



DEPARTMENT OF THE ARMY
U.S. ARMY SECURITY ASSISTANCE COMMAND
5701 21ST STREET
FORT BELVOIR, VA 22060-5940

REPLY TO
ATTENTION OF

AMSAC-EE

23 December 2011

MEMORANDUM FOR All U.S. Army Security Assistance Command Employees

SUBJECT: U.S. Army Security Assistance Command (USASAC) Policy
Memorandum 103.13 – Equal Employment Opportunity (EEO)

1. Purpose and Applicability. This policy memorandum applies to all current or former employees, applicants or certain contract employees covered by Army Regulation (AR) 690-600. The idea of human equality is fundamental to the existence of our democracy. The Army thrives on the diversity of its people.

2. References.

a. Title VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act, the Americans with Disabilities Act and the Equal Pay Act.

b. AR 690-12, Equal Employment Opportunity and Affirmative Action, 4 March 1988.

c. AR 690-600, Equal Employment Opportunity Discrimination Complaints, 9 February 2004.

d. Memorandum, Department of the Army, Office of the Assistant Secretary for Manpower and Reserve Affairs, 10 November 2004, subject: Retaliation for Engaging in Protected Equal Employment Opportunity (EEO) Activity (enclosed).

e. Department of Defense Directive 1020.02, Diversity Management and Equal Opportunity in the Department of Defense, 5 February 2009.

f. Army Policy on Diversity, 1 April 2009.

g. Title 29, Code of Federal Regulation, Part 1614, 1 April 2011.

h. AMC Command Policy Letter—Diversity Policy for Civilian Employees, undated.

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3. Policy.

a. I am totally committed to the EEO program, concepts, policies, objectives and goals which ensure equal treatment without regard to race, color, religion, age, gender, national origin, or physical or mental disability. I fully support the Department of Defense goals of Human Relations and EEO. Every employee will be treated fairly, with dignity and respect. To achieve the EEO program goal of a workforce representative of this Nation's diversity, management must ensure that selection and employment practices are appropriate, fair and based upon merit. I expect each member of USASAC to be equally committed to the concepts, policies, objectives and goals. It is our responsibility to provide equal opportunity for all.

b. No one will be subjected to discrimination, unfair treatment or harassment of any nature. In the EEO arena, civilian employees will not be discriminated against on the basis of race, color, religion, sex, gender, ethnicity, national origin, age or disability. Corrective action will be taken in the case of any violation of this policy.

c. This Command fully supports the laws that prohibit retaliation against an individual who has engaged in EEO-protected activities. Protected activities include opposing a practice made unlawful by one of the employment discrimination statutes; or filing a complaint, testifying, assisting or participating in any manner in an investigation, proceeding or hearing under the applicable statutes.

d. Supervisors and managers must perform their duties without differentiating between employees who have engaged in protected activities and other subordinates. Individuals who oppose employment practices they reasonably believe to be unlawful help us enforce the antidiscrimination statutes. Although these individuals remain subject to appropriate supervision (including performance or disciplinary actions when necessary), supervisors must ensure that their actions are not motivated by or misperceived as a reaction to protected activities.

e. As a Command, we are committed to creating a work environment free of any form of harassment. Commanders, managers and supervisors must be cognizant of their responsibilities to prevent this unacceptable conduct and take immediate and appropriate action when such conduct occurs

f. The EEO concepts are the cornerstones of personnel management programs within this Command. These EEO concepts are inherent to good personnel management practices and must be an integral part of day-to-day management and employee relations. This responsibility is extended to every leader, manager,

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supervisor and military and civilian employee throughout this Command. Every USASAC employee must prevent and eliminate all factors that inhibit productivity, achievement potential and cohesiveness.

g. An atmosphere of trust and equality of opportunity are key ingredients to the teamwork necessary to successfully accomplish the EEO mission. Therefore, the Command encourages everyone to participate in the available training and to demonstrate a personal commitment to equal opportunity for all USASAC personnel.

h. The commitment of every Soldier and civilian to our EEO mission will ensure that this Command maintains the highest level of professional behavior and courtesy that marks USASAC's commitment to excellence.

4. Employees requiring more information regarding the discrimination complaint process or to discuss an employment issue may contact the EEO Office at 256-450-5628, DSN 320-5628; or 717-770-6866, DSN 771-6866.

5. This supersedes Policy Memorandum 103.13 dated 23 December 2009.



Encl

F. D. TURNER III
Major General, USA
Commanding



**DEPARTMENT OF THE ARMY
OFFICE OF THE ASSISTANT SECRETARY
MANPOWER AND RESERVE AFFAIRS
1901 SOUTH BELL STREET 2ND FLOOR
ARLINGTON, VA 22202-4508**

November 10, 2004

MEMORANDUM FOR SEE DISTRIBUTION

SUBJECT: Retaliation for engaging in protected Equal Employment Opportunity (EEO) activity

The purpose of this memorandum is to inform you of the Equal Employment Opportunity Commission's (EEOC) primary basis for finding discrimination, retaliation, and to seek your assistance in assuring a workplace that does not discourage those affected from exercising their rights.

