



CHIEF NATIONAL GUARD BUREAU INSTRUCTION

NGB-EO
DISTRIBUTION: A

CNGBI 9601.01
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NATIONAL GUARD DISCRIMINATION COMPLAINT PROGRAM

References: See Enclosure B.

1. Purpose. This instruction establishes policy and assigns responsibilities for implementing and maintaining a National Guard (NG) Discrimination Complaint Program in accordance with (IAW) references a through j for all NG members serving in Title 32 duty status and all NG technicians employed under reference f. It also identifies responsibilities for civilians who work for the NG and their right, along with the right of NG members and people receiving services through NG programs, to file a discrimination complaint on the basis of race, color, national origin, religion, or sex-gender—including sexual harassment—and reprisal concerning prior engagement in protected discrimination process-related activity.

2. Cancellation. This instruction rescinds and replaces National Guard Regulation (NGR) (AR) 690-600/(AF) 40-1614, 15 March 1993, Volumes I and II, “National Guard Civilian Discrimination Complaint System;” and NGR 600-22/Air National Guard Instruction 36-3, 30 March 2001, “National Guard Military Discrimination Complaint System.”

3. Applicability. This instruction applies to all elements of the NG. It also applies to beneficiaries of services of the Army National Guard (ARNG) and Air National Guard (ANG) in programs receiving Federal financial assistance. This instruction does not apply to NG Service members serving in Title 10 status on active duty under reference l, or to civilian personnel employed in Title 5 status under reference m at State NG organizations, the National Guard Bureau (NGB), the Army and Air Readiness Centers, and all NG field-operating locations. Hereinafter the term “State” refers to each of the several States, Territories, Commonwealths, and the District of Columbia.

4. Policy. It is NG policy that:

UNCLASSIFIED

a. The NG does not condone or tolerate unlawful discrimination or sexual harassment of any kind. No NG Service member or civilian employee may unlawfully discriminate against, harass, intimidate, or threaten another person on the basis of race, color, national origin, religion, sex-gender, or sexual orientation; sexually harass someone; or seek reprisal against someone who engages in a protected discrimination complaint activity. The NGB prohibits unlawful discrimination under its authority granted in references b, h, i, j, Sections 108 through 110 of reference k, and Sections 10501 through 10503 of reference l.

b. The investigation and resolution of unlawful discrimination or sexual harassment complaints are fair, impartial, and timely.

c. Compliance with this policy is a leadership function. NG personnel serving or employed under references k and f are subject to the command, control, and disciplinary authority of The Adjutant General (TAG) or the Commanding General of the District of Columbia National Guard (CG) regardless of their work location.

d. Receipt of Title 32 funding, in whole or part, is contingent upon compliance with the policies and processes set forth within this instruction, under the authority granted in Section 108 of reference k, irrespective of whether the alleged discriminatory conduct falls within a specifically enumerated basis under reference j.

5. Definitions. See Glossary.

6. Responsibilities. See Enclosure A.

7. Summary of Changes. This instruction is a complete revision and integration of the NG discrimination complaint systems pertaining to both Title 32 military and civilian personnel performing duties or employed under the authority of reference k. This instruction:

a. Affirms that TAG is the final appellate authority for State or Territory NG discrimination complaints. The CG is the final appellate authority for the District of Columbia NG discrimination complaints.

b. Establishes formal responsibilities within NGB to oversee, review, and provide relief in appropriate State NG discrimination complaints matters under the authority of references b, h, and i.

c. Establishes the NGB requirement to implement Federal statutes, regulations, and directives of the Air Force, Army, and Department of Defense

(DoD) for Military Equal Opportunity and civilian Equal Employment Opportunity, subject to the limitations established by Federal case law.

d. Clarifies the NG policy to use Alternative Dispute Resolution (ADR) voluntarily and other early collaborative dispute resolution processes to the maximum extent practical and appropriate to resolve workplace disputes.

8. Releasability. This instruction is approved for public release; distribution is unlimited. Obtain copies through <<http://www.ngbpd.c.ngb.army.mil>>.

9. Effective Date. This instruction is effective upon publication and must be reissued, cancelled, or certified as current within five years of its publication.


