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OFFICE OF THE SECRETARY
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SECNAVINST 5300.26D
ASN(M&RA)
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SECNAV INSTRUCTION 5300.26D

From: Secretary of the Navy

Subj: DEPARTMENT OF THE NAVY (DON) POLICY ON SEXUAL HARASSMENT

Ref: (a) DOD Directive 1350.2 of 18 Aug 95
(b) DOD Directive 1440.1 of 21 May 87
(c) 29 C.F.R. § 1604.11 (NOTAL)
(d) Title VII of the Civil Rights Act of 1964, as amended
42 U.S.C. 2000e (NOTAL)
(e) DOD Directive 7050.6 of 23 Jun 2000
(f) NAVPERS 15620
(g) SECNAVINST 5354.1
(h) OCPMINST 12713.2A (NOTAL)
(i) OPNAVINST 5354.1E

Encl: (1) Definitions
(2) Range of Behaviors which Constitute Sexual Harassment

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 that policy.

2. Cancellation. SECNAVINST 5300.26C.

3. Applicability. This instruction applies to all DON personnel, specifically: all active-duty military personnel, both Regular and Reserve; all DON civilians including non-appropriated fund employees; midshipmen of the Naval Academy and the 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.

4. Definitions. Enclosure (1) defines sexual harassment in accordance with references (a) and (b). Interpretation of this instruction shall be governed by the definitions in enclosure (1).

3 Jan 2006

5. Background

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 unlawful discrimination. 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, and do not condone those behaviors in others.

b. The economic costs of sexual harassment are significant. Even more harmful, however, are the negative effects on productivity and readiness, including increased absenteeism, greater personnel turnover, lower morale, decreased effectiveness, and a loss of personal, organizational, and public trust. While not easily quantified, these costs are real and seriously affect DON's ability to accomplish its mission.

c. While the Equal Employment Opportunity Commission (EEOC) regulations, reference (c), establish a standard for determining employer liability for sexual harassment under Title VII of the Civil Rights Act, reference (d), the DOD definition of sexual harassment establishes a standard that exceeds that of the EEOC. This more comprehensive standard expands on the definition to include identifying supervisors and those in command positions who use or condone implicit or explicit sexual behavior to affect another's career, pay, or job as engaging in sexual harassment.

6. Policy. The DON is committed to maintaining a work environment free from unlawful discriminatory practices and inappropriate behavior. In support of this commitment, it is DON policy that:

a. Sexual harassment is prohibited. All DON personnel, military and civilian, will be provided a work environment free from unlawful discrimination which includes sexual harassment. Off-duty or non-duty behaviors that affect the military workplace may also be considered to be sexual harassment.

b. All DON personnel, military and civilian, will be educated and trained upon accession (within 90 days to the

3 Jan 2006

extent possible) and annually thereafter, in the areas of identification, prevention, resolution and elimination of sexual harassment. Training programs will use a three-tiered behavioral zone approach to explain the spectrum of sexual harassment, as outlined in enclosure (2), or other generally accepted training approach of equal or greater effectiveness. Annual training shall include the application of pertinent informal and formal complaint procedures (references (e)-(j) refer).

c. DON personnel who may be called upon to conduct or review investigations into alleged incidents of sexual harassment should receive training in DON policy on equal opportunity and investigative methods and processes.

d. Individuals who believe they have been sexually harassed shall be provided the opportunity to seek resolution and redress. Commanders and those in supervisory positions shall ensure that notification of sexual harassment can be made in a command climate that does not tolerate acts of reprisal, intimidation, or further acts of harassment. All personnel shall be made aware of the avenues of resolution and redress that are available.

e. All reported incidents of sexual harassment shall be investigated and resolved at the lowest appropriate level. 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 shall be resolved promptly and with sensitivity. Confidentiality will be maintained to the extent possible. For civilian employees, confidentiality is guaranteed during the informal stage of a discrimination complaint, if requested. Feedback will be provided to all affected individuals consistent with the requirements of the Privacy Act, Freedom of Information Act, and other pertinent laws, regulations and negotiated agreements. Both the complainant and the subject(s) of a complaint may appeal administrative findings (references (a) and (g) apply for military, reference (h) applies to civilian employees).