Title VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act, the Americans with Disabilities Act, and the Equal Pay Act prohibit retaliation by an employer, employment agency, or labor organization because an individual has engaged in protected activity. Protected activity is that activity which either opposes a practice made unlawful by one of the employment discrimination statutes (the "opposition clause"); or filing a complaint, testifying, assisting, or participating in any manner in an investigation, proceeding, or hearing under the applicable statute (the "participation clause").

Although some individuals inappropriately allege retaliation as a defense mechanism or as a display of resentment to those who take actions unpopular to those individuals, in many situations, leaders improperly express frustration with individuals who have engaged in protected activities. Often this is expressed in subtle ways, which supervisors may not realize are prohibited. For example; a manager may change his or her manner of speaking to the person, avoid the person, or changes the nature of work assignments. Actions such as these may lead the subject individual, or co-workers, to believe that the change behavior was motivated by the protected activity, thus having a chilling effect on the future exercise of those rights. Supervisors should not be reluctant to manage, but they must, however, ensure that their actions are not improperly motivated or perceived to be so.

Voluntary compliance with an effective enforcement of the anti-discrimination statutes depend in large part on the initiative of individuals to oppose employment practices that they reasonably believe to be unlawful, and to file charges of discrimination. If retaliation for such activities were permitted to go unremedied, it would have a chilling effect upon the willingness of individuals to speak out against employment discrimination or to participate in the EEOC's administrative process or other employment discrimination proceedings.

With your support I believe that we can sensitize our leaders to the cause and effect of reprisal allegations, emphasize professional leadership rather than take matters personally, and thus reduce the number of reprisal allegations. Please ensure that your EEO and legal advisors are adequately informing the workforce regarding their obligations concerning the anti-retaliation protections.

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For your information, I have enclosed an Information Sheet that discusses how EEOC adjudicates retaliation claims. The sheet also lists retaliation findings against the Army and the associated costs.

The Point of Contact for further information or questions is Mr. Stanley Kelley, Deputy, Equal Employment Opportunity Compliance and Complaints Review, who may be reached at (703) 607-1448 or by email: kellesl@hgda.army.mil.



Luther L. Santiful
Director of Equal Employment
Opportunity and Civil Rights

Enclosure

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EEOC Adjudication of Retaliation Claims

Through its Compliance Manual, No. 915.003, Sect. 8, the EEOC interprets the statutory retaliation clauses "to prohibit any adverse treatment that is based on a retaliatory motive and is reasonably likely to deter [complainant] or others from engaging in protected activity," including threats and harassment in or out of the workplace. See generally Jones v. Dept. of State, EEOC Appeal No. 01995660 (January 24, 2002); Cobb v. Dep't of Treasury, EEOC Request No. 05A11026 (July 20, 2001).

The Commission's definition is inconsistent with the majority of federal courts, which have held that the retaliation provisions apply only to retaliation that takes the form of ultimate employment actions. Other courts have construed the provisions more broadly, but still require that the action materially affect the terms, conditions, or privileges of employment.

The EEOC disagrees with those decisions and concludes that such constructions are unduly restrictive. The Commission finds that the degree of harm suffered by the individual goes to the issue of damages, not liability. The EEOC qualifies this position by stating that petty slights and trivial annoyances are not actionable, but this standard is not well defined and many administrative judges make extremely restrictive interpretations. These disagreements often lead to confusion as to what conduct is unlawful versus inappropriate.

Supervisors must continue to manage and not be intimidated by the protected activities of their employees; however, they must also be sensitive as to how their actions will be perceived not only by the employee engaging in the protected activity, but also by the employee's co-workers.

SAMPLE EEOC ADMINISTRATIVE JUDGE RETALIATION FINDINGS AGAINST THE ARMY

- FEB 2004 Supervisor recommended that co-workers avoid the complainant. [\$3K damages]
- FEB 2004 Supervisor rescinded offer of reassignment. [\$7.5K damages, \$17K fees]
- JAN 2004 Supervisor testified that complainant made a career of filing EEO complaints. [\$10K damages]
- NOV 2003 Supervisor revoked complainant's collateral duty facilitator duties stating that he could no longer trust after filing an EEO complaint [\$10K damages, \$12K fees]
- OCT 2003 Complainant asked to report the details of her discussion with the EEO Office. [\$1.5K damages]
- JUL 2003 Complainant was relieved of some supervisory duties after filing complaint. [\$300K damages, \$43K fees]
- MAY 2003 Supervisor told panel that complainant had named him in an EEO complaint. [\$10K damages]
- MAY 2003 Supervisor denied complainant a detail to avoid appearing to "buy him off." [declaratory relief only]
- MAY 2003 Complainant was involuntarily detailed after filing a complaint and the manager made disparaging remarks about the EEO process. [\$110K damages, \$80K fees]
- MAY 2003 Management detailed complainant to unpopular shift after she alleged sexual harassment (while returning harasser to previous duty location). [\$30K damages]