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Enclosures:

- A -- Responsibilities
- B -- References
- GL -- Glossary

ENCLOSURE A

RESPONSIBILITIES

1. Chief of the National Guard Bureau (CNGB). The CNGB will:
 - a. Establish and administer a program to process NG discrimination complaints for all NG personnel in a Title 32 status IAW references b, e, f, and i.
 - b. Require that the NG Discrimination Complaint Program is administered uniformly for all Title 32 personnel.
 - c. Provide adequate resources to ensure timely processing of discrimination complaints.
 - d. Rectify unjust personnel actions or compensate persons wronged by unlawful discrimination when appropriate.
2. Vice Chief of the National Guard Bureau (VCNGB). The VCNGB will:
 - a. Serve as the Final Reviewing Official for NG discrimination complaints under the NG Discrimination Complaint Program and render such reviews in a timely manner.
 - b. Have the option of re-delegating, in writing, the authority to act as the Final Reviewing Official to The Special Assistant to the CNGB.
 - c. Establish programs and procedures to ensure compliance with references i and j.
 - d. Provide guidance, oversight, and training; and enforce compliance regarding nondiscrimination in the NG.
 - e. Establish sufficient staff positions within the NGB to carry out the NG Discrimination Complaint Program requirements adequately.
3. Director of the ARNG (DARNG) and Director of the ANG (DANG). The DARNG and DANG will act as Reviewing Officials for NG discrimination complaints filed under the NG Discrimination Complaint Program and render such reviews in a timely manner.
4. Director of Equal Opportunity, Office of the Vice Chief of the National Guard Bureau (NGB-EO). The Director of NGB-EO reports directly to the VCNGB and will:

a. Liaise with the Office of the NGB Chief Counsel (NGB-JA) to ensure all proposed policy and guidance regarding the NG Discrimination Complaint Program is legally sufficient before promulgation.

b. Submit, manage, and execute the NG Discrimination Complaint Program budget.

c. Encourage, develop, and implement initiatives, activities, and training programs throughout the NG related to the detection and elimination of unlawful discrimination and its dilatory effects upon the organization.

5. Chief of the Complaints Management and Adjudication Division (NGB-EO-CMA). NGB-EO-CMA is the office of primary responsibility for implementing the NG Discrimination Complaint Program. The Chief of NGB-EO-CMA will:

a. Administer the NG Discrimination Complaint Program to ensure compliance with the CNGB's policies and guidance.

b. Investigate alleged instances of discrimination, as needed.

c. Administer the Discrimination Complaint process, ensuring timely resolution and closure of formal complaints.

d. Provide advice and assistance to complainants and the subjects of complaints throughout the complaint process.

e. Issue timely decisions, determinations, and certifications relating to the NG Discrimination Complaint Program.

f. Review all settlement offers and agreements, and coordinate these through NGB-JA before finalization.

g. Coordinate with NGB-JA when issuing guidance on the NG Discrimination Complaint Program.

h. Assist the Director of NGB-EO in:

(1) Providing NG Discrimination Complaint Program awareness throughout the NG and training for personnel assigned to administer the program.

(2) Making NG personnel aware of existing NG Discrimination Complaint Program resources and how to access them, including the NGB-EO Web site located at reference o.

(3) Advocating and defending the NG Discrimination Complaint Program.

(4) Identifying and eliminating unnecessary barriers to a work-environment free from unlawful discrimination.

(5) Soliciting NG Discrimination Complaint Program data from the field for each preceding fiscal year and preparing a summary report to the CNGB regarding progress made in implementing the NG Discrimination Complaint Program IAW this instruction.

i. Follow ADR processes and support their use throughout the NG Discrimination Complaint process.

6. NGB Chief Counsel. The NGB Chief Counsel will:

a. Appoint NG Discrimination Complaint Hearing Officers who have the requisite skills, abilities, and experience. A prospective Hearing Officer may be required to undergo a background investigation. The NGB Chief Counsel may withdraw or suspend a Hearing Officer's appointment for any reason he or she believes is appropriate. The decision to withdraw or suspend a Hearing Officer's appointment under this instruction is not appealable.

b. Designate the uniform to be worn by a military officer who is appointed as a Hearing Officer while conducting a hearing, pre-hearing conference, or fact-finding interview, which may include civilian clothes.

c. Provide legal advice as required throughout the NG Discrimination Complaint process, to include legal reviews of military and civilian complaint determinations, acceptance and dismissal letters, reports of investigation, settlement agreements, and agency decisions. These functions are generally delegated to NGB-JA.

