



DEPARTMENT OF THE NAVY
OFFICE OF THE SECRETARY
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SECNAVINST 5350.16
ASN (M&RA)
28 June 1999

SECNAV INSTRUCTION 5350.16

From: Secretary of the Navy
To: All Ships and Stations

Subj: EQUAL OPPORTUNITY (EO) WITHIN THE DEPARTMENT OF THE
NAVY

Ref: (a) DoD Directive 1350.2 of 18 Aug 95 (NOTAL)
(b) SECNAVINST 12720.1A (NOTAL)
(c) OPNAVINST 5354.1D (NOTAL)
(d) MCO P5354.1C (NOTAL)
(e) Uniform Code of Military Justice (NOTAL)
(f) SECNAVINST 5354.1
(g) DoD Instruction 1100.16 (NOTAL)
(h) SECNAVINST 5800.11A (NOTAL)
(i) OPNAVINST 3100.6G (NOTAL)
(j) DoD Instruction 1350.3 of 29 Feb 88 (NOTAL)

Encl: (1) Equal Opportunity (EO) Definitions
(2) Military Equal Opportunity (MEO) Assessment

1. **Purpose.** To implement the Department of the Navy (DON) policy on Equal Opportunity (EO), assign related responsibilities, and all duties stipulated in reference (a).

2. **Applicability.** This instruction applies to all DON military personnel, Regular and Reserve; Naval Academy and Reserve Officer Training Corps midshipmen; and Reservists performing active or inactive duty for training or engaging in any activity related to the performance of Department of Defense (DoD) Reserve duty or function. Civilian Equal Employment Opportunity (EEO) policy guidance and related assignment of responsibilities are contained in reference (b).

3. **Background.** The DON's ability to perform its mission at home and abroad is directly related to the fair and equitable treatment of its servicemembers. Every Sailor and Marine, regardless of race, ethnicity, color, religion, gender or

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national origin, will be treated with dignity and respect and be assured that he or she is a valued member of the Navy/Marine Corps team. The inability to overcome prejudices in the past has proved detrimental to our combat readiness and mission accomplishment; therefore, it is the intent of this instruction to provide guidance on EO matters.

4. Discussion. Sailors and Marines are our most precious resource. In order to ensure mission readiness, we must overcome any prejudicial bias or stereotypes that impede our cohesiveness, camaraderie, or morale. Such behavior is contrary to DON Core Values of Honor, Courage and Commitment and shall not be tolerated. Unlawful discrimination undermines and diminishes a unit's ability to function in an effective manner. Discrimination destroys members' confidence and trust in their shipmates and erodes a unit's cohesion and combat readiness. Every member of the DON must be afforded an equal opportunity to become a productive, contributing member of the Navy/Marine Corps team.

5. Definition and Terms. "Equal Opportunity" and other related definitions are contained in enclosure (1).

6. Policy. It is DON policy that:

a. Unlawful discrimination based on race, ethnicity, color, religion, gender or national origin is strictly prohibited and will not be tolerated.

b. No commander or supervisor may, by act, word, deed, or omission, condone or ignore unlawful discrimination. Commanders, commanding officers and officers in charge are responsible and accountable for enforcing the policy against unlawful discrimination.

c. It is the responsibility of every Sailor and Marine to ensure that unlawful discrimination does not occur in any form at any level. Every servicemember has the responsibility to make the appropriate authorities aware of each violation of this policy.

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d. Commanders or individuals in supervisory positions are responsible for ensuring that all military personnel receive equal opportunity training annually per references (c) and (d).

e. Heritage ceremonies and observances conducted within DON organizations or commands must comply with this policy and references (c) and (d).

f. All formal/informal equal opportunity complaints must be handled per references (a), (e) and (f).

g. Commanders shall ensure that a mandatory Fitness Report or Enlisted Evaluation comment is made in the record of any servicemember who has been found guilty by a court martial or other court of competent jurisdiction or who has received nonjudicial punishment based on commission of a criminal offense involving unlawful discrimination against another person based on race, ethnicity, color, gender, national origin or religion.

h. Reprisals against any victim or witness of discrimination are strictly prohibited.

i. Commanders must also ensure that military personnel and their families receive fair and equitable treatment both on and off base. Discriminatory practices detected by DON civilian and military personnel shall be reported to the proper authorities for appropriate action.

j. Commanders shall take actions to overcome discrimination in off-base housing and to impose off-limits sanctions in housing cases, as required by reference (g). In cases of discriminations involving places of public accommodation outside military installations, off-limits sanctions may be imposed through the cognizant Armed Forces Disciplinary Control Board.

