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MARINE CORPS ORDER 1000.9A

From: Commandant of the Marine Corps
To: Distribution List

Subj: SEXUAL HARASSMENT

Ref: (a) DOD DIRECTIVE 1350.2, "Department of Defense Military Equal Opportunity (MEO) Program," August 18, 1995
(b) SECNAVINST 5300.26D
(c) MCO P5354.1D
(d) NAVMC 2921
(e) MCO P1700.24B w/ch 1
(f) 29 CFR Part 1614
(g) OCPMINST 12713.2A
(h) Article 107, UCMJ
(i) Article 134, UCMJ

Encl: (1) Sexual Harassment Behaviors

1. Situation. To update policy and provide guidance concerning sexual harassment.
2. Cancellation. MCO 1000.9 w/ch 1.
3. Mission. All Marine Corps personnel will treat each other with dignity and respect and will maintain a professional work environment free from sexual harassment.

4. Execution

a. Commander's Intent and Concept of Operations

(1) Commander's Intent. Per references (a) and (b), sexual harassment is prohibited. All leaders--officer, enlisted and civilian--are obligated to uphold and protect the dignity of all Marine Corps personnel. Sexual harassment devalues the individual and threatens unit cohesion. It has no place in the Marine Corps. How we treat and care for each other and how we feel about our organizations are vital to mission readiness. No individual Marine or civilian employee of the Marine Corps will:

- (a) Commit or allow others to commit sexual harassment.
- (b) Take reprisal action against a person who provides information on an alleged or substantiated incident of sexual harassment;
- (c) Knowingly make a false accusation of sexual harassment; or

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(d) While in a supervisory or command position, condone or ignore sexual harassment of which he or she has knowledge or has reason to have knowledge.

(2) Concept of Operations

(a) Leadership is the key to eliminating sexual harassment. Commanders and supervisors are responsible for and must be committed to preventing sexual harassment in their commands and work environments. They will take appropriate actions to carry out their responsibilities regarding the prevention of sexual harassment, which are part of the broader responsibility of commanders and supervisors to foster a positive climate free of disruptive, provoking, discriminatory, or otherwise unprofessional behavior. They must set the example in treating all personnel with dignity and respect that is essential to maintain high morale, discipline, and unit readiness.

(b) Individuals who are subjected to or observe objectionable behavior should promptly take the required action necessary in order to resolve the issue at the lowest possible level.

(c) A violation of the provisions set forth in this Order is punishable under the Uniform Code of Military Justice for uniformed naval service members, and is the basis for disciplinary action with respect to civilian employees. Such behavior will be dealt with immediately through the leadership and supervisory structures of the Marine Corps.

b. Subordinate Element Missions

(1) All commanders will:

(a) Ensure the contents of this Order and the enclosure are known by all military and civilian personnel under their command.

(b) Create an environment in which all personnel are treated with dignity and respect, and ensure that prompt action is taken when they are not. This includes directing Marines and civilian personnel to refrain from sexual harassment and to actively counter and report incidents immediately.

(c) Process all formal complaints of sexual harassment per the timelines and procedures established in reference (c). A Commander's Handbook on "Processing Equal Opportunity and Equal Employment Opportunity Complaints" has been published by DC, M&RA (MPE) to provide specific guidance. It can be ordered through the Marine Corps supply system using PCN 50100379600. Additionally, a formally trained Equal Opportunity Advisor is available at every major command and installation to review sexual harassment investigations and provide other assistance as required.

(d) Take corrective action in each substantiated incident of sexual harassment. Corrective action includes but is not limited to: formal or informal counseling, non-punitive letter of caution, security clearance revocation, adverse fitness report, nonjudicial punishment, or court-martial.

(e) Per references (b) and (c), processing for separation is mandatory following the first substantiated incident of sexual harassment involving any of the following circumstances:

1. Action, threats, or attempts to influence another's career or job for sexual favors;

2. Rewards in exchange for sexual favors; or

3. Physical contact of a sexual nature, which, if charged as a violation of the UCMJ, could result in a punitive discharge.

