

HARASSING BEHAVIOR PREVENTION, RESPONSE, AND ACCOUNTABILITY



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COMMANDANT INSTRUCTION 5350.6

Subj: HARASSING BEHAVIOR PREVENTION, RESPONSE, AND ACCOUNTABILITY

- Ref:
- (a) U.S. Coast Guard Civil Rights Manual, COMDTINST M5350.4 (series)
 - (b) Equal Employment Opportunity Commission, Management Directive 715
 - (c) Equal Employment Opportunity Commission, "Enforcement Guidance: Vicarious Employer Liability for Unlawful Harassment by Supervisors," No. 915.002 (June 18, 1999)
 - (d) Anti-Harassment Program, DHS Directive 256-01 (24 May 2019)
 - (e) Anti-Harassment Program, DHS Instruction 256-01-001 (7 Jun 2019)
 - (f) Discipline and Conduct, COMDTINST M1600.2 (series)
 - (g) Coast Guard Investigative Service Roles and Responsibilities, COMDTINST 5520.5 (series)
 - (h) Administrative Investigations Manual, COMDTINST M5830.1 (series)
 - (i) Civilian Personnel Actions: Disciplinary, Adverse, and Performance Based Actions, COMDTINST M12750.4 (series)
 - (j) Military Separations, COMDTINST M1000.4 (series)
 - (k) Enlistments, Evaluations, and Advancements, COMDTINST M1000.2 (series)
 - (l) Military Justice Manual, COMDTINST M5810.1 (series)
 - (m) Discipline and Adverse Actions Program, DHS Instruction 250-09 (11 Nov 2016)
 - (n) Uniform Code of Military Justice, 10 U.S.C. § 877-934 (as amended)
 - (o) Administrative Remarks, Form CG-3307, COMDTINST M1000.14 (series)

1. **PURPOSE.** The goal of this Anti-Harassment and Hate Incident (AHHI) policy is to create and maintain a workplace free of harassment and other harassing behavior by ensuring prevention, timely and independent investigation, corrective action, and accountability. This Instruction is complementary to Reference (a), the Civil Rights Manual, COMDTINST M5250.4 (series), but is distinct and does not take the place of procedures for filing an Equal Opportunity (EO) or an Equal Employment Opportunity (EEO) complaint of discriminatory harassment. The EO and EEO processes are found in Chapter 5 of Reference (a).
2. **ACTION.** All military and civilian supervisors and convening authorities, including General Court-Martial Convening Authorities, Special Court-Martial Convening Authorities (all Coast Guard Commanding Officers (COs)), Officers-in-Charge, Deputy/Assistant Commandants, heads of headquarters directorates, principal deputies to three-star admirals,

and the Judge Advocate General shall comply with this Instruction. Any changes to this Instruction must include coordination between the Anti-Harassment Program Office (AHPO), the Civil Rights Directorate, and the DHS Office for Civil Rights and Civil Liberties to ensure compliance with References (b) through (e).

3. AUTHORIZED RELEASE. Internet release is authorized.
4. DIRECTIVES AFFECTED. Chapters 3.C - 3.J of Reference (a) and chapters 2.B.2. and 3 of Reference (f) are cancelled.
5. MAJOR CHANGES. This Instruction consolidates all procedures relating to harassment and other harassing behavior, standardizes corrective actions for substantiated incidents committed by civilian and military members, creates an appeals process, establishes consequences for those who fail to fulfill their obligations under this policy, and includes updated administrative templates to assist commands in executing this policy.
6. DISCLAIMER. This document is intended to provide operational requirements for Coast Guard personnel and is not intended to nor does it impose legally-binding requirements on any party outside the Coast Guard.
7. ENVIRONMENTAL ASPECT AND IMPACT CONSIDERATIONS. The Office of Environmental Management (CG-47) reviewed this Commandant Instruction and the general policies contained within, and determined that this policy falls under the Department of Homeland Security (DHS) categorical exclusion A3. This Commandant Instruction will not result in any substantial change to existing environmental conditions or violation of any applicable federal, state, or local laws relating to the protection of the environment. It is the responsibility of the action proponent to evaluate all future specific actions resulting from this policy for compliance with the National Environmental Policy Act (NEPA), other applicable environmental requirements, and the U.S. Coast Guard Environmental Planning Policy, COMDTINST 5090.1 (series).
8. DISTRIBUTION. No paper distribution will be made of this Instruction. An electronic version will be located in the Coast Guard Directives System Library internally, and if applicable on the Internet at www.dcms.uscg.mil/directives.
9. RECORDS MANAGEMENT CONSIDERATIONS. Records created as a result of this Instruction, regardless of format or media, must be managed in accordance with the records retention schedules located on the Records Resource Center SharePoint Online site: <https://uscg.sharepoint-mil.us/sites/cg61/CG611/SitePages/Home.aspx>.

10. ANTI-HARASSMENT PROGRAM RESPONSIBILITIES.

- a. Anti-Harassment Program Management Office (AHPO). The Assistant Commandant for Human Resources/Office of Harm Reduction serves as the Anti-Harassment Program Office.¹ The AHPO manages the Anti-Harassment Program and shall:
 - (1) Maintain a roster of all AHHI Investigators designated by commands;
 - (2) Maintain the AHHI Investigator Tactics, Techniques, and Procedures (TTP);
 - (3) Coordinate with Force Readiness Command (FORCECOM) to update, when necessary, AHHI Investigator training;
 - (4) Collect data and maintain a database with a repository of Final Action Memoranda;
 - (5) Respond to data calls and questions on AHHI; and
 - (6) Provide timely and accurate data to authorized entities on AHHI incidents and the program in general.
- b. Training. FORCECOM will create and maintain, in coordination with the AHPO and the Department of Homeland Security (DHS) Office for Civil Rights and Civil Liberties (CRCL), online training for AHHI Investigators that includes interviewing, report writing, and investigating harassment allegations. This training must also include the legal requirements for claims of harassment.
- c. Designating Investigating Officers.
 - (1) Convening authorities² must designate one AHHI Investigating Officer (IO) for every 150 members/employees of their unit. Units with fewer than 150 but more than 50 members/employees must appoint one IO. Units with fewer than 50 members/employees may appoint an AHHI IO. Units with fewer than 50 members/employees that do not have an appointed AHHI IO will consult with their servicing legal office, their immediate commander or civilian supervisor, as appropriate, and the AHPO for assistance in appointing an AHHI IO, as necessary.
 - (2) Convening authorities will designate IOs from among officers (CWO or O-3 and above), civilians (GS-12 and above), and senior enlisted members (E-7 and above) based on their professionalism, temperament, ability, and experience, including prior

¹ In the absence of a formally established AHPO, all references to the AHPO in this Instruction refer to the office or offices with interim responsibility for preventing and responding to allegations of harassment and incidents of hate within the Coast Guard, which may be designated by ALCOAST publishing this COMDTINST.