7. Equal Opportunity Complaint Processing. Commanding officers must be informed immediately, usually within 24 hours, of any allegation of unlawful discrimination or equal opportunity complaint in their command. Every reported incident of discrimination, formal or informal, must be investigated to determine if the case is substantiated or unsubstantiated.

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Anyone who has been discriminated against, observed an act of unlawful discrimination or whose command believes may have been discriminated against will be considered to be a victim or witness and will be afforded all his/her rights under reference (h). These incidents must be reported to the appropriate authorities in the chain of command as stated in reference (f). Formal complaints of discrimination and sexual harassment must be reported by SITREP per reference (i) via the Special Incident Reporting System. All formal complaints shall be processed per reference (f). Per reference (a), if a case is appealed to the general court-martial convening authority (GCMA), the GCMA shall ensure that the complaint is reviewed for legal sufficiency. In the event that the complaint is further appealed, final consideration shall be made by the Secretary of the Navy. In forwarding such complaints, commands shall use the procedures applicable to Article 138, UCMJ, complaints as detailed in Chapter III of the Manual of the Judge Advocate General (JAGMAN), with the recognition that EO complaints are generally not subject to denial based on the ground that the complaint is not cognizable.

8. **Accountability and Enforcement.** The policies detailed in paragraph 6 apply to the conduct of all DON military personnel. Any violation, attempted violation or solicitation of another to violate these policies is subject to appropriate disciplinary action, per Article 92 (failure to obey a lawful general order) and other applicable articles of reference (e). This instruction is a lawful general order and it is effective immediately.

9. **Assignment of Responsibility.** The Assistant Secretary of the Navy (Manpower and Reserve Affairs) (ASN (M&RA)) is responsible for the overall execution of the military equal opportunity program, its administration and supervision, and shall keep the Secretary and the Under Secretary informed of progress and any significant issues.

10. **Action.** The Chief of Naval Operations (CNO) and Commandant of the Marine Corps (CMC) shall:

- a. Implement these policies within their existing equal

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opportunity instructions. These changes should take place within 180 days from date of issuance.

b. Notify the ASN (M&RA) of any substantive changes to Service policies not less than 30 days prior to implementation of those changes.

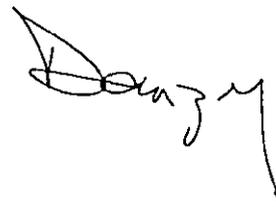
c. Ensure that this policy is covered in detail during all entry-level training for both enlisted and officer accession programs.

d. Provide annual training and updates on military equal opportunity in Professional Military Education (PME) courses, leadership training, commander's courses, troop information programs, etc.

e. Submit an annual Military Equal Opportunity assessment for the period ending September 30 to the Under Secretary of Defense (Personnel & Readiness) (USD (P&R)) via the chain of command to arrive no later than February 1 of the following year as directed in reference (j) and provide the Secretary of the Navy with an annual briefing of the results by June 1. This assessment and briefing shall include information contained in enclosure (2).

11. Report. Symbol DD-P&R(A)1760(5350) is assigned to the reporting requirement contained in paragraph 10e and enclosure (2) in accordance with SECNAVINST 5214.2B

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Distribution:

SNDL Parts 1 and 2

MARCORPS PCN 71000000000000 and 71000000100

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EQUAL OPPORTUNITY (EO) DEFINITIONS

1. Affirmative Action. Methods used to achieve the objectives of Military Equal Opportunity (MEO) program. Processes, activities, and systems designed to prevent, identify and eliminate unlawful discriminatory treatment as it affects the recruitment, training, assignment, utilization, promotion and retention of military personnel.
2. Complaint. An allegation of unlawful discrimination based on race, ethnicity, color, national origin, religion or sex.
 - a. Informal Resolution System (IRS). A system for resolving Equal Opportunity/Sexual Harassment complaints at the lowest possible level in the chain of command.
 - b. Informal Complaint. Allegation of unlawful discrimination or sexual harassment, made either orally or in writing, that is not submitted as a formal complaint.
 - c. Formal Complaint. Allegation of unlawful discrimination or sexual harassment that is submitted in writing to the authority designated for receipt of such complaints in Service implementing regulations.
3. Complainant. A servicemember who submits allegations of unlawful discrimination (as defined in item 16 below).
4. Defense Equal Opportunity Council (DEOC). A senior executive-level decision-making body that provides advice and counsel to the Secretary and Deputy Secretary of Defense on all DoD Equal Opportunity and/or Equal Employment Opportunity matters.
5. DoD Military Equal Opportunity (MEO) Program. The DoD-wide military program of EO that is accomplished through efforts by the DoD Components. It provides an environment in which servicemembers are ensured an opportunity to rise to the highest level of responsibility possible in the military profession, dependent only on merit, fitness and capability.

