



DEPARTMENT OF THE ARMY
U.S. ARMY SPACE AND MISSILE DEFENSE COMMAND
POST OFFICE BOX 1500
HUNTSVILLE, ALABAMA 35807-3801

SMDC-EE Policy No. 690-5*

JAN 31 2020

MEMORANDUM FOR SEE DISTRIBUTION

SUBJECT: Policy/Procedure for Implementation of Section 1561, Title 10 U.S. Code - Investigation of Sexual Harassment Complaints

1. Authority.

- a. Title 10 U.S. Code (USC) Section 1561.
- b. 29 Code of Federal Regulations (CFR) Part 1614.

2. Purpose. To issue policy/procedure that address complaints of sexual harassment outside of the Army Equal Employment Opportunity (EEO) administrative process. The policy implements the requirements of Title 10 USC Section 1561, Complaints of Sexual Harassment: Investigation by Commanding Officers.

3. Applicability. This policy is applicable to all elements of the U.S. Army Space and Missile Defense Command (USASMDC).

4. Definitions.

a. Under Title 10 USC Section 1561, sexual harassment is defined as any of the following:

(1) Conduct that involves unwelcome sexual advances, requests for sexual favors, and deliberate or repeated offensive comments or gestures 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, 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 working

*This policy statement supersedes SMDC-EE Policy No. 690-5, 22 May 17

SMDC-EE Policy No. 690-5*

**SUBJECT: Policy/Procedure for Implementation of Section 1561, Title 10 U.S. Code-
Investigation of Sexual Harassment Complaints**

environment; and is so severe or pervasive that a reasonable person would perceive, and the victim does perceive, the work environment as hostile or offensive.

(2) 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 armed forces or a civilian employee of Department of Defense (DoD).

(3) Any deliberate or repeated unwelcome verbal comment or gesture of a sexual nature in the workplace by any member of the armed forces or civilian employee of DoD.

b. Under 29 CFR Part 1604.11, sexual harassment is defined as unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when:

(1) Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment.

(2) Submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual.

(3) Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.

5. **Avenues of Redress.** Civilian employees have two avenues for addressing complaints alleging sexual harassment, i.e., Title 10 USC Section 1561 and Title 29 Code of Federal Regulations (CFR) Part 1614. For procedures on processing EEO complaints under 29 CFR 1614 see SMDC-EE Policy No. 690-2.

6. **Points of Contact.**

a. An employee wishing to have his/her sexual harassment complaint reviewed under Title 10 USC Section 1561 should contact the office at their respective locations as listed below, and ask for the person designated to receive complaints under Title 10 USC Section 1561:

<u>Location</u>	<u>Point of Contact</u>	<u>Phone</u>
USASMDC Huntsville, AL	Deputy Chief of Staff G-1 SMDC-PE	(256)-955-1800 (DSN 645)

SMDC-EE Policy No. 690-5*

SUBJECT: Policy/Procedure for Implementation of Section 1561, Title 10 U.S. Code -
Investigation of Sexual Harassment Complaints

USASMDC Colorado Springs, CO	Deputy Chief of Staff G-1, Civilian Personnel Div SMDC-PEC-W	(719)-554-1990 (DSN 692)
USASMDC Reagan Test Site	Reagan Test Site Directorate SMDC-TC-K	(805)-355-1416 (DSN 254)

b. Point of Contact under 29 CFR Part 1614. If an employee wishes to have his/her complaint reviewed under 29 CFR Part 1614, they should contact their servicing EEO office.

7. Procedures.

a. When reviewing complaints under Title 10 USC Section 1561 the following applies:

(1) Within 48 hours after contact by an aggrieved person, the point of contact as listed above will submit a written detailed description of the allegation to the respective command/director.

(2) To the extent practicable, the commander/director will, within 72 hours of receipt of the written notification of the complaint:

(a) Initiate an investigation of the complaint, and forward a copy of the notification to the Commanding General (the General Court Martial Convening Authority).

(b) Advise the complainant of the initiation of the investigation.

(3) To the extent practicable, complete the investigation within 14 days of the date it was begun.

(4) Within 6 days of receipt of the report of investigation, notify the complainant of the findings, decisions made, and to the extent practicable, corrective actions taken/proposed.

(5) Submit final report on investigation to the Commanding General within 20 days after date investigation began.

b. Procedure under 29 CFR 1614. Use of either or both procedures. Employees may have complaints alleging sexual harassment reviewed under both Title 10 USC Section 1561 and 29 CFR Part 1614, and may do so simultaneously, if they so choose.

SMDC-EE Policy No. 690-5*

SUBJECT: Policy/Procedure for Implementation of Section 1561, Title 10 U.S. Code -
Investigation of Sexual Harassment Complaints

8. Differences. Note the following differences between Title 10 USC Section 1561 and 29 CFR 1614:

a. The Title 10 USC Section 1561 definition is broader than the 29 CFR Part 1604.11 definition. It adds "any use or condonation, by persons in a supervisory position or command position, of any form of sexual behavior to control, influence, or affect the career, pay, or job of a member of the armed forces or civilian employee of the DoD."

b. The investigative process for sexual harassment complaints under Title 10 USC Section 1561 is not administered through the EEO office.

c. Using the procedure under Title 10 USC Section 1561 does not serve to exhaust the employee's administrative remedies under 29 CFR Part 1614.


d. Command decisions under Title 10 USC Section 1561 are final with no appeal rights and no compensatory damages.

e. The time limits for filing complaints under 29 CFR Part 1614 are unaffected by the procedures for review under Title 10 USC Section 1561.

9. Pursuance or Withdrawal. If a complainant elects to pursue both procedures, he/she may upon receipt of the report under Title 10 USC Section 1561 choose either to continue or withdraw the complaint under 29 CFR Part 1614, or he/she may upon receipt of a decision under 29 CFR Part 1614 choose to continue or withdraw the complaint under Title 10 USC Section 1561.

10. This policy is posted on the CMDNet as required reading for all assigned personnel.

"SECURE THE HIGH GROUND"


DANIEL L. KARBLER
Lieutenant General, USA
Commanding

DISTRIBUTION:

D