² See para. 2 above and 13.a below.

experience as an AHHI or other type of IO. IO experience at the unit type where the investigation will occur is preferred.

- (3) Convening authorities will provide the names of command-designated AHHI IOs, with proof of completed training, to the AHPO.
- (4) Convening authorities with designated AHHI IOs shall make those investigators available to units requesting assistance. The requesting command is responsible for funding the travel and activities of the IO.
- (5) Commands may, in coordination with the AHPO, contract for investigators with the appropriate training from outside of the Coast Guard.

11. POLICY.

- a. Expectations for leaders. COs/OICs and supervisors must cultivate a climate of dignity, respect, and trust. All COs/OICs and supervisors will act promptly to prevent and stop harassing behavior and shall take action against violators. COs/OICs and supervisors shall not wait for a complaint to act. Leaders must also hold accountable any subordinate leader who fails to respond to harassing behavior, inform those subjected to harassing behavior about available resources, and facilitate access to services.
- b. Expectations for our workforce. Harassing behaviors are harmful to our workforce, adversely affect the creation of an inclusive workplace, and are contrary to our core values of honor, respect, and devotion to duty. Every member of our workforce shall model appropriate and professional behavior, appropriately intervene when witnessing harassing behavior, and be vigilant and vocal when others act in manner that can harm our shipmates.
- c. Applicability.
 - (1) In general: This policy applies at all times to all active duty members, reserve members, civilian employees, and members of the Coast Guard Auxiliary. It covers and prohibits harassing behavior that has a direct nexus to a member's or employee's position or responsibilities, which occurs on duty, off duty, face-to-face, or remotely via written or electronic/digital means, including, but not limited to telephone, email, social media, websites, and chat applications. Such conduct is prohibited regardless of whether or not it occurs during working hours or onboard Coast Guard installations or assets.
 - (2) Lawful general order: The following orders are punitive in nature and constitute lawful general orders:
 - (a) Coast Guard members are prohibited from engaging in conduct that constitutes harassing behavior, hate, or other conduct as described and prohibited in this policy; and

- (b) Convening authorities must investigate or otherwise process reports or complaints of harassing behavior, hate, or other conduct as described and prohibited by this policy.

(3) Scope:

- (a) Active duty members (at all times) and Reservists (while in a drill or active duty status) who engage in conduct prohibited by this policy may face administrative or disciplinary action, including non-judicial punishment or court-martial for violation of Article 92, Uniform Code of Military Justice, 10 U.S.C. § 892.
- (b) Reservists who engage in conduct prohibited by this policy while in a non-drilling or non-duty status may face administrative action.
- (c) Civilian employees who engage in conduct prohibited by this policy, may face disciplinary and administrative action.
- (d) Members of the Coast Guard Auxiliary are subject to administrative action, including disenrollment, if determined to have engaged in conduct prohibited by this policy.
- (e) Leaders who fail to carry out their command responsibilities under this policy may be subject to adverse administrative or disciplinary action.

- (4) Effect on collective bargaining agreement: This policy is separate and distinct from any collective bargaining agreement or statutory complaint process covering discriminatory harassment, as outlined in Chapter 5 of Reference (a). Any conflicts between this policy and an applicable collective bargaining agreement or statutory complaint process will be resolved in favor of the collective bargaining agreement or statutory complaint process.

12. **WHAT CONSTITUTES HARASSING BEHAVIOR?** “Harassing behavior” in this policy includes harassment and other harassing behavior described here. COs/OICs and supervisors must also address and stop conduct not rising to the level of harassing behavior, but that is nonetheless unacceptable in a work environment, even if a single unintentional incident, and take appropriate action with respect to the offender.

- a. **Harassment.** Harassment is unwelcome conduct, whether verbal, nonverbal, or physical, that has the purpose or effect of unreasonably interfering with an individual’s work performance or creating an intimidating, offensive, or hostile environment. Harassment includes conduct - whether or not based on a protected status - that includes, but is not limited to, race, sex, gender, or gender identity (*see* Appendix A). Hate-based harassment that targets one or several people requires special reporting and investigation (*see* section 20).

- b. Sexual Harassment. Sexual harassment is gender-based harassment in which the aggrieved and harasser can be or identify as the same or another gender. Consequences for sexual harassment differ from other harassing behavior (*see* section 18). Sexual harassment occurs where the subject knowingly makes sexual advances, demands or requests for sexual favors, or knowingly engages in other acts of a sexual nature; such conduct is unwelcome; AND under the circumstances, such conduct:
- (1) Would cause a reasonable person to believe, and the person at whom the behavior is directed does believe, that submission to such conduct is, or would be made, either explicitly or implicitly, a term or condition of that person's job, pay, career, benefits, or entitlements;
 - (2) Would cause a reasonable person to believe, and the person at whom the behavior is directed does believe, that submission to, or rejection of, such conduct is, or would be used, as a basis for decisions affecting that person's job, pay, career, benefits, or entitlements; OR
 - (3) Is so severe, repetitive, or pervasive that it unreasonably interferes with an individual's work performance, or other conditions of employment, OR a reasonable person would perceive, and the person at whom the behavior is directed does perceive, an intimidating, hostile, or offensive working environment.
- c. Hazing and Bullying. These harassing behaviors physically or psychologically injure or create a risk of physical or psychological injury to Coast Guard personnel. Physical contact is unnecessary. Hazing is done for the purposes of initiation or admission into, affiliation with, change in status or position within, or as a condition for continued membership in any Coast Guard unit or organization. Hazing has no legitimate or properly authorized government purpose and is not excused by consent of the target of hazing. COs/OICs and supervisors should ensure traditional observances and initiation ceremonies respect participants. Bullying is threatening, humiliating, or intimidating behavior done with an intent to exclude.
- d. Retaliation or Reprisal. Retaliation or reprisal comprises illegal, unacceptable, or hostile actions taken against a military member or civilian employee, as a result of that individual engaging in, or being suspected of engaging in, a protected activity (*see* Appendix A).
13. REPORTING HARASSING BEHAVIOR. Anyone, civilian or military, who has witnessed or has been subjected to behavior believed to be harassing behavior may make an AHHI complaint. Appendix B contains a graphical representation of the process and timelines once a member or employee makes a report.
- a. Harassing behavior may be reported to any person of authority within the member or employee's chain of command or chain of responsibility, or to the AHPO. Anyone who receives a complaint or otherwise learns of apparent harassing behavior shall report the incident through her or his chain of command or chain of responsibility to her or his first

