

# State Human Resources Policy #E24-100.12

## Workplace Environment / Workplace Harassment or Discrimination

**THE LANGUAGE USED IN THIS DOCUMENT DOES NOT CREATE AN EMPLOYMENT CONTRACT BETWEEN THE EMPLOYEE AND THE AGENCY. THIS DOCUMENT DOES NOT CREATE ANY CONTRACTUAL RIGHTS OR ENTITLEMENTS. THE AGENCY RESERVES THE RIGHT TO REVISE THE CONTENT OF THIS DOCUMENT, IN WHOLE OR IN PART. NO PROMISES OR ASSURANCES, WHETHER WRITTEN OR ORAL, WHICH ARE CONTRARY TO OR INCONSISTENT WITH THE TERMS OF THIS PARAGRAPH CREATE ANY CONTRACT OF EMPLOYMENT.**

### **DEFINITIONS**

Agency – The South Carolina Military Department/Office of the Adjutant General.

Discrimination - Distinguishing differences between things or treating someone as inferior based on their race, sex, national origin, age or other characteristics.

Essential Functions - The basic job duties an employee must be able to perform, with or without reasonable accommodation.

Harassment – Unwelcome conduct based on race, color, religion, sex (including pregnancy), national origin, age (40 or older), genetic information or disability.

Qualified Employee with a Disability - A person (employee) with a disability who meets legitimate skill, experience, education, or other requirements of an employment position that he or she holds or seeks, and who can perform the essential functions of the position with or without reasonable accommodation.

Reasonable Accommodation - Any modification or adjustment to the application or hiring process, to the job, an employment practice, or the work environment that allows a qualified individual (employee) with a disability to perform the essential functions of their job.

Sexual Harassment - Unwelcome sexual advances, requests for sexual favors and other verbal or physical conduct of a sexual or intimidating nature, when:

- Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment.
- Submission to such conduct by an individual is used as the basis for employment decisions affecting such individual.
- Such conduct has the purpose or effect of substantially interfering with a person's work performance or creating an intimidating, hostile or offensive work environment.

Unlawful Discrimination - The unfair or unequal treatment of an individual (or group) based on certain characteristics, including age, disability, equal pay/compensation, genetic information, national origin, pregnancy, race/color, religion, sex and/or sexual harassment. Anti-discrimination laws also prohibit harassment against individuals in retaliation for filing a discrimination charge, testifying, or participating in any way in an investigation, proceeding, or lawsuit under these laws; or opposing employment practices they reasonably believe discriminate against individuals, in violation of these laws.

Unlawful Harassment – Conduct which creates a work environment that would be intimidating, hostile, or offensive to reasonable people. Harassment becomes unlawful where (1) enduring the offensive conduct becomes a condition of continued employment, or (2) the conduct is severe or pervasive enough to create a work environment a reasonable person would consider intimidating, hostile, or abusive. Petty slights, annoyances, and isolated incidents (unless extremely serious) do not rise to the level of illegality.

## **GENERAL**

1. Offensive conduct may include, but is not limited to, offensive comments, jokes, slurs, epithets or name calling, gestures or physical contact of a sexual nature, physical assaults or threats, intimidation, ridicule or mockery, insults or put-downs, offensive objects or pictures, and interference with work performance.
2. Harassment can occur in a variety of circumstances, including, but not limited to, the following:
  - The harasser can be the victim's supervisor, a supervisor in another area, an agent of the employer, a co-worker, or a non-employee.
  - The victim does not have to be the person harassed, but can be anyone affected by the offensive conduct.
  - Unlawful harassment may occur without economic injury to, or discharge of, the victim.

## **POLICY**

1. The South Carolina Military Department will provide its Service Members, Federal Technicians, State employees, non-supervisory employees or non-employees over whom it has control (e.g., independent contractors or customers on the premises), and visitors a work environment free from harassment, discrimination, and intimidation. When necessary, the Agency will take immediate and appropriate corrective action when it learns of an individual(s) engaging in harassment, discrimination, or conduct of an unacceptable nature.
2. The Agency and its members will take all necessary steps to protect its Service Members, Federal Technicians, State employees, non-supervisory employees or non-employees over whom it has control, and visitors from:
  - Unfair treatment, discrimination, or harassment because of race, color, religion, sex (including sexual harassment); national origin, age (40 and above); genetic information and disability to include pregnancy, childbirth or related medical conditions including, but not limited to, lactation.
  - Denial of a reasonable workplace accommodation needed because of religious beliefs; disability; or pregnancy, childbirth or related medical conditions including, without limitation, lactation.
  - Retaliation because an individual complained about job discrimination, or assisted with a job discrimination investigation or lawsuit
3. The Agency will, on a case-by-case basis, make all efforts to provide reasonable accommodations to allow qualified employees with disabilities (to include issues related to pregnancy, childbirth or related medical conditions including, but not limited to, lactation) or religious beliefs to perform the essential functions of their job unless doing so would cause undue hardship to the Agency (i.e., when an accommodation is expensive, difficult, disruptive to the work environment, or will fundamentally change the nature of the position) or in cases of direct threat (i.e., a significant risk of threat to the safety of the employee or others that cannot be eliminated or lessened by reasonable accommodation).
4. Lactation Support
  - a. The Agency will provide an employee who requests a reasonable accommodation to express breast milk with reasonable unpaid break time or will permit the employee to use paid break time or meal time each day to express breast milk.
  - b. Each Department or Program will make reasonable efforts to provide a room or other location, other than a toilet stall, in close proximity to the work area where an employee may express milk in privacy.
  - c. Employees will make reasonable efforts to minimize disruption to the Agency's operations.

