DEPARTMENT OF THE ARMY
US ARMY CORPS OF ENGINEERS
GULF REGION DIVISION
BAGHDAD, IRAQ
APO AE 09348

CEGRD-EO

15 October 2008

MEMORANDUM FOR All Gulf Region Division Military and Civilian Personnel

Subject: GRD Policy Letter 16, Prohibiting Discrimination Against Employees and Applicants for Employment 690-3

1. The U.S. Army Corps of Engineers has always followed the principles of non-discrimination. Enclosed is the Gulf Region Division's policy prohibiting discrimination against civilians and applicants for employment. To assist you in obtaining technical advice and guidance in interpreting and applying the policy, please contact the Gulf Region Division's EEO program manager.

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2. I must emphasize, I support leaders who select, promote and train team members solely on the basis of their experience, knowledge, skills and abilities; reward team members only for their performance; and discipline team members based upon their behavior. Creating and maintaining an environment that is free from discrimination and harassment will help us to attract outstanding team members, motivate them and inspire their loyalty.

3. I know that I can count on you to join me in supporting the principles embodied in this policy.

4. This memorandum supersedes 690-3, dated 15 May 2008, subject as above.

Michael R. Eyre
MICHAEL R. EYRE
MG, USA
Commanding

Encl

Mandatory posting on all Official Bulletin Boards

It is the US Army Corps of Engineers' Gulf Region Division's policy to ensure that every military and civilian team member enjoys a non-hostile work environment free of discrimination or harassment of any kind. All employment decisions; such as hiring, promoting, training and rewarding, will be made exclusively on the basis of job-related criteria; e.g. employees' knowledge, skills, abilities and performance. Discrimination of any kind based on race, color, religion, sex, sexual harassment, national origin, age (40 and above), handicap (mental/physical) and reprisal for participating in a protected EEO activity or any non-job-related conduct is forbidden and subject to appropriate disciplinary action.

Race

Discrimination based on race is prohibited by Title VII of the Civil Rights Act of 1964. Racial discrimination occurs when persons are treated differently than others who are similarly situated because they are members of a specific race; e.g., Caucasian, African American, Asian, etc. Examples of employees who are similarly situated may be those working in the same position and grade, the same directorate or under the same line of supervision.

Racial discrimination also occurs when persons are treated differently because of unalterable characteristics; e.g., physical features indigenous to race. Courts have held that racial discrimination in employment can also occur when employees are treated differently because of their interracial dating or marriage, or membership in racially oriented groups.

Color

Title VII of the Civil Rights Act of 1964 prohibits discrimination based on color. This type of discrimination occurs when persons are treated differently than others who are similarly situated because of the color of their skin. Color discrimination can occur together with race, but may also occur between members of the same race.

Religion

Discrimination based on religion is prohibited by Title VII of the Civil Rights Act of 1964. In defining religious discrimination, the United States Supreme Court held that religion is limited to Orthodox or well recognized denominations; e.g., Catholic, Baptist, Muslim, or Judaism. All that is required is a sincere and meaningful belief equivalent to the belief in God held by the more well recognized religions.

Atheists are also protected. Religious discrimination can occur in two ways. The first is by treating employees or applicants for employment differently because of their religion. The second occurs when an employment rule or policy violates a fundamental belief, principle or practice of one's religion and management fails to provide an accommodation. Religious practices are not limited to worship, but may include attendance at meetings or retreats, or the wearing of certain attire. Management's obligation to accommodate begins when the employee notifies them of the need for an accommodation. Once notified, management should consider

alternatives and offer one that would not create an undue hardship for the Command or disadvantage other employees. Undue hardships are determined on a case-by-case basis.

Sex

Discrimination based on sex is prohibited by Title VII of the Civil Rights Act of 1964. Sex discrimination may occur in two ways. The first is a policy or practice that treats similarly situated men or women differently from the opposite gender. The second occurs when a gender-neutral policy or practice has a disproportionate adverse effect on one of the genders.

Sexual Harassment

Sexual harassment is a form of sex discrimination and is prohibited by Title VII of the Civil Rights Act of 1964. In 1980, the Equal Employment Opportunity Commission issued guidelines defining sexual harassment as un-welcomed sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when any three criteria are met:

- Submission to the conduct is made either explicitly or implicitly a term or condition of employment;
- Submission to or rejection of the conduct is used as a basis for employment decisions; or
- The conduct has the purpose or effect of unreasonably interfering with work performance or creating an intimidating, hostile or offensive working environment.

Sexual harassment may be verbal or physical, exhibited by a man or woman, by a woman to a man, or within the same gender. Examples of behaviors which could constitute sexual harassment are touching, sexual innuendo, suggestive comments, threats, and nude or sexual picture, cartoons or calendars, etc.