immediate convening authority, generally within one (1) calendar day. For the purposes of this Instruction, convening authorities are any General Court-Martial Convening Authority, any Special Court-Martial Convening Authority (commanding officer of any Coast Guard unit), Officers-in-Charge, Deputy and Assistant Commandants, heads of headquarters directorates, any principal deputy to a three-star admiral, and the Judge Advocate General. The complaint may be oral or written, though a writing is preferable. Complaints shall be treated as confidential, as much as is possible. A complainant who perceives that the convening authority has taken no action on a complaint should inform the AHPO.

- (1) Reporting harassing behavior based on a protected status under this policy does not preclude filing an EO/EEO complaint for the same conduct.
 - (2) The convening authority shall inform the complainant, in writing, of the option to file an EO/EEO complaint when the complaint alleges harassing behavior based on protected status. Convening authorities should advise complainants that the complainant must initiate the EO/EEO complaint process within 45 calendar days of the most recent incident of alleged harassment if the complainant wishes to participate in the EO/EEO process.
- b. A complaint must allege facts that, if true, would constitute harassing behavior as defined in this Instruction. Convening authorities should consult with their servicing legal office to determine if an allegation constitutes harassing behavior. If, upon initial review and consultation with legal, the official receiving a report of harassment does not believe the conduct alleged would constitute harassing behavior, the official should review the definition of harassing behavior with the complainant and provide the complainant the opportunity to revise the complaint.
 - c. The AHPO will refer complaints made to the AHPO to the immediate convening authority of the alleged perpetrator for investigation and inform the CO, OIC, or immediate supervisor of the aggrieved or targeted party of the complaint. The AHPO will refer complaints to the immediate superior commander or supervisor in cases where the alleged perpetrator and aggrieved are assigned to the same unit. Complaints may be made anonymously to the AHPO.
 - d. Any withdrawal or settlement of an EO/EEO complaint does not affect the requirement to complete the procedure and actions under this policy, unless the withdrawal or settlement expressly includes a separately filed harassment complaint.
 - e. Whistleblower protections.
 - (1) Civilian personnel who believe they have been subjected to whistleblower retaliation or reprisal may file a complaint with the U.S. Office of Special Counsel (OSC) 1730 M Street N.W., Suite 218, Washington, DC 20036-4505, website: https://www.whistleblowers.gov/complaint_page; or file complaint (Form OSC-11), or with the DHS Office of Inspector General (OIG) at

<https://www.oig.dhs.gov/whistleblower-protection>. Civilian personnel who believe they have been subjected to a personnel action directly appealable to the Merit Systems Protection Board (MSPB), may also file an “otherwise appealable action” with the MSPB at mspb@mspb.gov, where the employee asserts that the action was taken because of whistleblowing, *see* <https://www.mspb.gov/appeals/whistleblower.htm>.

- (2) Military members who believe they are subject to whistleblower retaliation or reprisal may file a complaint with DHS OIG at Whistleblower.Protection@oig.dhs.gov.
- (3) OSC and OIG can recommend disciplinary action against violators. In some *civilian* cases, OSC may request that the MSPB direct the Coast Guard to take disciplinary action. Thus, Coast Guard action on a whistleblower retaliation or reprisal matter accepted by OSC or OIG may be stayed by the Coast Guard until after those outside investigations are complete. The relevant convening authority will, however, still take appropriate action to stop potentially harassing behavior and protect the complainant.

14. RESPONSE TO REPORTS AND COMPLAINTS OF HARASSING BEHAVIOR. The first convening authority in the complainant’s chain of command or chain of supervision must:

- a. Acknowledge receipt of any non-anonymous complaint to the complainant (*see* Appendix C);
- b. Take immediate action to ensure the safety of the aggrieved party, including contacting base security forces, emergency medical care, and CGIS as required by Reference (g);
- c. Coordinate as necessary with local law enforcement, in consultation with CGIS, as appropriate;
- d. To avoid recurrence, take appropriate action to stop the reported harassing behavior, such as issuing a cease-and-desist letter to the alleged harasser, separating the alleged harasser from the alleged aggrieved person while the matter is investigated, or both. Aggrieved civilian employees should not be moved unless they expressly request to be moved. The alleged harasser may be reassigned/detailed/directed to telework during the investigation;
- e. Report the complaint and any required data to the AHPO prior to convening the investigation or taking other action;
- f. Advise the aggrieved party that filing a complaint of harassing behavior does not substitute for or satisfy the requirements associated with separately filing an EO/EEO complaint, negotiated grievance, Equal Employment Opportunity Commission (EEOC) or Merit System Protections Board (MSPB) appeal, or other statutory grievance procedure;

- g. Respect and protect the privacy and confidentiality of anyone reporting harassing behavior, or who provides information relating to it, to the extent permitted by law and consistent with good order and discipline. This includes limiting access to documentation only to those with a need to know, which generally means someone with an official role under this policy. The Coast Guard does not tolerate retaliation for reporting or assisting another individual in reporting harassing behavior; and
- h. Initiate an investigation usually within seven (7) calendar days, but in any event no later than ten (10) calendar days of notification of a report or complaint of harassing behavior, unless CGIS has initiated an investigation or the AHPO refers the report to another convening authority for investigation. Convening authorities may not delay convening an investigation to take corrective or remedial action. The procedures in Reference (h) pertaining to standard investigations apply to harassing behavior investigations, as well as other requirements in this Instruction. This Instruction takes precedence when there is a conflict.