7. NGB-JA. NGB-JA will:

a. Provide full-spectrum legal representation and support to the NGB, and legal support to State NG management regarding discrimination complaints, including those made or forwarded to other State or Federal entities. NGB-JA attorneys and paralegals are not authorized to provide individual complainants legal representation or assistance.

b. Participate in ADR proceedings, when appropriate, arising during disputes about discrimination complaints.

c. Coordinate with the State Judge Advocate (JA):

(1) In disputes in which NGB-JA has representational responsibility.

(2) Regarding participation by the servicing NGB-JA attorney in discrimination complaint proceedings.

(3) Regarding the terms of any settlements resulting from such proceedings.

d. Coordinate with the Director of NGB-EO and the Chief of NGB-EO-CMA to provide Discrimination Complaint process training and guidance for NG Hearing Officers, JAs, civilian attorneys, and paralegal personnel.

8. TAG and the CG. TAG and the CG, or their designees, will:

a. Establish a State Discrimination Complaint program to supplement the guidance provided in this instruction.

b. Provide guidance, oversight, and training for the State Discrimination Complaint Program.

c. Enforce compliance in the States regarding nondiscrimination in the NG.

d. Take immediate and appropriate action to investigate and resolve allegations when someone alleges unlawful discriminatory practices and stop any proven, unlawful behavior. Furthermore, leaders will take appropriate disciplinary action against any individual, employed or in service pursuant to Title 32 who engages in unlawful discriminatory practices.

e. Provide adequate resources to ensure the timely processing of discrimination complaints in the States at all levels.

f. Rectify unjust personnel actions or compensate persons wronged by unlawful discrimination in the States, when appropriate.

g. Maintain a work environment free of unlawful discrimination.

h. Encourage personnel to participate in the complaint process without fear of retaliation.

i. Resolve all findings of unlawful discrimination within allowable time frames to ensure compliance with internal policy and this instruction.

j. Display the URL link to the NGB-EO Web site in a conspicuous place on all of the State NG workplace dispute-related Web sites. The NGB-EO Web site address is located at reference o.

k. Act as the State's final arbiter fairly and impartially in all State NG EO discrimination complaints IAW reference f, subject to any State requirements and limitations.

1. Appoint an individual assigned to the Joint Force Headquarters-State to serve as the State Equal Employment Manager (SEEM).

9. SEEM. The SEEM will:

a. Serve as TAG's or the CG's central point of contact for all complaints of discrimination arising within the State NG, and have direct access to TAG or the CG.

b. Manage the State Discrimination Complaint program on behalf of TAG or the CG, to include:

(1) Maintaining a database with all open and closed complaints.

(2) Monitoring and tracking the progress of all open complaints.

(3) Timely notifying NGB-EO-CMA of all complaints, both informal and formal.

(4) Timely coordinating all complaint processing with NGB-EO-CMA.

(5) Coordinating with the State Civilian Personnel Office and Human Resources Office, or the military Equal Opportunity (EO) officer at the State NG or first subordinate command level to ensure that complaints are properly and timely processed.

c. Coordinate legal aspects of a complaint with the State JA, NGB-EO-CMA, and NGB-JA as required and advise TAG or the CG on all aspects of discrimination complaint processing and management at the State level.

d. Act as the custodian of records for discrimination complaint files and related records.

e. Prepare and timely submit required reports, reviews, or other correspondence in adherence to the schedule or as requested by NGB.

f. Administer the State pre-complaint, fact-finding phase.

g. Provide support, as required, during the investigative phase of the complaint process.

g. Receive a minimum of 16 hours of specified training from NGB-EO-CMA within 60 days of appointment. Training will include NG Discrimination Complaint Program processing and a case-by-case review of all open and pending complaints in the SEEM's State.

h. Receive training prescribed for EO professionals and any additional training applicable to State and NG Discrimination Complaint Program duties.

i. Require that the State has no fewer than two EO counselors.

j. Require that EO training is provided to EO professionals IAW NGB, Army, Air Force, and DoD rules, regulations, and policies.

k. Provide EO professionals adequate resources to accomplish their fact-finding and resolution duties.

l. Assist the State ADR Manager in developing and implementing the State ADR Program with respect to the NG Discrimination Complaint Program.

m. Review settlement agreements resulting from ADR proceedings for compliance with applicable NGB, Army, Air Force, and DoD rules, regulations, and policies.