(An incident is considered substantiated when there has been a court-martial conviction, nonjudicial punishment, or the commander determines, based on a preponderance of evidence, that sexual harassment has occurred. Commanders are not precluded from initiating administrative separation proceedings for individuals whose conduct warrants separation not covered in the above subparagraphs.)

(f) Conduct sexual harassment prevention training for all Marines and civilian employees per references (b) and (c). Commanders should actively participate in the training with their units.

(g) Ensure subordinate leaders/supervisory personnel are aware of their responsibilities for maintaining a positive work environment and dealing with sexual harassment incidents.

(h) Ensure reference (d) is prominently displayed on a permanent basis within the command.

(i) Protect complainants, and others providing information of an alleged or substantiated sexual harassment incident, from reprisal or retaliation during an investigation and afterwards. Monitor during follow-up interviews with the complainant, per reference (c).

(j) Ensure counseling support or referral services are made available to all personnel involved in incidents of sexual harassment, per references (b) and (e).

(2) All leaders/supervisors will:

(a) Actively prevent sexual harassment in their workplace.

(b) Understand their responsibilities if they receive a complaint of sexual harassment.

(3) All Marines and civilian employees will:

(a) Conduct themselves in a professional manner in the workplace and treat others with dignity and respect.

(b) Understand their rights and responsibilities in preventing sexual harassment in the workplace.

(c) Take action immediately if they are the recipient of or witness to sexual harassment behavior. Sexual harassment incidents should be addressed or reported as soon as possible to minimize the negative impact on the Marine or civilian employee and the unit, and to facilitate the incident's investigation. Per reference (f), civilian personnel have 45 days to notify an Equal Employment Opportunity Counselor. Per reference (c),

military personnel filing formal complaints should do so within 60 days of the incident.

c. Coordinating Instructions

(1) Sexual Harassment Definition. Sexual harassment is a form of discrimination that involves unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when:

(a) Submission to such conduct is made either explicitly or implicitly a term or condition of a person's job, pay, or career, or

(b) Submission to or rejection of such conduct by a person is used as a basis for career or employment decisions affecting that person, or

(c) Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creates an intimidating, hostile, or offensive working environment. Workplace conduct, to be actionable as "abusive work environment" harassment, need not result in concrete psychological harm to the victim, but rather need only be so severe or pervasive that a reasonable person would perceive, and the victim does perceive, the work environment as hostile or abusive. Any person in a supervisory or command position who uses or condones any form of sexual behavior to control, influence, or affect the career, pay, or job of a military member or civilian employee is engaging in sexual harassment. Similarly, any military member or civilian employee who makes deliberate or repeated unwelcome verbal comments, gestures, or physical contact of a sexual nature in the workplace is also engaging in sexual harassment.

(2) Informal Resolution System (IRS). Whenever possible, conflicts arising from offensive or unwelcome behavior should be resolved at the lowest possible level. The IRS is designed to address behaviors that could potentially become sexual harassment or behaviors which are inappropriate but do not constitute an offense under the UCMJ. Examples can be found in enclosure (1). The recipient is encouraged to confront the offender directly in person, in writing, or through an informal third party. The third party can be the supervisor, a co-worker, or someone outside of the workplace. The offender should be informed that the behavior is offensive or unwelcome and should be stopped. Another IRS alternative is for the offended person or the supervisor to request sexual harassment prevention training or resource materials to improve overall awareness in the workplace. Additional information on the IRS can be found in reference (c). Although this is an informal system, participants are encouraged to document what was said and when, in the event the behavior continues or repeats afterwards. Use of the IRS is encouraged but not required.

(3) Formal Complaints. All Marines have the right and responsibility to lodge a legitimate formal complaint of sexual harassment without fear of reprisal. Avenues to file a formal complaint are outlined in chapter 5, reference (c). Assistance in filing a formal complaint is available from the unit Equal Opportunity Representative or command Equal Opportunity Advisor. Civilian personnel will file complaints per references (f) and (g).