15. COAST GUARD INVESTIGATIVE SERVICE (CGIS) NOTIFICATION AND SUPPORT.

- a. CGIS notification. Some harassing behavior can constitute an offense under the Uniform Code of Military Justice (UCMJ). Convening authorities who receive complaints of harassment or hate shall notify CGIS of all allegations outlined in Reference (g), including sexual assault, sexual harassment, workplace violence such as physical assault, hazing threatening behavior, child abuse, spousal abuse, stalking, or wrongful broadcast of intimate visual images. IOs shall contact their servicing legal office, suspend the investigation, and notify the convening authority where a command-convened investigation uncovers evidence of serious violations of the UCMJ, federal law, or state law that are beyond the scope of the convening order. CGIS, in coordination with the servicing legal office and the referring command, will determine the appropriate way forward with respect to the investigation. This could include referral to another investigative body, initiation of a CGIS criminal investigation, or resuming the command-convened investigation.
- b. CGIS support. Convening authorities may request investigative assistance from CGIS pursuant to paragraph 10.c. of Reference (g). Assistance includes, but is not limited to, assistance with the exploitation of digital media and guidance on crafting investigative strategies. The Regional Special Agent in Charge (SAC) will, in coordination with the servicing legal office and convening authority, decide the nature and extent of CGIS support to a command-conducted investigation based on availability of CGIS resources.

16. INVESTIGATION PROCEDURES.

- a. Selecting an Investigating Officer.
 - (1) IOs assigned to conduct investigations into reports of harassing behavior or hate incidents must have completed DHS/Coast Guard training in investigating allegations of harassing behavior within the past three years. The training is available in the

Coast Guard Learning Management System. IOs shall refer to the TTP for best practices on how to conduct the investigation.

- (2) When selecting an IO, the convening authority should consider professionalism; temperament; current assignments; workload; education; past experience as an IO; writing skills; and demonstrated ability to exercise discretion, maintain confidentiality, and apply analytical and critical thinking skills.
- (3) The convening authority shall ensure that the IO has no substantive professional or personal associations with the complainant(s), alleged aggrieved person(s), alleged perpetrator(s), or witnesses, to such an extent that a reasonable person with knowledge of all the facts and circumstances would question the IO's impartiality.
- (4) Subject to operational constraints, such as an underway cutter or geographically isolated unit, the convening authority shall endeavor to ensure investigators are not from the same unit where an allegation arose. The convening authority should request assistance from the AHPO to identify an IO if the convening authority determines that no suitable IO is available locally.

b. Convening the investigation.

- (1) The convening authority shall sign and issue a written convening order normally within seven (7) calendar days, but in any event, no later than ten (10) calendar days of receipt of a complaint. The convening order should include the name and grade/rank of reporting party, alleged aggrieved person(s), alleged perpetrator(s), and known witnesses, as well as enough information to provide a clear and detailed record of the allegations (incidents, issue, and protected basis).
- (2) The convening order will require that the IO complete and submit the investigation, including legal review, within 30 calendar days of initiating the investigation.
- (3) The convening order will advise the IO what to do if the IO uncovers additional allegations during the investigation.
- (4) The convening authority may consider authorizing the IO to issue a non-disclosure order to witnesses.
- (5) The convening order shall direct the IO to determine facts. The IO shall not offer in the report any opinion substantiating or un-substantiating the alleged harassing behavior, or include recommendations.
- (6) The convening order shall be reviewed by the servicing legal office before convening authority signature.
- (7) The convening authority:

- (a) Shall not substitute a Command Climate Survey or similar activity for a factual inquiry into specific allegations covered by this Instruction;
 - (b) May grant extensions for specified periods and will notify the aggrieved party and the AHPO of extensions. Extending an investigation completion date beyond 40 calendar days (or 20 calendar days for a potential hate incident) from the date of initiation of the investigation is inconsistent with Service direction to expedite resolution of these cases. Convening authorities must consult with the AHPO to determine the most efficient course of action where the convening authority believes that it is necessary to extend the investigation beyond this timeline. The AHPO retains the final approval authority on completion dates;
 - (c) Will not consult with any individual who has a personal interest in the outcome of the investigation, including the alleged perpetrator(s), prior to making a determination on the allegations and taking final action. Consultation should be limited to only those with an official role in the matter, including the servicing legal office, Civil Rights Directorate, and Human Resources representatives; and
 - (d) Will provide or otherwise arrange for administrative and logistics support of the AHHI investigation, including the expenses of the IO and access to interview space removed from the workspaces of those involved.
- (8) Complaints of harassment naming the Commandant, Vice Commandant, COMDT (CG-00H) Director, or the AH Program Manager as the individual alleged to have engaged in the harassing conduct must be processed as conflict of interest harassment complaints. Individuals should contact the DHS-HQ Anti-Harassment Unit if they are reporting a conflict of interest harassment complaint.
- c. Conducting the investigation. The IO must:
- (1) Maintain, to the maximum extent practicable, the confidentiality of the investigation, complainant(s), alleged aggrieved person(s), and alleged perpetrator(s);
 - (2) Appropriately prioritize the investigative responsibility above other official responsibilities;
 - (3) Thoroughly examine each issue being investigated and collect and present sufficient facts to the convening authority upon which a determination with respect to each allegation can be made;
 - (4) Make findings of fact, and offer opinions inferring facts from the evidence where it is necessary to resolve factual ambiguity, but shall otherwise make no opinion substantiating or unsubstantiating the allegation(s) or offer recommendations to the convening authority;

