaint or speaking out against discriminatory activities. All of the laws enforced by the EEOC make it illegal to fire, demote, or take any negative actions for participating in a protective activity.

21. **Retaliation** encompasses illegal, impermissible, or hostile actions taken by a NG member (military or civilian) in the chain of command, peers, or coworkers as a result of making or being suspected of making a protected communication IAW DoDD 7050.06 or MD110. Retaliation for reporting a criminal offense can occur in several ways, including reprisal. Investigation of complaints of non-criminal retaliatory actions other than reprisal will be processed consistent with CNGBN XXXXX and Service-specific regulations. In addition to reprisal, as defined in this instruction, additional retaliatory behaviors include ostracism, maltreatment, and criminal acts for a retaliatory purpose in connection with an alleged sex-related offense or sexual harassment; or for performance of duties concerning an alleged sex-related offense or sexual harassment. For detailed definitions of the full range of retaliatory behaviors, see the RPRS Implementation Plan

22. **Sex or Gender Based discrimination** involves treating someone (an applicant or employee) unfavorably because of that person's sex or gender. Sex discrimination also can involve treating someone less favorably because of his or her connection with an organization or group that is generally associated with people of a certain sex. Discrimination on the basis of pregnancy, gender identity, or sexual orientation (non-conformance with gender stereotypes) is discrimination because of sex.

23. **Sexual Harassment (SH)** -- Conduct that involves unwelcome sexual advances, requests for sexual favors, and deliberate or repeated offensive comments or gestures of a sexual nature. This type of harassment may become unlawful when there is a civilian employee nexus. Sexual Harassment (SH) behavior is present when:

a. Submission to 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 has the purpose or effect of unreasonably interfering with an individual's work performance or creates an intimidating, hostile, or offensive environment; is so severe or pervasive that a reasonable person would perceive, and the victim does perceive, the environment as hostile or offensive.

d. 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 NG.

e. Any deliberate or repeated unwelcome verbal comments or gestures of a sexual nature by any member of the NG (military or civilian employee).

(1) There is no requirement for concrete psychological harm to the complainant for behavior to constitute SH. Behavior is sufficient to constitute SH if it is so severe or pervasive that a reasonable person would perceive, and the complainant does perceive, the environment as hostile or offensive.

(2) Sexual harassment can occur through electronic communications, including social media, other forms of communication, and in person.

24 Supervisory/Leadership/Manager (management) position: A position whose incumbent is responsible for discipline, performance, time and attendance, and day to day guidance of one or more employees, regardless of the title of the position description.

Harassment Complaint Form For South Dakota National Guard Employees <small>The proponent office is HRO/A-HPRC.</small>	A-HPRC Use Case Tracking Number:	Filing State/ Territory: SDNG
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PRIVACY ACT STATEMENT

Authority: 29 CFR 1614, MD-715

Principal Purpose: To document allegations of harassment in the South Dakota National Guard **Routine Uses:** None

Disclosure: Voluntary. However, failure to complete all portions of this form could affect the timely processing, or result in the rejection or dismissal of your complaint.

INSTRUCTIONS

PART I - TO BE COMPLETED BY COMPLAINANT

Submit to Your State Anti-Harassment Prevention and Response Coordinator (A-HPRC)

All NG employees who believe are or have experienced a form of harassment based on race, color, national origin, religion, sex/gender, or sexual orientation, or who believe they have experienced reprisal/retaliation for any prior engagement in a complaint process or related activity, may file a request to resolve harassment allegations.

You are encouraged to discuss your complaint with the alleged harasser immediate supervisor, unit commander, members of the chain of command or Anti-Harassment Prevention and Response Coordinator (A-HPRC). Fill out Part I of this form and file the complaint within 30 days of the date of the alleged harassment or the date that you became aware of the event or action. The complaint can be filed with the immediate supervisor, HRO or the A-HPR Coordinator. You may file with any other commander in the chain of command, Inspector General Office, Chief of Staff, and the Adjutant General. Regardless of where the complaint is filed, an applicable supervisor or command level member will be informed of the harassment.

NOTE: The purpose of this policy is to immediately stop harassing conduct that has occurred and deter its occurrence in the future. However, corrective action under this policy does not provide the remedies available in the EEO, grievance, or other processes, such as compensatory damages. Filing a report under this policy does not satisfy the requirements for filing an EEO complaint, grievance or any other process available nor negate the reporting time-lines for those processes.

