



DEPARTMENTS OF THE ARMY AND AIR FORCE  
JOINT FORCE HEADQUARTERS WISCONSIN  
WISCONSIN ARMY NATIONAL GUARD  
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WING/SEEM

2 September 2020

MEMORANDUM FOR Wisconsin Army and Air National Guard

SUBJECT: Policy Against Sexual Harassment in the Workplace – TAG POLICY  
MEMORANDUM 26

1. References:

- a. NGR 600-21, Equal Opportunity Program in the Army National Guard
- b. CNGBI 9601.01, National Guard Discrimination and Complaint Program
- c. DODI 1020.03, Harassment Prevention and Response in the Armed Forces

2. The Wisconsin National Guard (WING) does not tolerate sexual harassment in our organization. Sexual harassment is incompatible with our core values and it degrades mission readiness, unit cohesion, and morale.

3. Harassment based on a person's gender or sex constitutes gender or sex-based discrimination and is a violation of service regulations and instructions. Sexual harassment is any unwelcome conduct that is based on sex or sexual orientation, including unwelcome advances for sex or physical contact, request for favors involving sex or other verbal or physical conduct of that nature, particularly when submission to such conduct is made directly or indirectly as a term or condition of employment, or when submission to or rejection of such conduct is used as a basis for an employment decision affecting the person. The behavior in question is evaluated from the standpoint of a reasonable person, taking into account the particular context in which it occurred.

4. Commanders, leaders, managers, and supervisors will not tolerate sexual harassment in the workplace and will immediately contact the State Equal Opportunity Manager (SEEM) for guidance upon learning of an incident of sexual harassment, in accordance with CNGBI 9601.01, and DODI 1020.03.

5. Commanders, leaders, managers, and supervisors will take all necessary steps to prevent sexual harassment. This includes providing immediate necessary protections; informing employees and service members of their rights and how to request resolution of sexual harassment complaints; and educating all employees and service members

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about sexual harassment including measures to prevent and how to identify and report sexual harassment.

6. Requests for resolution of sexual harassment complaints will be processed in accordance with the appropriate instruction or policy, based on the complainant's status.

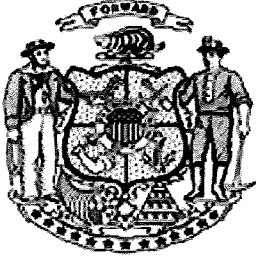
7. Federal employees or military members should direct questions or concerns regarding this policy to the Equal Employment Manager at (608)242-3702. Department of Military Affairs (DMA) state employees, or Soldiers and Airmen on state active duty, should direct questions or concerns to the DMA State Human Resources Officer at (608) 242-3163.

8. The point of contact for this policy is the SEEM at (608)242-3702.

A handwritten signature in black ink, appearing to read 'P. Knapp', with a horizontal line underneath.

PAUL E. KNAPP  
Maj Gen, Wisconsin National Guard  
The Adjutant General





# **WISCONSIN NATIONAL GUARD ADJUTANT GENERAL'S INSTRUCTION**

**WING-EEO  
DISTRIBUTION: A**

**WING AGI 0400.01  
20 January 2021**

## **WISCONSIN NATIONAL GUARD ADJUTANT GENERAL'S PROGRAM FOR CIVILIAN EQUAL EMPLOYMENT OPPORTUNITY DISCRIMINATION COMPLAINTS**

### **1. Purpose.**

a. This instruction establishes procedures for the Wisconsin National Guard Civilian Equal Employment Opportunity complaint process. All supervisors, managers, and employees share in the responsibilities to foster a climate of Equal Employment Opportunity. Employees are encouraged to report allegations of discrimination to the Equal Employment Opportunity office. Allegation of discrimination must be reported to the EEO office within 45 days following the discriminatory behavior or event. All allegations of discrimination will be given prompt attention and be treated objectively. Supervisors, managers, and employees are expected to engage in good faith in all constructive efforts to resolve issues or concerns at the earliest stage of the process.

b. This Instruction implements to section 709 of Reference (a) and section 10508 of Reference (b), as enacted in Reference (c), with regard to the processing of Title 32 Technicians and Title 5 National Guard Employees Equal Employment Opportunity (EEO) discrimination complaints within Wisconsin National Guard (WING) in accordance with (IAW) 29 CFR Part 1614. This Instruction also establishes a uniform system to conduct legal and administrative reviews of EEO complaints for Final Agency Decision by the Adjutant General.