- (5) Include in the report any evidence that any member of the chain of command knew, or reasonably should have known, of the alleged harassing behavior, and failed to address it prior to receiving the report/complaint;
 - (6) Report immediately to the next superior of the convening authority in the chain of command if there is evidence that the convening authority knew, or reasonably should have known, of the harassing behavior, and failed to address it prior to receiving the report/complaint;
 - (7) Consult with the designated legal advisor throughout the course of the investigation and submit the investigative report to the servicing legal office for legal review before submitting it to the convening authority. Servicing legal offices that do not have dedicated employment law attorneys shall consult with the Legal Service Command on matters involving civilian parties;
 - (8) Consult with Coast Guard Office of Civilian Workforce Relations (CG-124) on matters involving civilian alleged perpetrators; and
 - (9) Submit the investigative report after legal review to meet the deadline prescribed by the convening authority.
- d. Final Action by the convening authority. The convening authority must take final action (i.e., at a minimum, conclude whether the alleged conduct occurred and whether the alleged conduct was prohibited under this policy). The convening authority shall take final action within ten (10) calendar days after receiving the investigative report, unless the AHPO approves an extension. These procedures also apply to hate incidents described in section 20 of this Instruction.
- (1) Taking the final action. Convening authorities shall:
 - (a) Consult with the servicing legal office prior to taking final action;
 - (b) Document the final action in a stand-alone Final Action Memorandum (FAM) that identifies the complainant and the alleged perpetrator, contact dates, time, locations, allegations, a determination whether the allegation is substantiated or unsubstantiated, and any remedial or corrective actions taken or planned by the convening authority;
 - (c) Determine that it is more likely than not that the alleged perpetrator engaged in the harassing behavior to substantiate an allegation, or that the allegation is unsubstantiated;

- (d) Specify the nature of substantiated harassing behavior and any aggravating factors, such as harassment based on protected status;³
 - (e) Articulate the evidence and reasoning for findings (*see* Appendix G);
 - (f) Include a finding addressing whether anyone in the chain of command or supervision knew or should have known of the alleged harassing behavior prior to the report, and whether the chain of command or supervision failed to properly address the behavior or follow the procedures in this Instruction; and
 - (g) Document the rationale for not taking disciplinary action where the convening authority substantiates an allegation and does not intend to take disciplinary action.
- (2) Convening authority actions after taking final action. Convening authorities:
- (a) Below the rank of O-6 will send the FAM and investigative report to the first O-6 or civilian supervisor of equivalent grade in the chain of command or chain of supervision, as appropriate. All other convening authorities will send the FAM and investigative report to the next superior in the chain of command;
 - (b) Shall provide a copy of the FAM, but not the investigative report, to the AHPO within ten (10) calendar days of finalizing the FAM;
 - (c) Should not delay forwarding the FAM to the AHPO even if action by the next superior in the chain of command is incomplete;
 - (d) Shall coordinate any appropriate release of the investigative report, after consulting with the servicing legal office;
 - (e) Shall, within five (5) calendar days of finalizing the FAM, cause the aggrieved party to be notified, either verbally or in writing, of the disposition of the investigation, and whether or not corrective action has been or will be taken. Such notification shall not include disclosure of the specific nature of any disciplinary or other action recommended against the offender;
 - (f) Shall, within five (5) calendar days of finalizing the FAM, cause the subject of the investigation to be notified of the disposition of the investigation. Documented accountability measures as described in section 18 of this Instruction suffice for such notice where the command substantiates the complaint. Where the

³ A finding of substantiated discriminatory harassment by the convening authority through the AHHI process is not a substitute for, nor does it affect, the EO/EEO process.

complaint is not substantiated, notice can either be provided verbally or in writing; and

- (g) Shall take appropriate measures to prevent retaliation or reprisal for any reported harassment or information provided during the investigation of alleged harassing behavior.
- e. Actions by the next superior in the chain of command or chain of supervision.
- (1) The superior must acknowledge receipt of the FAM and indicate that she or he has considered the report and final action. Acknowledgement should be in writing, and either memo or email is sufficient, but in either case the AHPO should be copied on the acknowledgement.
 - (2) The superior will consult with the servicing legal office if evidence provided directly by the IO or contained in the FAM or investigative report indicates that the convening authority knew or should have known of the alleged harassing behavior prior to the report, or failed to properly address the behavior, or failed to follow the procedures in this Instruction.
- f. Effect of CGIS involvement on command investigations. Convening authorities should work closely with their servicing legal office and CGIS when the convening authority suspects or becomes aware of conduct that may constitute criminal activity.
- (1) The convening authority's timeline for convening the investigation is tolled (suspended) until the earlier of the following:
 - (a) CGIS, or another law enforcement agency, determines it will not investigate; or
 - (b) Ten (10) calendar days have passed since such notification.
 - (2) If CGIS or another law enforcement agency informs the convening authority that it will investigate, the convening authority will defer convening the AHHI investigation until the convening authority obtains concurrence from the servicing legal office and CGIS to proceed. The convening authority should inform CGIS as soon as practicable where the convening authority receives notice that a local law enforcement agency intends to investigate an allegation.
 - (3) When CGIS investigates and provides the report of investigation to the convening authority, the convening authority will proceed with the command investigation and incorporate the CGIS report into the command's investigation as an exhibit, in coordination with CGIS and the servicing legal office. The time taken by CGIS to investigate will not be counted against the time requirements applicable to the command investigation.

17. APPEAL OF DETERMINATION IN HARASSING BEHAVIOR CASES. The subject of the complaint has the right to appeal the convening authority's determination to substantiate a finding of prohibited conduct covered by this Instruction. An appeal must be made in writing within the later of eight (8) calendar days of either receipt of the convening authority's decision or the discovery of new evidence.
- a. Appeal authority. The first flag officer or Senior Executive Service member (SES) in the chain of command senior to the convening authority shall be the appeal authority.
 - b. Basis for appeal. An appeal may be requested by the subject of the complaint only:
 - (1) Where the convening authority incorrectly applied policy or disregarded or inappropriately weighed facts; or
 - (2) Upon the discovery of new evidence, where that evidence:
 - (a) Was not discoverable during the investigation through no fault of the person proposing the evidence;
 - (b) Does not go beyond the issues investigated; and
 - (c) If considered, would substantially alter the original determination.
 - c. Actions of the appeal authority. The appeal authority must ensure that the convening authority adhered to all policies and directives and that the convening authority appropriately considered all of the available relevant facts. The appeal authority will notify the appealing subject of the outcome of the appeal. The appeal authority may:
 - (1) Direct the convening authority to reopen the investigation or the appeal authority may direct the convening authority or another officer to order a new investigation;
 - (2) Take appropriate corrective action with respect to the findings and, if necessary, corrective action consistent with the facts established in the investigation where there is clear and convincing evidence that the convening authority ignored facts or did not appropriately weigh the available relevant facts; or
 - (3) Concur with the investigation as conducted and concur with the subordinate commander's decision.
 - d. Existing remedies. Nothing in this Instruction affects an employee or member's rights to pursue independent avenues of relief or appeal as otherwise authorized in law or policy.