1. COMPLAINANT

a. NAME (Last, First, MI)		b. GRADE	c. COMPONENT (ARNG/ANG)	d. POSITION
2. SEX-GENDER (M/F)	3. RACE		4. NATIONAL ORIGIN	
5. ORGANIZATIONAL ADDRESS (Including Zip Code)		6. TELEPHONE NUMBERS		
		a. BUSINESS	b. HOME or CELL	

7. ACTIVITY OR UNIT IN WHICH ALLEGED DISCRIMINATION OCCURRED	8. ARE YOU (Check ALL THAT APPLY) <input type="checkbox"/> PART TIME EMPLOYEE <input type="checkbox"/> FULL TIME EMPLOYEE <input type="checkbox"/> TITLE 5 CIVILIAN EMPLOYEE <input type="checkbox"/> TITLE 32 MILITARY TECHNICIAN OR AGR
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9. ALLEGED HARASSER

a. NAME (Last, First, MI)	b. RANK or GRADE AND TITLE
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10. REPRESENTATIVE (If any)

a. NAME (Last, First, MI)	b. ADDRESS
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11. CHECK BELOW THE BASIS (Reasons) FOR ALLEGED DISCRIMINATION/HARASSMENT

- HAZING
- BULLYING
- HOSTILE OR OFFENSIVE WORK ENVIRONMENT
- DISCRIMINATORY HARASSMENT
- STALKING
- RETALIATION
- OTHER: _____

12. CHECK FOR SPECIFIC ALLEGATIONS AND ISSUES: MARK ALL THAT APPLY			
Appointment		Evaluation/Appraisal	Reassignment
Assignment of Duties		Harassment	Retirement
Awards (Monetary/Time-Off)		a. Non-Sexual	Time and Attendance
Disciplinary Action		b. Sexual	Training/Education
Duty Hours		Promotion/Non-Selection	Other

13. STATE ALLEGATION AND ISSUES (Explanations, background, and evidence can be attached as supporting material; they are NOT issues.)

ISSUES:

- A. Number each issue
- B. Briefly list the alleged act of unlawful harassment, the basis, and the date(s) it took place
- C. Indicate the name(s) of the alleged discriminating official(s) (ADO)

SAMPLE: I was harassed against on (date) on the basis of (Race, Religion, or other basis) when (name the ADO) and briefly list the discriminatory event(s) or personnel action(s). Attach additional blank sheets, if necessary.

1. _____

2. _____

3. _____

14. WHAT CORRECTIVE ACTION DO YOU RECOMMEND TO RESOLVE YOUR COMPLAINT?

15a. SIGNATURE OF COMPLAINANT	15b. DATE
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16. OFFICIAL RECEIVING COMPLAINT	
a. NAME	b. TITLE
c. SIGNATURE	d. DATE

PART II - HARASSMENT COMPLAINT MANAGEMENT PROCESSING					
TO BE COMPLETED AT THE APPLICABLE SUPERVISOR/COMMAND LEVEL					
COMPLETE AS APPROPRIATE					
1. WHEN DID YOU RECEIVE THE COMPLAINT?					DATE (YYYY/MM/DD)
2. WAS THE COMPLAINT					
a.	Accepted	<input type="checkbox"/>	All	<input type="checkbox"/>	In Part
b.	Referred	<input type="checkbox"/>	All	<input type="checkbox"/>	In Part
					TO WHOM?
c.	Dismissed	<input type="checkbox"/>	All	<input type="checkbox"/>	In Part
(Reason)					
3. AFTER REVIEW OF THE MANAGEMENT INQUIRY/INVESTIGATION REPORT I FIND THAT YOUR HARASSMENT ALLEGATION(S) ARE (Circle One) AND THAT THE MATTER HAS BEEN (Circle One).					
FOUNDED			UNFOUNDED		
RESOLVED			UN-RESOLVED		
4. DID THE RESOLUTION CONCUR WITH THE FINDINGS OF THE INQUIRY/INVESTIGATION?					Yes
					No
5. NAME/DATE DID THE A-HPRC REVIEW THE ENTIRE REPORT?:					b. DATE (YYYY/MM/DD)
6. NAME/THE JUDGE ADVOCATE REVIEW THE ENTIRE REPORT?					DATE (YYYY/MM/DD)
Yes					No
7.a. NAME/SEEM REVIEW THE ENTIRE REPORT?					DATE (YYYY/MM/DD)
Yes					No
7. b. NAME/LRS REVIEW THE ENTIRE REPORT?					DATE (YYYY/MM/DD)
Yes					No
8 a. REVIEWED BY THE ADJUTANT GENERAL (or designated representative)?					DATE (YYYY/MM/DD)
Yes					No
8 b. COMPLAINANT ELECTED ALTERNATE DISPUTE RESOLUTION:					DATE (YYYY/MM/DD)
Yes					No
9. DATE MANAGEMENT MET WITH MEMBER AND PROVIDED THEM WITH PROPOSED RESOLUTION					DATE: (YYYY/MM/DD)
10. SIGNATURE OF COMPLAINANT					b. DATE (YYYY/MM/DD)
11. NOTES:					
10a. SIGNATURE OF A-HPRC					10b. DATE CASE WAS CLOSED (YYYY/MM/DD)