10. Commanders, Supervisors, and Managers. Commanders, supervisors, and managers will:

a. Process all complaints IAW the procedures in this instruction.

b. Brief unit members and employees annually about their right to file discrimination complaints.

(1) Disseminate information on how to file complaints, and the time limits for such filing and processing of the complaint.

(2) Permanently post required information on easily accessible bulletin boards for all applicable personnel to review.

c. Take action to end unlawful discrimination or sexual harassment when a formal complaint is substantiated.

d. Carry out personnel actions fairly and offer all members an equal opportunity to advance in the organization.

e. Allow personnel with collateral EO duties, whether civilian or military, sufficient duty time to perform their EO functions.

f. Allow complainants and their representatives reasonable amounts of duty time during both the fact-finding and investigatory phases of the complaint process to pursue the complaint.

g. Require full cooperation with EO counselors, SEEMs, investigators, JAs, NGB representatives, and Hearing Officers.

h. Promote the use of ADR to resolve disputes under his or her jurisdiction.

i. Participate in good faith in ADR proceedings and consider issuing a policy that all subordinates participating in the ADR process do likewise.

11. State JA. State JAs will:

a. Provide legal advice to the SEEM and either TAG or the CG on all aspects of discrimination complaints, including the development, implementation, and administration of the State's Discrimination Complaint program.

b. Assist the SEEM, as required, during the fact-finding and investigatory phases of the complaint process.

c. Advise TAG or the CG, in conjunction with the SEEM and after coordination with NGB-JA, on settlement agreements and claims for attorney's fees and costs.

d. Coordinate with the NGB-JA:

(1) In disputes in which NGB-JA has representational responsibility.

(2) To participate in or assist the servicing NGB-JA attorney in State discrimination complaint proceedings.

(3) On the terms of any settlement agreement.

(4) When anticipating or engaging in Discrimination Complaint litigation.

e. Notify NGB-EO-CMA and NGB-JA when informed that a complainant has initiated or terminated a civil action.

f. Represent the State NG in proceedings relating to discrimination complaints. Act as the State's legal point of contact and cooperate fully with the servicing NGB-JA attorney when NGB-JA has representational responsibility.

g. Advise on the suitability of using ADR to resolve disputes. The servicing NGB-JA attorney will accomplish ADR or coordinate it when NGB-JA has representational responsibility.

h. Draft or review settlement agreements. The servicing NGB-JA attorney will review and coordinate with the full-time JA on all settlement agreements when NGB-JA has representational responsibility.

i. Assist the ADR Manager in providing personnel awareness training and briefings on ADR processes and techniques.

12. ARNG and ANG EO Professionals. ARNG and ANG EO Professionals will:

a. Advise commanders, supervisors, and managers regarding issues, merits, validity, and processing of discrimination complaints.

b. Conduct informal fact-finding into allegations of discrimination on behalf of the State NG to facilitate informal resolution.

c. Advise the complainant on the Discrimination Complaint process.

d. Assist the complainant in processing a discrimination complaint, particularly in clarifying the issues and bases of the complaint.

e. Provide feedback to the complainant on the status of the complaint at each step of the process and advise the complainant of the next step.

f. Notify the SEEM immediately upon receipt of a complaint or as soon as reasonably possible and then coordinate processing of the complaint with the SEEM.

g. Provide technical assistance to investigators of formal complaints of discrimination.

h. Assist in developing and implementing the State Discrimination Complaint and ADR programs.

i. Review and coordinate settlement agreements with the State JA and NGB-JA.