18. ACCOUNTABILITY FOR HARASSING BEHAVIOR. Commanders shall take appropriate action as described below, after substantiating harassing behavior or other misconduct.

- a. Purpose. This policy is intended to require documentation of harassing behavior and disciplinary or administrative action that is appropriate and proportionate to the severity of the misconduct, and that will prevent future harassing behavior. Convening authorities may consider, but are not bound by, remedial measures requested or preferred by the aggrieved. Corrective remedial actions should be consistent with disciplinary/corrective actions taken in similar incidents, with Coast Guard policy, and with respect to civilian employees, consistent with Reference (i). Convening authorities shall consult the Civil Rights Directorate and the AHPO to determine if the subject was previously implicated in a finding of discrimination or harassing behavior. Prior substantiated findings are relevant when assessing appropriate action. Regardless, all COs/OICs and supervisors have an affirmative duty to act promptly to stop and correct unacceptable behavior even if it does not rise to the level of prohibited harassing behavior.
- b. Accession points. Within 90 calendar days of the effective date of this Instruction, the Superintendent of the Coast Guard Academy and Commander, FORCECOM shall issue policies addressing consequences for cadets, new officer accessions, and enlisted recruits who engage in substantiated incidents of behavior covered by this Instruction. All other provisions of this policy otherwise apply, unless the AHPO approves a deviation.
- c. Types of actions available. Disciplinary actions include, but are not limited to, informal and formal counseling, comments in officer or enlisted performance evaluations, non-judicial punishment, administrative separation, court-martial, and civilian adverse personnel actions. The provisions below set forth the minimum action to document a substantiated AHHI complaint.

(1) Military members.

- (a) Documentation. Each instance of substantiated harassing behavior identified in this Instruction shall be, at a minimum, documented in a CG-3307 for military members. If a substantiated incident results in non-judicial punishment, the substantiated determination will not be documented in a CG-3307 in the subject member's record or performance evaluation until the NJP action is complete. For members who receive a documented harassing behavior incident in the first 18 months of service, such documentation may be removed from the member's personnel data record at the member's request when:
 - 1) The member requests removal of the documentation after serving four consecutive years after the incident with no further misconduct;
 - 2) The member receives a favorable command endorsement supporting removal of the CG-3307; and

- 3) The cognizant Personnel Service Center Division Chief (EPM, OPM, RPM) approves the removal.
- (b) Enlisted - administrative separation and reenlistment.
- 1) Separation processing for sexual harassment. An enlisted member who has a documented, substantiated instance of sexual harassment will be processed for involuntary administrative separation on the basis of misconduct, commission of a serious offense, or as otherwise described in Reference (j).
 - 2) Separation processing for other harassing behavior. A single substantiated incident of harassing behavior committed by an enlisted member provides the basis for initiating involuntary administrative separation on the basis of misconduct, commission of a serious offense, unless the convening authority concludes that a first incident was isolated or unintentional, and that the individual through their efforts at rehabilitation has clearly demonstrated that they will not engage in harassing conduct in the future. COs/OICs shall initiate involuntary administrative separation on the basis of misconduct, commission of a serious offense for any subsequent instance of documented substantiated harassment after the first documented incident of substantiated harassment.
 - 3) Reenlistment.
 - a. A member who has a documented, substantiated instance of sexual harassment is ineligible for reenlistment consistent with Chapter 1.E.2.e of Reference (k).
 - b. Notwithstanding Chapter 1.E.2.e of Reference (k), a single documented, substantiated instance of harassing behavior that is not sexual harassment does not make a member ineligible for reenlistment, but COs/OICs shall not recommend, and CG PSC-EPM or RPM will not approve, reenlistment or extension of service unless the incident was isolated or unintentional, and the individual through their efforts at rehabilitation has clearly demonstrated that they will not engage in harassing conduct in the future. CG PSC-EPM or RPM will not approve reenlistment or extension of service if a member has more than one documented, substantiated instance of harassing behavior, and one instance is in the current period of enlistment.
 - 4) Enlisted members being separated pursuant to these provisions are ineligible for the Second Chance Program.
- (c) Officers - administrative separation. Commands must notify CG-PSC-OPM/RPM of any officer found to have committed a substantiated incident of sexual harassment or harassment. Commander, Personnel Service Center shall initiate

separation processing for any substantiated incident of sexual harassment. CG-PSC-OPM or RPM shall also initiate separation processing for any substantiated incident of any other harassing behavior, unless the incident was isolated or unintentional, and the individual through their efforts at rehabilitation has clearly demonstrated that they will not engage in harassing conduct in the future. The command shall undertake rehabilitative efforts for an officer who is retained after separation processing. Officers in receipt of a second documented, substantiated incident under this Instruction shall be processed for separation in accordance with Reference (j). Sections 1.A.7, 1.A.8, 1.A.10, 1.A.19, or 1.A.20 of Reference (j) will apply, as appropriate.

- (2) Civilian employees. Civilian employees are subject to adverse personnel actions including, but not limited to, those outlined in Reference (i) when there is a determination that the employee has engaged in harassment or related misconduct, as prohibited by this policy. Accountability for civilians will be coordinated with Coast Guard Office of Civilian Workforce Relations (CG-124).

19. ACCOUNTABILITY OF THE CHAIN OF COMMAND/CHAIN OF SUPERVISION.

- a. The convening authority or the convening authority's immediate superior shall take appropriate corrective action after finding that a military or civilian supervisor in the chain of command or supervision:
- (1) Knew or reasonably should have known of the harassing behavior and failed to immediately and appropriately address it, or
 - (2) Failed to follow the procedures set forth in this Instruction.
- b. Corrective action for a finding in section 19.a.1 of this Instruction will, at a minimum, include documentation in the military supervisor's record or in accordance with Reference (i) for civilians. Documentation for a finding in section 19.a.2 of this Instruction may be appropriate in circumstances where the military or civilian supervisor knowingly failed to follow procedures. Documentation for enlisted members will be via CG-3307, and where appropriate, in the member's Enlisted Evaluation Report. Documentation for officers will be captured in the appropriate text field of the Officer Evaluation Report, with a corresponding numerical score in the relevant performance dimension(s). Documentation for civilians will be coordinated with Coast Guard Office of Civilian Workforce Relations (CG-124). Corrective action does not preclude further disciplinary action.