5. Service Members, Federal Technicians, State employees, non-supervisory employees or non-employees over whom the Agency has control, and visitors who experience harassment, discrimination, or conduct of an unacceptable nature from a member of the SC Military Department or while in or on a Military Department facility:

- Are encouraged to directly inform the individual exhibiting the behavior that the conduct is unwelcome and must stop.
- Should report harassment to their immediate Supervisor, Commander, or Manager at an early stage in order to identify and correct the unacceptable behavior and to prevent its escalation. This provides the Supervisor, Commander, or Manager the opportunity to resolve the issue at the lowest level.
- If for some reason the individual is not comfortable reporting the incident to their Supervisor, Commander, or Manager, report the incident directly to the Military Department State Human Resources Officer (HRO) (State employees, non-supervisory State employees or non-employees over whom the Agency has control, and visitors), State Equal Employment Manager (SEEM) (SC Army National Guard members or Federal Technicians), or Military Equal Opportunity (MEO) Advisor/Office (SC Air National Guard members).

6. Prevention

a. Prevention is the best tool for elimination of harassment, discrimination, or conduct of an unacceptable nature.

b. All members of the SC Military Department, regardless of rank or position, will take all steps necessary to prevent the unacceptable behavior from occurring or continuing, such as raising the subject, expressing strong disapproval, developing appropriate sanctions, and informing personnel of their right to pursue the issue of harassment, discrimination, or conduct of an unacceptable nature.

7. Potential Disciplinary Actions

a. Service Members who participate in or allow harassment, discrimination, or conduct of an unacceptable nature may be subject to disciplinary actions under the State Military Code or the Uniformed Code of Military Justice.

b. Federal Technicians who participate in or allow harassment, discrimination, or conduct of an unacceptable nature may be subject to disciplinary actions under Technician Personnel Regulation (TPR) 752 up to and including termination.

c. State employees of the Agency who participate in or allow harassment, discrimination, or conduct of an unacceptable nature may be subject to disciplinary actions under the Agency's Progressive Discipline Policy up to and including termination.

d. Non-supervisory employees or non-employees over whom the Agency has control, and visitors who participate in or allow harassment, discrimination, or conduct of an unacceptable nature may be subject to actions up to and including banning from SC Military Department facilities and properties.

## **PROCEDURE**

1. State employees, Non-Supervisory State employees or Non-Employees over whom the Agency has control, and Visitors

a. The State HRO will receive the report and process the action in accordance with the procedures as outlined by the State Human Affairs Commission (SHAC).

b. The State HRO will inform the Chief of Staff for State Operations, the Deputy Adjutant General for State Operations, and the Adjutant General of the complaint, and will keep them aware of the status and outcome of any investigation or actions.

2. SC Army National Guard Service Members and all Federal Technicians

a. For SCARNG Service Members, the SEEM will receive the report and process the action in accordance with AR 600-20 and CNGB Manual 9601.01.

b. For Federal Technicians, the SEEM will receive the report and process the action in accordance with EEOC Management Directive 110.

c. The SEEM will inform the SCARNG Chief of Staff, the Deputy Adjutant General for State Operations, and the Adjutant General of the complaint, and will keep them aware of the status and outcome of any investigation or actions.

3. SC Air National Guard Service Members

a. For SCANG Service Members, the MEO Advisor will receive the report and process the action in accordance with ANGI 36-7 and CNGB Manual 9601.01.

b. The MEO Advisor will inform the 169<sup>th</sup> Fighter Wing Commander, SCANG Chief of Staff, the Deputy Adjutant General for State Operations, and the Adjutant General of the complaint, and will keep them aware of the status and outcome of any investigation or actions.

4. The State HRO, SEEM, and MEO Advisor will coordinate actions as necessary in the event the action or investigation involves personnel under their separate areas of responsibility.