2. **Applicability.** This Instruction applies to the processing and resolution of discrimination complaints arising from Wisconsin National Guard Title 32 Technicians and Title 5 National Guard employment and applicants for employment, who are managed under a designation of authority to the Adjutant General under section 709(d) of Reference (a) and section 10508 of Reference (b), as enacted in Reference (c), to include Title 5 National Guard employees and Title 32 Technicians.

a. This Instruction does not apply to complaints of discrimination from WING military personnel, including Active Guard Reserve, and Title 32 drill status guardsmen, and other

personnel serving in a military status. Military members should reference the CNGBI 9601.01, National Guard Discrimination Program.

b. This Instruction does not apply to beneficiaries of services from the Army National Guard (ARNG) and Air National Guard (ANG) in programs receiving federal financial assistance. Complaints from such beneficiaries are processed IAW CNGBI 9400.01, Nondiscrimination in Federally Assisted Programs.

c. This Instruction does not apply to WING military personnel serving in a Title 10 status, Additional Duty for Operational Support (ADOS), or to civilian personnel employed in a Title 5 status at the National Guard Bureau (NGB), the ARNG and ANG Readiness Centers, and any NGB field-operating locations.

### 3. Guidance.

a. For the purpose of any EEO complaint, grievance, claim, or action arising from, or relating to a personnel action or condition of employment:

(1) The Adjutant General (TAG) shall be considered the head of the agency and the WING shall be considered the employing agency of the individual and the sole defendant or respondent in any administrative action.

(2) The WING shall defend any administrative complaint, grievance, claim, or action, and shall promptly implement all aspects of any final administrative order, judgment, or decision.

(3) Any settlement, judgment, or costs arising from an action described in subparagraph (1) or (2) shall be paid from appropriated funds allocated to WING.

4. Release Authority. This Instruction is approved for public release; distribution is unlimited.

5. Effective Date. This Instruction is effective on the date signed and will expire five years from the date of signature, unless cancelled earlier.

6. Point of Contact. The Wisconsin National Guard Equal Employment Director may be reached by phone at (608) 242-3702 or by email at michelle.l.baer.civ@mail.mil.

A handwritten signature in black ink, appearing to read "Paul E. Knapp". The signature is fluid and cursive, with a large initial "P" and "K".

PAUL E. KNAPP  
Maj Gen, Wisconsin National Guard  
The Adjutant General

Enclosures:

- A – Civilian Equal Employment Opportunity (EEO) Complaint Process
- B – References
- C – Civilian Equal Employment Opportunity Complaint flow chart

## ENCLOSURE A

### CIVILIAN EQUAL EMPLOYMENT OPPORTUNITY (EEO) COMPLAINT PROCESS

#### 1. Objective

a. The purpose of the civilian EEO complaint process is to assure that all employees will have the freedom to compete on a fair and level playing field. The Wisconsin National Guard will not tolerate workplace harassment or reprisal against anyone who engages in protected activity. In addition, it assures employees have a prompt, fair, and impartial processing and resolution of complaints consistent with its legal obligations under 29 CFR Part 1614.

b. The objective of civilian EEO counseling is to seek opportunities to resolve issues at the lowest organizational level at the earliest possible time. The EEO complaint process covers all personnel/employment programs, management practices, and decisions, including, but not limited to, recruitment, hiring, merit promotions, transfers, reassignments, training and career development, benefits, and separations.

c. As a federal employee or job applicant, the law protects employees from discrimination because of race, color, religion, sex (including gender identity, sexual orientation, and pregnancy), national origin, age (40 and older), disability, and genetic information. The law also protects employees from retaliation if they oppose employment discrimination, file a complaint of discrimination, or participate in the EEO complaint process (even if the complaint is not theirs.) If the employee believes that they have been discriminated, they have a right to file a complaint.

#### 2. Filing Informal Complaint

a. The aggrieved person starts the civilian EEO process by contacting an EEO Professional within 45 calendar days from the day the discrimination occurred.

b. The EEO Professional will offer the choice of participating in either EEO counseling or in an alternative dispute resolution (ADR) program, such as a mediation program.

c. If the employee does not settle the dispute during counseling or through ADR, they can file a formal discrimination complaint against the Wisconsin National Guard. The employee must file within 15 days from the day they receive notice from the EEO Professional about how to file.