20. HATE INCIDENTS: CO/OIC AND SUPERVISOR RESPONSIBILITIES. Incidents of hatred and prejudice have no place in the Coast Guard and undermine good order, discipline, unit cohesion, and morale. These special procedures for reporting and resolving potential hate incidents exist because hate incidents may not be targeted at a particular individual, and thus, may not constitute harassing behavior. These procedures are intended to identify and stop hate incidents and to hold accountable persons who commit a hate incident on or with a

nexus to Coast Guard installations and in Coast Guard vessels, aircraft, vehicles, facilities, and workspaces. Contact the AHPO for guidance when a member or employee alleges a potential hate incident that occurs at a non-Coast Guard installation or facility.

- a. Hate incident defined. A hate incident is any intentional act (conduct or speech) of intolerance committed against a person, a group of individuals, or property which is motivated, in whole or in part, by the offender's bias against a race, color, religion, sex (including gender identity, sexual orientation, and pregnancy), age (40 and over), national origin, or disability, and which is intended, or is more likely than not, to have the effect of intimidating others or inciting others to similar conduct. Hate-based harassing behavior is a hate incident.
- b. Potential hate incidents.
 - (1) The creation, depiction, display, presentation, or transmission of a symbol (including photographs, images, or other printed or electronic material) widely identified with oppression or hatred, or that could reasonably be construed to encourage oppression or hatred, is a potential hate incident, irrespective of size, type, or how it is displayed or presented.
 - (2) The following is a non-exhaustive list of symbols whose display, presentation, creation, or depiction would constitute a potential hate incident: a noose, a swastika, supremacist symbols, Confederate symbols or flags, and anti-Semitic symbols. The display of these types of symbols constitutes a potential hate incident because hate-based groups have co-opted or adopted them as symbols of supremacy, racial or religious intolerance, or other bias. Symbols can be presented as images, on any type of material or clothing, as words or numbers, and in any combination. Other conduct or speech, including highly charged epithets, slurs, or other comments not involving a symbol, can also be a potential hate incident.
 - (3) Creating an exhaustive list of hate symbols is neither possible nor desirable, because supremacist and hate groups often add or change symbols and because new groups emerge. For more information about symbols of hate, and their potential meaning, commanders should consult resources such as the Anti-Defamation League's on-line Hate Symbols Database at <https://www.adl.org/hate-symbols>, the Department of Justice's Community Relations Service, and/or other expert sources.
 - (4) Some displays that in other contexts might be a hate incident, may exist for an unquestionably legitimate purpose and raise no concern that they are intended to convey hate or to intimidate. As such, displays of objects and symbols that are clearly and only historical Coast Guard artifacts, items connected with operations (e.g., objects, photos, or paintings displayed onboard units that reflect Coast Guard activities or operations), or state-sanctioned items (e.g., state-issued license plates), are not deemed potential hate incidents under this policy. Other displays require inquiry and possible removal if they otherwise meet the definition in this policy as a potential hate incident.

c. Hate incident complaints and initial notifications.

- (1) Any aggrieved party or witness to a perceived hate incident should immediately report it to a member higher in their chain of command or chain of responsibility. Commands and members should notify CGIS where commands and members suspect that the incident constitutes a serious criminal offense in accordance with Reference (g).
- (2) The first convening authority in receipt of a report of a perceived hate incident must report the incident to the next level in the chain of command/supervision and the AHPO within 48 hours of learning of it. The AHPO will notify the Civil Rights Directorate.
- (3) The Civil Rights Service Provider (CRSP) should inform the complainant of the right to report it to their CO/OIC, supervisor, or the AHPO, where a CRSP receives notification or becomes aware of a potential hate incident that may have occurred but has not been otherwise reported. The CRSP will report anonymous complaints directly to the command.
- (4) The AHPO will coordinate additional notifications, provide technical guidance to commands, and monitor compliance with the process.

d. Convening authority responsibilities.

- (1) Once a convening authority identifies a potential hate incident, she or he must conduct an initial assessment to conclude whether a hate incident may have occurred. The convening authority's assessment may be informal and brief. The convening authority shall decide whether there is sufficient evidence that clearly indicates no hate incident occurred, or otherwise open a standard investigation into the suspected hate incident. If, after consulting with the servicing legal office, the convening authority concludes that no hate incident occurred and further investigation is unnecessary, she or he will report that conclusion and the rationale in writing to the next level in the chain of command and to the AHPO. Notification may be made either through e-mail or through official correspondence, with a copy to the servicing legal office. The convening authority has the alternative option to conduct a preliminary inquiry in accordance with Chapter 1.F.4 of Reference (h) or immediately convene a standard investigation in accordance with Chapter 4 of Reference (h), to determine whether a hate incident has occurred.
- (2) Convening authorities shall report the incident to the first flag officer/SES in the chain of command and to the AHPO within 48 hours of learning of the incident. This 48-hour report shall be in writing but may be made either through e-mail or through official correspondence, with a copy to the servicing legal office(s). This communication should include a sufficient description of the incident, results of the

initial assessment, if available, and may include photographs or other illustrative documentation (*see* Appendix D).

