



DEPARTMENT OF THE ARMY  
HEADQUARTERS, U.S. ARMY MATERIEL COMMAND  
5001 EISENHOWER AVENUE, ALEXANDRIA, VA 22333 - 0001

REPLY TO  
ATTENTION OF

AMCPE-C

28 APR 1999

MEMORANDUM FOR SEE DISTRIBUTION

SUBJECT: Implementation of Executive Order 13087

1. Executive Order 13087 prohibits discrimination against any civilian Federal employee or applicant for employment on the basis of sexual orientation. The enclosed memorandum, 12 Mar 99, signed by the Assistant Secretary of the Army (Manpower and Reserve Affairs), subject as above, provides Army's policy for processing complaints of discrimination based on sexual orientation.

2. The enclosed memorandum has been forwarded to all MSC and installation Equal Employment Opportunity (EEO) officers by the HQ AMC, EEO Office. However, since Army's policy also involves personnel administrative complaint procedures, this memorandum is forwarded, as a matter of information, to Civilian Personnel Advisory Center directors, personnelists, supervisors and managers. An overview is presented below:

a. The Civil Service Reform Act of 1978, 5 USC 2302(b)(10), prohibits "any employee who has authority to take personnel actions" from discriminating against any employee or applicant for employment on the basis of conduct which does not adversely affect either the employee's own job performance or the performance of others.

b. As a rule, most sexual orientation complaints should be processed through the Department of Defense Administrative Grievance Procedure, negotiated procedures, Merit System Protection Board appeals, or Office of Special Counsel procedures (as appropriate), not under EEO procedures as further explained in the enclosed memorandum. In addition, any case which combines allegations of sexual orientation discrimination along with other types of discrimination should be separated and processed under appropriate procedures, except when the complaint is filed under a negotiated grievance procedure which requires or permits combined processing.

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c. During the evaluation process, the deciding official (manager) will be responsible for determining whether the grievant was, in fact, discriminated against. If discrimination is found by a preponderance of evidence, the deciding official is obliged to take or recommend appropriate action.

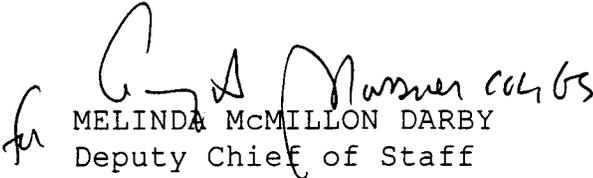
3. Semi-annual reports concerning this issue must be submitted by local EEO offices through EEO channels to the Director, Equal Employment Opportunity Agency, Office of the Assistant Secretary (Manpower and Reserve Affairs). Civilian Personnel Advisory Centers must, therefore, coordinate all relevant cases with their local EEO offices.

4. The point of contact for this action is Teresa Greene telephone, (703) 617-3408 or DSN 767-3408.

5. AMC -- America's Arsenal for the Brave.

FOR THE COMMANDER:

Encl

*for*    
MELINDA McMILLON DARBY  
Deputy Chief of Staff  
for Personnel

DISTRIBUTION:

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AMCPE-O

March 12, 1999

MEMORANDUM FOR SEE DISTRIBUTION

SUBJECT: Implementation of Executive Order 13087

On May 28, 1998, the President issued Executive Order 13087, amending Executive Order 11478, Equal Employment Opportunity in the Federal Government, and prohibited discrimination based on sexual orientation against any civilian Federal employee or applicant for employment. This memorandum provides the Army policy for processing complaints of discrimination based on sexual orientation.

Federal civil rights laws do not specifically address discrimination on the basis of sexual orientation. However, the Civil Service Reform Act of 1978, 5 U.S.C. §2302(b)(10), prohibits any employee who has authority to take personnel actions from discriminating for or against any employee or applicant for employment on the basis of conduct which does not adversely affect either the employee's own job performance or the performance of others.

Complaints of sexual orientation discrimination should, as a rule, be handled under the Department of Defense administrative grievance procedure, a negotiated grievance procedure, if appropriate, or as appeals to the Merit Systems Protection Board when otherwise appealable actions are involved. Employees or applicants who feel they have been discriminated against based on sexual orientation should also be advised of procedures for filing complaints with the Office of Special Counsel. Discrimination based on sexual orientation may violate merit systems principles outlined in 5 U.S.C. 2301 and constitute a prohibited personnel practice as described in 5 U.S.C 2302.

Combined complaints that raise claims of sexual orientation discrimination and also raise claims covered by a statutory EEO complaint process should be divided. Sexual orientation discrimination claims may not be processed under the EEO complaint process. Conversely, claims of discrimination covered by 29 C.F.R. Part 1614 may not be processed under the DoD administrative grievance system. Therefore, if an

*ENCLOSURE*

aggrieved person raises a combined complaint of sexual orientation discrimination and discrimination cognizable under 29 C.F.R. Part 1614, the person should be advised to follow the appropriate procedure for each type of complaint. As an exception to this rule, a combined claim of sexual orientation discrimination and discrimination covered by 29 C.F.R. Part 1614 raised in a grievance filed under a negotiated grievance procedure should not be separated unless elected by the grievant or required by the terms of the negotiated grievance procedure.

As indicated above, sexual orientation is not a protected category under statutes such as the Civil Rights Act of 1964, as amended, nor EEOC regulations at 29 C.F.R. Part 1614. Therefore, under the grievance processes, the appropriate deciding official should determine whether the grievant has been discriminated against based on sexual orientation. If that official finds by a preponderance of the evidence that the grievant has been discriminated against, he or she will take or recommend appropriate action.

Beginning in October 1999, commanders are requested to submit semi-annual reports through command channels to the Director, Equal Employment Opportunity Agency, Office of the Assistant Secretary (Manpower and Reserve Affairs). The reports should include the number of sexual orientation complaints processed under this policy during the previous six months and the dispositions of those complaints.

Signed  
Patrick T. Henry  
Assistant Secretary of the Army  
(Manpower and Reserve Affairs)

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