#### 3. Filing Formal Complaint

a. Once an employee has filed a formal complaint, the Wisconsin National Guard Equal Employment Office (WING EEO) will review the complaint and decide whether or not the case should be dismissed for procedural reason (for example, the claim was filed too late).

b. If the WING EEO accepts the complaint, it will conduct an investigation. The WING EEO has 180 days from the day the employee filed the complaint to finish the investigation. When the investigation is finished, the WING EEO will issue a notice giving the employee two choices: either request a hearing before an Equal Employment Opportunity Commission (EEOC) Administrative Judge or ask the WING EEO to issue a decision as to whether the discrimination occurred.

4. Agency issues a decision. If the employee asks the WING EEO to issue a decision and no discrimination is found, or if the employee disagrees with some part of the decision, the employee can appeal the decision to EEOC or challenge it in federal district court.

#### 5. Requesting a hearing

a. If the employee wants a hearing, the employee must make the request in writing or via the EEOC Public Portal located at <https://publicportal.eeoc.gov/> where the employee can also upload hearing requests, and manage their personal and representative information within 30 days from the day they receive the notice from the WING EEO about their hearing rights. If the employee requests a hearing, an EEOC Administrative Judge will conduct the hearing, make a decision, and order relief if discrimination is found.

b. Once the WING EEO receives the Administrative Judge's decision, the WING EEO will issue what is called a final order which will tell the employee whether the WING EEO agrees with the Administrative Judge and if it will grant any relief the judge ordered. The WING EEO will have 40 days to issue the final order. It will also contain information about the employee's right to appeal to EEOC, their right to file a civil action in federal district court, and the deadline for filing both an appeal and a civil action.

#### 6. Filing an appeal of the agency's final order

a. The employee has the right to appeal a WING EEO's final order (including a final order dismissing the employee's complaint) to EEOC Office of Federal Operations. The employee must file the appeal no later than 30 days after they receive the final order. The employee may file their appeal using the EEOC's Public Portal located at <https://publicportal.eeoc.gov/> where they can also upload selected documents, and manage their personal and representative information.

b. EEOC appellate attorneys will review the entire file, including the WING EEO's investigation, the decision of the Administrative Judge, the transcript of what was said at the hearing (if there was a hearing), and any appeal statements.



c. If the WING EEO disagrees with any part of the Administrative Judge's decision, it must appeal to EEOC.

#### 7. Request for reconsideration of the appeal decision

a. If the employee does not agree with the EEOC's decision on their appeal, they can ask for a reconsideration of that decision. A request for reconsideration is only granted if you can show that the decision is based on a mistake about the facts of the case or the law applied to the facts. The employee must ask for reconsideration no later than 30 days after they receive the decision on their appeal.

b. Once EEOC has issued a decision on the appeal, the WING EEO also has the right to ask EEOC to reconsider that decision.

c. Once EEOC has made a decision on the employee's request for reconsideration, the decision is final.

#### 8. Filing a lawsuit

a. The employee must go through the administrative complaint process before they can file a lawsuit. There are several different points during the process when the employee may stop the process and file a lawsuit in court, including:

- i. After 180 days have passed from the day the employee filed their complaint, if the WING EEO has not issued a decision and no appeal has been filed.
- ii. Within 90 days from the day the employee receive the WING EEO's decision on their complaint, so long as no appeal has been filed.
- iii. After 180 days from the day the employee filed their appeal if the EEOC has not issued a decision, or
- iv. Within 90 days from the day the employee received the EEOC's decision on their appeal.

ENCLOSURE B

REFERENCES

- a. Title 32, United States Code
- b. Title 10, United States Code
- c. Public Law 114-328, 23 December 2016, "National Defense Authorization Act for Fiscal Year 2017"
- d. 29 CFR Part 1614 Federal Sector Equal Employment Opportunity
- e. CNGB Instruction 9601.01, 27 September 2015, "National Guard Discrimination Program"
- f. CNGB Instruction 9400.01, 29 November 2017, "Nondiscrimination in Federally Assisted Programs"
- g. Equal Employment Opportunity Commission Management Directive 110, 05 August 2015, "Federal Sector Complaint Processing Manual"
- h. Equal Employment Opportunity Commission Management Directive 715, 01 October 2003, "EEO Reporting Requirements for Federal Agencies"
- i. Public Law 104-320, "Administrative Dispute Resolution Act of 1996", 110 Stat. 3870, codified at 5 USC Section 571, et seq.