(4) False or Malicious Complaints. An intentionally false complaint of sexual harassment may be, among other things, chargeable as a "false official statement" in violation of reference (h), or a "false

swearing" under reference (i). A Marine who makes an intentionally false complaint may be subject to adverse administrative or disciplinary action. A complaint that is not substantiated does not automatically constitute an intentionally false complaint.

5. Administration and Logistics. Unit commanders shall:

a. Provide sexual harassment prevention training, to include training on the IRS and formal complaint procedures, upon initial entry into the Marine Corps at Marine Corps Recruit Depots, Officer Candidates School, and The Basic School.

b. Provide annual sexual harassment training per references (b) and (c) to all Marines and civilian personnel.

6. Command and Signal

a. Command. This Order is applicable to all Marine Corps military and civilian personnel.

b. Signal. This Order is effective on the date signed.



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SEXUAL HARASSMENT BEHAVIORS

1. Introduction. This enclosure explains and illustrates behaviors, which may constitute sexual harassment by describing in layperson's terms what sexual harassment is and how it occurs in the work environment. It is intended to be used as a guide for developing training programs and to assist military members and civilian employees in distinguishing between acceptable and unacceptable behavior.

2. The Elements of Sexual Harassment. For a person's behavior to be considered sexual harassment, it must meet three criteria: (1) it must be unwelcome, (2) it must be sexual in nature, and (3) it must occur in or impact on the work environment.

a. Unwelcome behavior is behavior that a person does not ask for and which that person considers undesirable or offensive. Not everyone has the same perception of "undesirable or offensive." Since the person being subjected to the behavior--the recipient--is the one being affected, it is the recipient's perception that counts. Using a "reasonable person standard," as defined in reference (c), from the perspective of the recipient, is considered a common sense approach in determining which behaviors might be considered sexual harassment. In this regard, behavior, which the recipient finds unwelcome, should be stopped.

b. Behavior, which is sexual in nature, is fairly easy to determine. Telling sexually explicit jokes, displaying sexually suggestive pictures, talking about sex are obviously "sexual in nature." Some people would consider other behaviors, such as touching, to be sexual in some cases but not in others. Again, the reasonable person standard is considered a common sense approach. (*Sexist behavior--behavior which disparages or discriminates based on gender--is not sexual, however, it is a form of discrimination and equally unacceptable.*)

c. For sexual harassment to occur, the unwelcome behavior must occur in or impact on the work environment. The harassment can take one of the following forms:

(1) "Quid pro quo." A legal term meaning literally "this for that." This occurs when recipients are offered or denied something that is work connected in return for submitting to or rejecting unwelcome sexual behavior. Examples include getting or losing a job, a promotion or demotion, a good or bad performance evaluation, etc. If any work-related decisions are made based on the submission to or rejection of the unwelcome behavior, sexual harassment has occurred. Normally this is from a senior to a junior because the senior person has something to offer.

(2) Unwelcome sexual behavior of one or more persons in a workplace, which interferes with another person's work performance.

(3) "Hostile Environment." This occurs when the behavior produces a work atmosphere, which is offensive, intimidating, or abusive to another person, whether or not work performance is affected. Again, the reasonable person test from the recipient's perspective is used to determine if workplace conduct is so severe or pervasive to perceive the work environment as hostile or abusive. (Note: "workplace" is an expansive term for military members and may include conduct on or off duty 24 hours a day.) The following are examples of behavior that could create a hostile environment:

- (a) Using sexually explicit or sexually offensive language;
- (b) Displaying sexually-oriented posters or calendars;
- (c) Giving someone unwelcome letters, cards, or gifts of a personal nature, particularly when these items have sexual overtones;
- (d) Applying unwanted or uninvited pressure for dates;
- (e) Making offensive remarks about a person's appearance, body, or sexual activities.