ENCLOSURE B

REFERENCES

- a. DoD Directive 1440.1, 21 May 1987, certified current as of 21 November 2003, "The DoD Civilian Equal Opportunity (EEO) Program"
- b. DoD Directive 1350.2, 18 August 1995, certified current as of 21 November 2003, "Department of Defense Military Equal Opportunity (MEO) Program"
- c. DoD Directive 1020.1, 31 March 1982, certified as current 21 November 2003, "Nondiscrimination on the Basis of Handicap in Programs and Activities Assisted or Conducted by the Department of Defense"
- d. AR 600-20, 06 November 2014, "Army Command Policy"
- e. AF Instruction 36-2706, 05 October 2010, "Equal Opportunity Program Military and Civilian"
- f. 32 U.S.C. § 709, "Technicians: Employment, Use, Status"
- g. E.O. 13160, 23 June 2000, "Nondiscrimination on the Basis of Race, Sex, Color, National Origin, Disability, Religion, Age, Sexual Orientation, and Status as a Parent in Federally Conducted Education and Training Programs"
- h. DoD Directive 5500.11, 27 May 1971, certified as current 21 November 2003, "Nondiscrimination in Federally Assisted Programs"
- i. DoD Directive 5105.77, 21 May 2008, "National Guard Bureau (NGB)"
- j. 42 U.S.C., Chapter 21, Subchapter V, "Federally Assisted Programs"
- k. 32 U.S.C., "National Guard"
- l. 10 U.S.C., "Armed Forces"
- m. 5 U.S.C., "Government Organization and Employees"
- n. 29 U.S.C. § 206 (d), "Prohibition of Sex Discrimination"
- o. <<http://www.nationalguard.mil/Leadership/JointStaff/ZB/OfficeofEqualOpportunity.aspx>>, 27 September 2015

GLOSSARY

PART I. ACRONYMS

ADR	Alternative Dispute Resolution
ANG	Air National Guard
ARNG	Army National Guard
CG	Commanding General of the District of Columbia National Guard
CNGB	Chief of the National Guard Bureau
DoD	Department of Defense
EO	Equal Opportunity
IAW	In accordance with
JA	Judge Advocate
NG	National Guard
NGB	National Guard Bureau
NGB-EO	Office of Equal Opportunity
NGB-EO-CMA	Chief of Complaints Management and Adjudication Division
NGB-JA	Office of the National Guard Bureau Chief Counsel
NGR	National Guard Regulation
SEEM	State Equal Employment Manager
TAG	The Adjutant General
VCNGB	Vice Chief of the National Guard Bureau

PART II. DEFINITIONS

Air and Army National Guard Equal Opportunity Professionals -- Civilian Personnel Office and Human Resource Office Equal Opportunity designees, Air National Guard Equal Opportunity Specialists and Equal Opportunity Counselors, and Army National Guard Equal Opportunity Advisors and Equal Opportunity Leaders.

Alternative Dispute Resolution -- Any 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, and the use of ombuds, or any combination.

Harassment -- Any unwelcome conduct that is based on race, color, religion, sex (including pregnancy) or sexual orientation, national origin, age (40 or older), disability, or genetic information. Harassment becomes unlawful where enduring the offensive conduct becomes a condition of continued employment or the conduct is severe or pervasive enough to create a work environment that a reasonable person would consider intimidating, hostile, or abusive.

Hostile work environment -- Discriminatory conduct or behavior in the workplace that is unwelcome and offensive to an employee or group of employees based on race, color, religion, sex (including pregnancy) or sexual orientation, national origin, age (40 or older), disability or genetic information. 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 employee such as when the employee becomes disturbed because of intimidation or due to fear of loss of employment. The complainant must have reason to believe that such behavior patterns are likely to continue indefinitely. Offensive conduct may include, but is 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 in another area, an agent of the employer, a co-worker, or a non-employee. The victim does not have to be the person harassed, but can be anyone affected by the offensive conduct. The discrimination may occur without economic injury to, or discharge of, the victim.

Sexual harassment -- Any unwelcome conduct that is based on sex or sexual orientation, including unwelcome advances for sex or physical contact, requests for favors involving sex or other verbal or physical conduct of that nature, particularly when submission to such conduct is made directly or indirectly as a term or condition of employment, or when submission to or rejection of such conduct is used as a basis for an employment decision affecting the person. The conduct must be pervasive or severe enough to significantly and adversely alter the conditions of the victim's employment and create an abusive working environment. The behavior in question is evaluated from the standpoint of a reasonable person, taking into account the particular context in which it occurred. Unless the conduct is very severe, a single incident or group of isolated incidents will not be regarded as discriminatory.

Unlawful discrimination -- Unfair or unequal treatment of an individual or group on the basis of race, color, religion, sex or sexual orientation, national origin, age (40 or older), disability, reprisal, or genetic information. It may take the form of a hostile work environment.