## GLOSSARY

### ABBREVIATIONS, ACRONYMS AND TERMS

ADR	Alternate Dispute Resolution
AGP	Administrative Grievance Procedure
AJ	Administrative Judge
EEO	Equal Employment Opportunity
EEOC	Equal Employment Opportunity Commission
FAD	Final agency Decision
HRO	Human Resources Officer
IRD	Investigations and Resolutions Directorate
MSPB	Merits Systems Protection Board
NG	National Guard
NGB	National Guard Bureau
NGP	Negotiated Grievance Procedure
OFO	Office of Federal Operations
ROI	Report of Investigation
RFR	Request for Reconsideration
EEO Manager	Wisconsin Equal Employment Manager
SJA	Staff Judge Advocate
TDY	Temporary Duty

Administrative Judge (AJ)— For the purpose of this Instruction and pursuant to 29 CFR 1614.109, an AJ is an individual appointed by the Equal Employment Opportunity Commission when a hearing is requested, who assumes full responsibility for the adjudication of the complaint--including oversight of the development of the record.

Aggrieved Person— For the purpose of this Instruction, this refers to an employee, former employee, or applicant for employment who believes he or she has been discriminated against on the basis of race, color, religion, sex, national origin, age, disability or reprisal.

Alternative Dispute Resolution (ADR)— The Administrative Dispute Resolution Act of 1996, Public Law (PL) No. 104-320, 110 Stat. 3870, 5 USC Section 571, et seq. (1996) defines ADR as any procedure that is used to resolve issues in

controversy, including but not limited to facilitation, mediation, fact-finding, mini-trials, arbitration and the use of ombudsmen, or any combination thereof. Sec. 4(b), 5 USC Section 571(3).

**Alternative Dispute Resolution Manager for Workplace Disputes—** An individual appointed at the Joint Forces Headquarters, and installation level to promote the use of ADR processes for resolving military and civilian workplace disputes, to facilitate the development and implementation of the organization's workplace disputes ADR plan, and to provide oversight of the organization's workplace disputes ADR program.

**Basis of Complaint—** For the purpose of this Instruction, the statutory source (Title VII of the Civil Rights Act of 1964, as amended, the Age Discrimination in Employment Act (ADEA), Equal Pay Act (EPA), or Rehabilitation Act) upon which the complainant believes she or he has been discriminated against, or the alleged motivation for the employment action being challenged; i.e., race, color, religion, sex, national origin, age, disability and/or reprisal for opposing any practice made unlawful, or for participating in any stage of the complaint process under those statutes.

**Class—** A group of employees, former employees, and/or applicants for employment who allegedly have been or are being harmed by an agency's personnel policy or practice, based on their common race, color, religion, sex, national origin, age, or disability.

**Compensatory Damages—** Payments intended to fully compensate victims of intentional discrimination, if allowed by law, for pecuniary and non-pecuniary losses that result directly from the discrimination. These damages are in addition to equitable relief such as back pay, interest, reinstatement, and attorney's fees.

**Complainant—** For the purpose of this Instruction, a military member or retiree, military family member, an employee, former employee, or applicant for employment who files a complaint of discrimination or who submits allegations of unlawful discrimination or sexual harassment.

**Complaint Clarification—** A process of gathering information regarding a formal EO complaint or Hotline complaint to determine whether a "preponderance of evidence" exists and/or that unlawful discrimination or sexual harassment has occurred.

**Complaint**— An allegation of unlawful discrimination based on race, color, national origin, religion, sex, age disability or reprisal filed by a civilian employee with an EEO Office; or an allegation of unlawful discrimination based on race, color, national origin, religion, or sex filed by a military member with an EEO Office.

**Formal Complaint**—Allegation of unlawful discrimination or sexual harassment that is submitted in writing by a complainant to the EEO Office. It will be recorded on a DD Form 2655 Complaint of Discrimination in the Federal Government.

**Pre-Complaint**—Allegation of unlawful discrimination or sexual harassment, made either orally or in writing to the EEO office by a complainant that is not submitted as a formal complaint. If the complaint is made to the EEO office, it will be recorded on a DA Form 7510 EEO Counselor's Report.

**Confidentiality**— As used in this Instruction, refers to the protection from voluntary or compulsory disclosure, afforded by the Administrative Dispute Resolution Act of 1996, to certain dispute resolution communications given in confidence for the purposes of a dispute resolution proceeding. See ADRA, 5 USC Section 574.