National Origin

Discrimination based on national origin is prohibited by Title VII of the Civil Rights Act of 1964. National origin discrimination is based on an individual's ancestors' place of origin, physical, cultural or linguistic characteristics. Other examples include discrimination based on marriage to, association with, persons of a national origin group; attendance or participation in schools or religious organizations used by a national origin group; and an individual's or spouse's name which is associated with a national origin group. Requiring employees to speak English at all times, including breaks and lunch periods, is an example of an employment practice that discriminates against persons whose primary language is not English.

Age

Discrimination based on age is prohibited by the Age Discrimination in Employment Act of 1967. For Federal employees, the protected age group is age 40 and above, with no upper age

limit. Age discrimination also occurs among age groups who are over age 40; e.g., the selection of a 45-year-old candidate may appear to be discriminatory to 55-year-old candidates if it can be shown that management has never selected a candidate at or above age 55. Excluding older employees from training opportunities, denying them special work assignments that would give them experience for promotions or awards, and attempting to persuade or influence them to retire are other examples of age discrimination.

Disability

Discrimination based on disability is prohibited by the Rehabilitation Act of 1973 and the American with Disabilities Act of 1990. Disability discrimination can occur in two ways. The first occurs when employees or applicants are treated differently on the basis of their physical or mental disabilities. The second occurs when management fails to make reasonable accommodation for the disabling condition(s).

A person with a disability is defined as one who has a physical or mental impairment which substantially limits one or more major life functions; e.g., walking, speaking, breathing, learning, etc.; one who has a record of such, or one who is regarded as having a disability.

Command leadership must make reasonable accommodation to the known physical or mental limitations of qualified applicants or employees with disabilities unless the accommodation would impose an undue hardship upon the Command. Qualified persons with disabilities are those who, with or without accommodation, can perform the essential elements of the job. Otherwise qualified applicants with disabilities may not be rejected for employment on the grounds that reasonable accommodation would have to be made.

Reasonable accommodation can include modifying job-related procedures, tasks or requirements (other than generic job tasks), adjusting the employee's work schedule, altering the physical work space, providing special equipment, providing readers for the visually impaired, interpreters for the hearing impaired, etc. Medical proof of disability is usually required when an employee requests an accommodation. The reasonableness and the creation of undue hardships are determined on a case-by-case basis.

Reprisal

Discrimination based on reprisal is prohibited by the Title VII of the Civil Rights Act of 1964. Reprisal occurs when employees are treated differently because they are, or were, involved in a protected EEO activity; e.g., seeking or participating in EEO counseling, providing testimony in an EEO investigation or at an EEO hearing, filing a discrimination complaint, or speaking out against discriminatory activities.

Maintaining a Non-Hostile Workplace
Free of Discriminatory Harassment

EEOC regulation 29 CFR, Part 1614, Section 102 (a) (3) requires agencies to remove every form of prejudice or discrimination from personnel policies, practices and working conditions. A hostile work environment allows ridicule, abuse, insults or derogatory comments that are directly or indirectly based on race, color, national origin, sex, sexual harassment, religion, age, handicap, sexual orientation, reprisal, marital status, political affiliation or parental status. It is further defined as an offensive or intimidating environment that unreasonably interferes with work performance or that otherwise adversely affects employment opportunities. Personal conversations that can be overhead by other employees who consider the conversation offensive can also create a hostile environment.

Command leadership is responsible for maintaining a non-hostile work environment and can be held accountable for, not only their behavior, but also that of their employees. If an employee makes abusive or derogatory comments of the type noted above to another employee and the matter comes to the Command leadership's attention, management must take prompt action.

Such allegations should be confirmed with the employees directly involved in the incident along with any witnesses who might have firsthand information. It is very important to demonstrate to concerned employees that the allegations are taken seriously and that management will not condone offensive behavior. Disciplinary or other remedial action should reflect management's findings during the course of the inquiry.

The Gulf Region Division leadership will follow guidance regarding harassment established by the Equal Employment Opportunity Commission (EEOC) and standards regarding harassment set by the Supreme Court in two landmark decisions: *Burlington Industries, Inc. v. Ellerth,* 118 S. Ct. 2257 (1998) and *Faragher v. City of Boca Raton*, 118 S. Ct 2275 (1998). In these decisions, the Supreme Court made it clear that employees are subject to vicarious liability for unlawful harassment by supervisors. Liability is premised on two principles: 1) an employer is responsible for the acts of its supervisors; and 2) employers should be encouraged to prevent harassment and employees should be encouraged to avoid or limit the harm from harassment.

Employees are responsible to come forward and report any behavior they view as harassment before it becomes severe or pervasive. While isolated incidents of harassment generally do not violate the law, a pattern of incidents may be unlawful. Employees should report incidents of harassment to leaders within their chain of command, the Provost Marshal, Human Resource Personnel, the Command Sergeant Major or the EEO officer.

The Command leadership has a responsibility to maintain a workforce environment that is free from harassment. When an employee complains to management about alleged harassment, management is obligated to investigate the allegation regardless of whether the complaint conforms to a particular format or is made in writing.