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

7. Accountability. The rules in subparagraph 7a are regulatory

3 Jan 2006

orders and apply to all DON personnel individually and without further implementation. A violation of these provisions by military personnel is punishable in accordance with the Uniform Code of Military Justice (UCMJ), and is the basis for disciplinary action with respect to civilian employees. The prohibitions in subparagraph 7a apply to all conduct which occurs in or impacts a DOD working environment, as defined in enclosure (1). The reasonable person standard as defined in enclosure (1) shall be used to determine whether a violation of these provisions has occurred.

a. No individual in the DON shall:

(1) Commit sexual harassment, as defined in enclosure (1);

(2) Take reprisal action against a person who provides information on an incident of alleged sexual harassment;

(3) Knowingly make a false accusation of sexual harassment; or

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

b. 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, options include informal counseling, and disciplinary action including removal from the Federal Service.

c. Military personnel of the Navy and Marine Corps shall 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):

3 Jan 2006

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

(2) Rewards in exchange for sexual favors; or

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

d. 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 8c.

8. Responsibility

a. Leadership is the key to eliminating all forms of unlawful discrimination. 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, fostering a climate free of all forms of unlawful discrimination including 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 reprisal or retaliation. Reprisals, as further described in enclosure (1) and references (e) and (h), are prohibited under this instruction whether they are originated by the command, the alleged perpetrator, or peers of the complainant. 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. Individuals who believe they have been sexually harassed are encouraged to address their concerns or objections regarding the incident directly with the person demonstrating the harassing behavior. Persons who are subjected to or observe objectionable behavior should promptly notify the chain of

3 Jan 2006

command if:

- (1) the objectionable behavior does not stop;
- or
- (2) the situation is not resolved; or
 - (3) addressing the objectionable behavior directly with the person concerned is not reasonable under the circumstances; or
 - (4) the behavior is clearly criminal in nature.

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.

c. All personnel are responsible for treating others with dignity and respect. This means fully and faithfully complying with this instruction. All DON personnel are accountable for their actions.

9. Action. The Chief of Naval Operations, the Commandant of the Marine Corps, and the Administrative Assistant to the Under Secretary of the Navy shall take action to enforce the provisions of this instruction. These actions shall ensure that:

a. All DON personnel under their cognizance comply with this instruction.

b. Education and training programs are in place at all levels within the DON. These programs will cover identification, prevention, and resolution of sexual harassment, and reprisal prevention, and will be implemented from entry through executive levels. A Core Values emphasis in such training is appropriate.

c. An effective system is in place to resolve complaints of discrimination at the lowest possible level. This system will emphasize the individual accountability of the recipient, accused, co-workers, and the chain of command; clarify the roles for co-workers and the chain of command; teach interpersonal communications skills; and incorporate the concepts of a reprisal-free environment, timely resolution, and appropriate

3 Jan 2006

feedback and follow-up.

d. Systems are in place to monitor the DON's progress in eliminating sexual harassment and to evaluate DON education and training programs including attendance at and effectiveness of those programs. These systems will include surveys, assessments, and an integrated database, featuring standardized information to track formal complaints of sexual harassment.

e. A counseling support and referral network exists and is advertised.

f. Commanders and supervisors investigate and, to the extent that authority to do so is vested in them by law or regulation, take such action as they consider appropriate on all alleged violations of this instruction.

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3 Jan 2006

DEFINITIONS

1. Reasonable person standard. An objective test used to determine if behavior meets the legal test for sexual harassment. The test requires a hypothetical exposure of a reasonable person to the same set of facts and circumstances; if the behavior is offensive, then the test is met. The reasonable person standard considers the complainant's perspective and does not rely upon stereotyped notions of acceptable behavior within that particular work environment.