**Discrimination (Civilian EEO)**— An unlawful employment practice that occurs when an employer fails or refuses to hire or promote, discharges, or otherwise discriminates against any individual with respect to compensation, terms, conditions, or privileges of employment because of race, color, religion, sex, national origin, age, reprisal, physical or mental disability; limits, segregates or classifies employees or applicants for employment in any way that deprives or tends to deprive any individual of employment opportunities or otherwise adversely affects their status as an employee because of race, color, religion, sex, national origin, age, reprisal, physical or mental disability.

**Disparate Treatment**— Treatment that is different because of race color, sex, religion, national origin, age, disability, or reprisal.

**Equal Employment Opportunity Commission (EEOC)**— The Commission is responsible for, among other things, conducting hearings and issuing decisions on complaints of discrimination in the federal sector, as well as enforcing compliance with section 717 of Title VII of the Civil Rights Act of 1964, as amended; sections 501 and 505 of the Rehabilitation Act of 1973, as amended; section 15 of the Age Discrimination in Employment Act of 1977, as amended; and the Equal Pay Act, section 6(d) of the Fair Labor Standards Act of 1938, as amended.

Equal Employment Opportunity Commission Office of Federal Operations (EEOC/OFO) — The Equal Employment Opportunity Commission office responsible for federal sector complaint processing.

Genetic Information Nondisclosure Act (GINA) — GINA prohibits discrimination on the basis of genetic information. It creates a separate form of unlawful discrimination distinct from disability discrimination under the Rehabilitation Act. GINA prohibits discrimination based on genetic information and not on the basis of a manifested condition. The Rehabilitation Act and the Americans with Disabilities Act prohibit discrimination on the basis of manifested conditions that meet the definition of disability. For example, a woman who carries the genetic marker posing a risk for breast cancer (BRCA 2) but who does not have breast cancer is covered by GINA. If she develops breast cancer, she is likely covered by the Rehabilitation Act, but not by GINA.

Hostile Work Environment — A hostile work environment is a series of acts which are so severe and pervasive as to alter the terms and conditions of employment. The acts which make up the hostile environment may be discreet acts or may be ones which taken alone do not rise to the level of an adverse employment action.

Investigations and Resolutions Division (IRD) — Component of the Department of Defense (DoD), Civilian Personnel Management Service (CPMS) that is responsible for investigating discrimination complaints for DoD components.

Merit Systems Protection Board (MSPB) — The federal agency responsible for holding hearings and issuing decisions on complaints or appeals of adverse personnel actions, including disciplinary actions and performance based actions. Appeals to the MSPB may also contain allegations of discrimination, i.e., mixed cases.

Mixed Case Appeal — A mixed case appeal is an appeal filed with the MSPB that alleges that an agency action over which the MSPB has jurisdiction was effected, in whole or in part, because of discrimination based on race, color, religion, sex, national origin, age, disability, or reprisal.

Mixed Case Complaint — A mixed case complaint is a complaint of employment discrimination based on race, color, religion, sex, national origin, age, disability, or reprisal related to or stemming from an action that can be appealed to the MSPB. The

complaint may contain only an allegation of employment discrimination or it may contain additional allegations that the MSPB has jurisdiction to address.

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

**Neutral** — An individual who, with respect to an issue in controversy, functions specifically to aid the parties in resolving the controversy. This individual may be a Federal government employee or someone outside the Government. For purposes of determining whether communications are confidential, the term —neutral also includes ADR intake or other administrative personnel designated and identified by the ADR Manager as a neutral for the purpose of taking information from the party or parties to a dispute to assist them in deciding whether to use a dispute resolution proceeding to resolve the dispute. See ADRA, 5 USC Section 571(9).

**Reasonable Accommodation** — A logical adjustment to the job and/or the work environment that enables a qualified person with a disability to perform the essential duties of the position without doing harm to themselves or others.

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

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

**Report of Investigation (ROI)** — The summary of facts and documents collected during an investigation issued by the investigator pursuant to the investigation of a formal complaint of discrimination under 29 CFR 1614.108.

**Reprisal (Civilian)** — It is unlawful to retaliate against an individual for opposing employment practices that discriminate based on any of the protected categories or for filing an unlawful discrimination charge, testifying, or participating in any way in an investigation, proceeding, litigation, or expressing opposition to a perceived discriminatory practice.

**Sexual Harassment** — Harassment on the basis of sex is a violation of Title VII of the Civil Rights Act of 1964. Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment 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, or (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.

**Substantiated** — A substantiated finding occurs when a preponderance of the evidence supports (more likely to have occurred than not occurred) the complainant's allegation of a violation of law, regulation or NGB policy or standards. The documented facts indicate that a violation occurred.



