



Military and Naval Affairs

KATHY HOCHUL
Governor
Commander-in-Chief

RAYMOND F. SHIELDS, JR.
Major General
The Adjutant General

MNAG-TAG

1 MAR 2022

MEMORANDUM FOR SEE DISTRIBUTION

SUBJECT: Prevention of Sexual Harassment Policy

1. This policy is applicable to all members assigned to the State's Organized Militia, including the New York Army National Guard, New Air National Guard, New York Naval Militia, New York Guard, and all State and Federal employees of the Division of Military and Naval Affairs (Division) as well as interns, contractors, or persons conducting business at Division facilities.
2. Sexual Harassment is a form of gender discrimination 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 or rejection of such conduct is made either explicitly or implicitly a term or condition of a person's job, pay, or career;
 - b. Submission to or rejection of such conduct by a person is used as the 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 work environment.
3. Sexual harassment includes anyone in a supervisory or command position using or condoning any form of sexual behavior to control, influence, or affect the career, pay, or job of the armed forces or civilian employee of the State. It also includes any deliberate or repeated unwelcome verbal comments or gestures of a sexual nature made by armed forces and civilian employees of the State.
4. A victim of sexual harassment does not have to suffer concrete psychological harm to prove a case of sexual harassment. The standard for what constitutes sexual harassment for those subject to federal and state laws are the following:
 - a. When an individual, subject to federal law, is targeted with words or actions listed above that are so severe or pervasive that a reasonable person would perceive, and the victim does perceive, the environment as intimidating, hostile, or offensive; those words or actions constitute sexual harassment.
 - b. When an individual, subject to state law, is targeted with words or actions listed above that causes them to experience inferior terms, conditions or privileges of employment; those words or actions constitute sexual harassment.

MNAG-TAG

SUBJECT: Prevention of Sexual Harassment Policy

5. Sexual harassment will not be tolerated by any uniformed member or civilian employee. Sexual harassment violates acceptable standards of conduct required of all personnel, reduces mission effectiveness, and wastes valuable resources. This commitment to the prevention of sexual harassment in the workplace will include annual sexual harassment training. While we should all act if we witness or otherwise know of incidents of sexual harassment, supervisors, managers, or command personnel are required to immediately report incidents of sexual harassment, discriminatory treatment, workplace harassment or retaliations. Failure to do so will result in disciplinary action, which may include termination and/or discharge.

6. Sexual harassment is a form of employee and member misconduct. Any employee or member who is found to have engaged in sexual harassment shall be subject to prompt and appropriate remedial and/or disciplinary action, which may include termination and/or discharge. Supervisors are required to immediately report instances of sexual harassment, discriminatory treatment, workplace harassment or retaliations. Failure to do so will result in disciplinary action, which may include termination and/or discharge.

7. All employees and members have a responsibility to help resolve acts of sexual harassment and are required to cooperate fully with any investigation of alleged violations of this policy. An employee or member who fails to cooperate with an investigation, obstructs an investigation, or who intentionally provides false or malicious information during an investigation, may be subject to appropriate disciplinary action.

8. Retaliation encompasses illegal, impermissible, or hostile actions taken by a Service Member's chain of command, peers, or coworkers as a result of making or being suspected of making a protected communication. In addition to reprisal, retaliatory behaviors include ostracism, maltreatment, and criminal acts for a retaliatory purpose in connection with an alleged sex-related offense of sexual harassment; or for performance of duties concerning an alleged sex-related offense or sexual harassment.

9. Reprisal is defined as taking, threatening to take an unfavorable personnel action or withholding, threatening to withhold a favorable personnel action, for making, preparing to make, or being perceived as making, or preparing to make a protected communication.

10. No person shall be retaliated/reprised against because such person filed a complaint, testified, provided information, or otherwise assisted in any investigation of alleged violations of this policy. Retaliation/reprisal against any complainant or witness is illegal and any person employed by or a member of the New York National Guard who engages in such conduct is subject to disciplinary action and any other consequences the law may provide.

11. Individuals have the right to excel in their position without the threat of sexual harassment or discrimination. Any member or employee who believes that he or she has been the victim of sexual harassment or discrimination, or has any knowledge of such behavior is urged to report the conduct immediately to the following representatives:

a. Federal Employees, Soldiers, and Airmen will contact the State Equal Employment Manager (SEEM), CPT Alisa Kupinski, at 518-786-4733.

MNAG-TAG

SUBJECT: Prevention of Sexual Harassment Policy

b. State Employees (including New York Guard and New York Naval Militia members):

(1) File an internal complaint: State Employees wishing to file an internal complaint, should utilize the online complaint form located on the GOER website at <https://goer.ny.gov/new-york-state-discrimination-complaint-form>. A link to the form may also be found on the DMNA website at <http://dmna.ny.gov/state/?page=1323863280>. You may submit this form electronically to GOER or print it out and mail it directly to GOER at the address on the form. A copy of the form will be posted on bulletin boards at each work location.

(2) Employees may also file a complaint directly with a supervisor or manager or may contact State Human Resource (MNHS) Labor Relations Representative or Ms. Marilyn Hartley, Director of MNHS at 518-786-4830. These individuals are required to send your complaint to GOER so that it will be investigated in accordance with New York State policy.

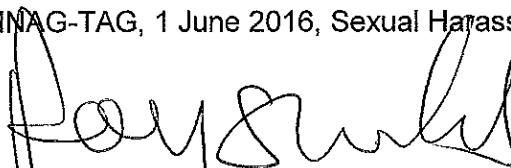
(3) If you file a complaint with any of these individuals and you do not hear from a GOER investigator within one week, please contact GOER at 518-474-1920 to ensure that GOER received your complaint or follow-up with one of the points of contact noted above.

(4) Supervisors who receive a complaint should forward the information to GOER as directed on the form and notify a MNHS Labor Relations Representative, that a complaint form was submitted.

(5) File an External Complaint: State Employees are not required to pursue the internal complaint procedure before filing a complaint with the Equal Employment Opportunity Commission, the New York State Division of Human Rights or with a court, based on federal or state or local law.

(6) The following agencies can provide information to employees and receive and investigate complaints of protected class employment discrimination: New York State Division of Human Rights at www.dhr.ny.gov, by telephone at 888-392-3644, or by TTY number at 718-741-8300, and the United States Equal Employment Opportunity Commission at www.eeoc.gov, by telephone at 800-669-4000, or by TTY number at 800-669-6820.

12. This policy supersedes memorandum, MNAG-TAG, 1 June 2016, Sexual Harassment Policy.



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