2. Reprisal. In general, reprisal is taking or threatening to take an unfavorable personnel action or withholding or threatening to withhold a favorable personnel action, or any other act of retaliation, against a military member or civilian employee for participating in the EEO or EO appeal process. Further guidance is contained in references (c) and (e).

3. Sexual Harassment. A form of sex discrimination that involves unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when:

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

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

c. 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. This definition emphasizes that workplace conduct, to be actionable as "abusive work environment" harassment, need not result in concrete psychological harm to the victim, but rather need only be so severe or pervasive that a reasonable person would perceive, and the victim does perceive, the work environment as hostile or offensive. ("Workplace" is an expansive term for military members and may include conduct on or off duty, 24 hours a day.) Any person in a supervisory or command position who uses or condones any form of sexual behavior to control, influence, or affect the career, pay, or job of a military member or civilian employee is engaging in sexual harassment.

Enclosure (1)

3 Jan 2006

Similarly, any military member or civilian employee who makes deliberate or repeated unwelcome verbal comments, gestures, or physical contact of a sexual nature in the workplace is also engaging in sexual harassment.

4. 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.

3 Jan 2006

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 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 in the work environment. DON policy and prohibitions governing sexual harassment are contained in the basic instruction and enclosure (1).

2. Description. Sexual harassment is behavior that is unwelcome, sexual in nature, and connected in some way with a person's job or 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 behavior to be considered sexual harassment, it must meet three criteria: it must be unwelcome, sexual in nature, and occur in or impact on the work environment.

a. Unwelcome behavior is behavior that a person does not ask for and which that person considers undesirable or offensive. Not everyone has the same perception of "undesirable or offensive." Since the person being subjected to the behavior, the recipient, is the one being affected, it is the recipient's perception that counts. Using a "reasonable person standard," defined in enclosure (1), from the perspective of the recipient, is considered a common sense 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. Using common sense will normally be enough to determine whether or not a certain behavior is sexual in

Enclosure (2)

3 Jan 2006

nature.

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

(1) When recipients are offered or denied something that is work-connected in return for submitting to or rejecting unwelcome sexual behavior, they have been subjected to a type of sexual harassment known as "quid pro quo," 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 in a workplace interferes with another person's work performance, sexual harassment has occurred. If the behavior produces a work atmosphere which is offensive, intimidating, or abusive to another person, whether or not work performance is affected, a type of sexual harassment called "hostile environment" has occurred. The following are examples of behavior that could create a hostile environment:

(a) Using sexually explicit or sexually offensive language;

(b) Displaying sexually-oriented 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.

4. Range of Behaviors. There is a wide range of behaviors which can be unwelcome, sexual, and work-connected and can, therefore, constitute sexual harassment. Some behaviors may be unwelcome and work-connected, but not sexual (for example, performance counseling), and obviously do not constitute sexual harassment. To better explain the range of behaviors that may constitute sexual harassment, the traffic light illustration was developed,

3 Jan 2006

in which behaviors are divided into three zones, corresponding to the

colors on a traffic light. Green on the traffic light means "go," and behavior in the green zone is acceptable. Green zone behavior is not sexual harassment. Yellow on the traffic light means "caution," and behavior in the yellow zone may be sexual harassment. Red on the traffic light means "stop." Red zone behaviors are sexual harassment. Just as with a traffic light, if in the yellow zone long enough, the light will turn red. If yellow zone behaviors occur repeatedly, especially after the person has been told it is unwelcome, it becomes red zone behavior - sexual harassment. The following examples illustrate these three types of behavior:

a. Green zone. These behaviors are not sexual harassment: touching which could not reasonably be perceived in a sexual way (such as shaking hands, or a friendly pat on the shoulder), counseling on military appearance, social interaction, showing concern or encouragement, a polite compliment, or friendly conversation.

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

c. Red zone. These behaviors are always considered sexual harassment: sexual favors in return for employment rewards, threats if sexual favors are not provided, sexually explicit pictures (including calendars or posters) or remarks, using status to request dates, or obscene letters or comments.

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