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6. Equal Opportunity (EO). The right of all persons to participate in, and benefit from, programs and activities for which they are qualified. These programs and activities shall be free from social, personal or institutional barriers that prevent people from rising to the highest level of responsibility possible. Persons shall be evaluated on individual merit, fitness and capability, regardless of race, ethnicity, color, sex, national origin or religion.

7. Equal Opportunity (EO) Climate Assessment. Determining the "health" and functioning effectiveness of an organization by examining such factors as morale, teamwork and communication. This is accomplished through some or all of the following: group and/or individual interviews, observations, surveys or questionnaires and reviews of records and reports.

8. Ethnic Group. A group socially distinguished or set apart by others and/or by itself, primarily on the basis of cultural or nationality characteristics.

9. Ethnic and Racial Categories. The basic racial and ethnic categories for DoD reporting are defined as follows:

a. American Indian or Alaskan Native. A person having origins in the original peoples of North America.

b. Asian or Pacific Islander. A person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent or the Pacific Islands. This area includes China, India, Japan, Korea, the Philippine Islands and Samoa.

c. Black (Not of Hispanic Origin). A person having origins in any of the original peoples of Africa.

d. Hispanic. A person having origins in any of the original peoples of Mexico, Puerto Rico, Cuba, Central or South America or of other Spanish cultures, regardless of race.

e. White (Not of Hispanic Origin). A person having origins in any of the original peoples of Europe, Africa or the Middle East.

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10. Legal Sufficiency Review. A review of an investigation into a formal complaint of unlawful discrimination or sexual harassment to determine whether:

a. The investigation complies with all applicable legal and administrative requirements;

b. The investigation adequately addresses the matters complained of;

c. The evidence supports the findings of the investigating officer or board;

d. The conclusions and recommendations of the investigating officer or board are consistent with the findings; and,

e. Any errors or irregularities exist, and, if so, their legal effects, if any.

11. National Origin. An individual's or ancestor's place of origin. Also applies to a person who has physical, cultural or linguistic characteristics of a national group.

12. Protected Communication. A lawful communication to a Member of Congress, an IG, any member of a DoD audit, inspection, investigation or law enforcement organization, or to any other person or organization (including any person or organization in the chain of command) designated pursuant to regulations or other established administrative procedures to receive such communications, to which a member of the Armed Forces makes a complaint or discloses information that he or she reasonably believes evidences a violation of law or regulation (including those covering unlawful discrimination and sexual harassment), mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health of safety.

13. Race. A division of human beings identified by the possession traits that are transmissible by descent and that are sufficient to characterize persons possessing these traits as a distinctive human genotype.

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14. Religion. A personal set or institutional system of attitudes, moral or ethical beliefs, and practices that are held with the strength of traditional religious views, characterized by ardor and faith, and generally evidenced through specific religious observances.

15. Reprisal. Taking or threatening an unfavorable personnel action or withholding or threatening to withhold a favorable personnel action, or any other act of retaliation, against a military member for making or preparing a protected communication.

16. 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.

Note: 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. Similarly, any military member or civilian employee who makes deliberate or repeated unwelcome verbal comments,

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gestures or physical contact of a sexual nature in the workplace is also engaging in sexual harassment.

17. Unlawful Discrimination. Includes discrimination on the basis of race, ethnicity, color, national origin, religion, or sex that is not otherwise authorized by law or regulation.

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MILITARY EQUAL OPPORTUNITY ASSESSMENT (MEOA) REPORTING
REQUIREMENTS

Each DoD component shall submit an annual MEO assessment for the period ending September 30 to the USD (P&R) no later than February 1 of the following year. The report shall include the following information:

A. An executive summary, providing an overall assessment of each DoD component's Affirmative Action Plans (AAPs) and EO Programs.

B. An assessment of each affirmative action in the following ten categories shall be made an enclosure to the report. The assessment in each category should include quantitative data in the basic race and/or ethnic classifications for officers and enlisted personnel broken down by gender.

- Recruiting and/or accessions.
- Composition.
- Promotions.
- Professional Military Education.
- Separations.
- Augmentation and/or Retention.
- Assignments.
- Discrimination and/or Sexual Harassment Complaints.
- Utilization of Skills.
- Discipline.

C. These requirements are further explained in DoD Instruction 1350.3 (reference (j)).

Enclosure (2)