(4) Overt, Unwelcome Sexual Behavior. Certain types of unwelcome sexual behavior do not have to create a "hostile environment" to be considered sexual harassment. If the behavior occurs in the work environment and is unreasonable, it may be considered sexual harassment, even if displayed only once. Other less obvious behaviors can become sexual harassment if they are repeated.

3. Range of Behaviors. There is a wide range of behaviors, which can be unwelcome, sexual, and work-connected and can, therefore, constitute sexual harassment. It can be confusing. What if a behavior doesn't meet all three criteria? Some behaviors may be unwelcome and work-connected, but not sexual, such as performance counseling, and obviously do not constitute sexual harassment. To better explain the range of behaviors, which may constitute sexual harassment, the traffic light illustration was developed. Behaviors are divided into three zones, corresponding to the colors on a traffic light.

a. Green Zone. Green means "go" on a traffic light and these behaviors are not sexual harassment and can continue. Examples include: touching, which could not reasonably be perceived to be sexual, such as a professional handshake or a friendly pat on the shoulder; counseling on military appearance or conduct; social interaction; showing concern or encouragement in a reasonable manner; a polite compliment; or friendly conversation.

Green Zone Behaviors: A male platoon sergeant counsels a single female lance corporal on using protection if she is going to be sexually active. A female corporal is told to go home and change when she shows up for a command function in inappropriate clothing. A female lieutenant tells a male sergeant to limit phone calls from his girlfriend during working hours to emergencies only. A male colonel pats a female captain on the back in congratulations for receiving an award or tells her she looks sharp in uniform.

b. Yellow Zone. Yellow means "caution" and these are behaviors, which many people would find unacceptable and they could be sexual harassment, particularly if repeated and especially after the offender has been told the behavior is unwelcome. Examples include: violating personal space; cat calls or whistling; questions about personal life; lewd or sexually suggestive comments; suggestive posters or calendars; off-color jokes; leering or staring; repeated requests for dates; foul language; unwanted letters or poems; and sexually suggestive touching or gesturing.

Yellow Zone Behaviors: A male corporal asks a female co-worker about her sex life--caution-- the co-worker tells the corporal his questions are

unwelcome but he continues to ask either in the same conversation or at a later time--sexual harassment. A female lieutenant massages the shoulders of a male Sergeant while he works on a project at the computer--caution--he tries to shrug her off or tells her his wife wouldn't like this but the lieutenant laughs and doesn't take the hint--sexual harassment. A male staff sergeant has a lingering touch when the women he works with have to come into contact with him--sexual harassment. The Marines in the motor pool have always talked and joked about sex while they work but a female private first class checks in and tells her supervisor the sex talk makes her uncomfortable; the supervisor tells her to lighten up and the talk continues--sexual harassment.

c. Red Zone. Red means "stop" and these behaviors are always sexual harassment. Examples include: making sexual favors a condition for employment rewards; threats if sexual favors are not provided; sexually explicit pictures (including calendars or posters) or remarks; using status to request dates; or obscene letters or comments.

Red Zone Behaviors: The male S-1 chief propositions young enlisted women in the command and tells them he has something on them like a DUI. A group of young male Marines surround a female lance corporal at the chow hall and won't let her leave. A male gunnery sergeant tells a female gunnery sergeant co-worker that he had a dream about her and describes it to her in explicit detail. While TAD, a female major with connections at HQMC invites a male staff sergeant to her room after a few drinks at the bar telling him with a wink maybe they can work out something to get him the special assignment he wants.

Note: Keep in mind that the above examples are used as guidance only. Individuals believe they have been sexually harassed based on their perceptions. Each incident is judged on all the facts in that particular case and individuals' judgment may vary on the same facts. Caution in this area is advised. Anytime sexually oriented behavior is introduced into the work environment or among co-workers, the individuals involved are on notice that the behavior may constitute sexual harassment.