- (3) The convening authority's initial assessment can continue after the 48-hour report. The convening authority shall, however, initiate a standard investigation within ten (10) calendar days of the initial report of the incident, or refer the incident to CGIS, as appropriate, unless the convening authority, after conducting the initial assessment, decides that there is sufficient evidence that clearly indicates no hate incident occurred, and reports that result, as described above.
- (4) The procedures and guidance in section 16 of this Instruction govern investigations convened in this section. Additionally:
 - (a) Convening authorities shall note in the convening order that the purpose of the investigation is to document whether a hate incident occurred and whether a civilian or military member committed hate-based harassing behavior.
 - (b) The IO should conclude the administrative investigation within ten (10) calendar days once it is convened because of the inherently disruptive nature to the unit posed by hate incidents. Only the first flag officer/SES in the chain of command may authorize extensions.
 - (c) The investigator shall forward the completed investigation to the servicing legal office for review, prior to the investigation's submission to the convening authority. The servicing legal office will typically provide review and clearance of the investigation within five (5) calendar days of receipt and will then return the cleared investigation to the investigator, so the investigator can transmit it to the convening authority. Time in legal review is added to the ten (10) calendar days required for submission.
 - (d) The CRSP, AHPO, and next level of the chain of command or chain of supervision will receive a copy of hate incident FAMs.
- (5) Context and intent are critical to a convening authority's determination that a hate incident has occurred.
 - (a) Context includes, among other considerations, the type of symbol and how it is displayed; other symbols and wording displayed with the symbol; whether a symbol is displayed in a public way or in workspaces where its view is unavoidable by others; and the duration of a display.
 - (b) Intent and motivation can be shown by words or conduct. There may be evidence of express intent, or intent can be inferred from surrounding circumstances as well as from the context of a symbol's display.

- (c) While the decision of whether a hate incident occurred and what action may be appropriate resides with the convening authority, the convening authority shall consult with the servicing legal office before making a final determination. In instances where CGIS does not conduct the investigation, Reference (h) allows the convening authority to set the scope and scale of a preliminary inquiry or standard investigation.
 - (6) Convening authorities should consult with their servicing legal office and Reference (f) after determining that a military member committed a hate incident, because the evidence may reflect extremist activities that are punitive under the UCMJ. Further, convening authorities shall commence or continue an investigation consistent with this manual, where the convening authority concludes that there has been no hate incident or hate-based harassing behavior, but still has reason to believe that the civilian or military member(s) may have engaged in other harassing behavior or extremist activities (*see* Reference (f)) or that such members have demonstrated a pattern of intolerance, prejudice, hate, or bias.
 - (7) COs/OICs and supervisors must also take appropriate action in situations where the conduct or speech does not constitute or meet the definition of a hate incident, but nevertheless could adversely affect good order and discipline, unit cohesion, command climate, morale, or mission effectiveness.
 - (8) COs/OICs and supervisors should take every opportunity to educate and remind civilian and military members that although they themselves may not intend a symbol to be offensive, that others may see it as such. COs/OICs and supervisors should consistently encourage actions consistent with the Coast Guard's core values.
 - (9) This Instruction can neither anticipate nor describe what combination of symbols, words, actions, and/or circumstances constitutes a hate incident. Convening authorities must examine reference material, carefully consider First Amendment protections, consult with the servicing legal office, and exercise judgment in making determinations on a case-by-case basis.
- e. Display and removal of hate symbols or divisive symbols.
- (1) COs/OICs and supervisors will order or direct, as appropriate, the removal of hate symbols or divisive symbols where, after consultation with their servicing legal office, the CO or supervisor determines that the display or depiction of the symbol adversely affects good order and discipline, unit cohesion, command climate, morale, or mission effectiveness.
 - (2) Convening authorities will investigate the display of any hate symbol or divisive symbol as a potential hate incident. The Anti-Defamation League maintains a database of the symbols most frequently used by hate groups at <https://www.adl.org/hate-symbols>.

- (3) Display or depiction of the Confederate battle flag is prohibited in all Coast Guard work places, common access areas, public areas, and operating facilities. This includes barracks and other quarters where the flag is readily visible, and the exterior of Coast Guard housing. This prohibition includes automobile bumper stickers and other vehicle adornments, clothing and other apparel, and when the flag is displayed inside a vehicle in plain view and readily visible to the public.
- (4) Prohibited display and depiction of the Confederate battle flag does not include private spaces, such as inside family housing, within personal property, or, except as described above, private automobiles. The prohibition does not apply to state flags or state-issued license plates. It does not apply to displays or depictions where the Confederate battle flag is only an incidental or minor component, such as in works of art, or in educational or historical displays.
- (5) COs/OICs and supervisors will order or direct, as appropriate, the removal of the Confederate battle flag from the locations to which the prohibition applies.
21. FORMS/REPORTS. The forms referenced in this Instruction are available on the Coast Guard Standard Workstation or on the Internet: www.dcms.uscg.mil/Our-Organization/Assistant-Commandant-for-C4IT-CG-6/The-Office-of-Information-Management-CG-61/Forms-Management/.
22. SECTION 508. This Instruction was created to adhere to Accessibility guidelines and standards as promulgated by the U.S. Access Board. If changes are needed, please communicate with the Coast Guard Section 508 Program Management Office at Section.508@uscg.mil.
23. REQUEST FOR CHANGES. The Deputy Commandant for Mission Support, Deputy for Personnel Readiness will coordinate the promulgation of time-sensitive amendments when needed. Recommendations for improvement or corrections should be submitted directly to Commandant (CG-62).

/L. L. FAGAN/
Admiral, U. S. Coast Guard
Commandant

Appendix A. Glossary of Relevant Terms
Appendix B. Processes and Timelines
Appendix C. Acknowledgement Memorandum Sample
Appendix D. Potential Hate Incident – 48 Hour Report Template
Appendix E. Investigation Convening Order – Alleged Harassing Behavior
Appendix F. Investigation Convening Order – Suspected Hate Incident
Appendix G. Final Action Memo – Report of Prohibited Harassment or Hate

Appendix A – Glossary of Relevant Terms

To ensure uniform understanding of terms that have significance and meaning relative to this policy, the following definitions are provided for terms not defined elsewhere in this Instruction.

Allegation. A claim or assertion that a person subject to this policy has committed an act in violation of this policy.

Civilian Employee. As defined in 5 U.S.C. § 2105.

Clear and Convincing. A standard of proof greater than the preponderance of the evidence standard commonly used in non-judicial punishment proceedings or to prove civil liability, but less than the beyond a reasonable doubt standard used to prove criminal culpability.

Climate Survey or Assessment. An assessment based on information about the positive and negative factors that may have an impact on unit effectiveness and readiness. The survey or assessment focuses on issues of organization effectiveness, equal opportunity / equal employment opportunity, and sexual harassment prevention and response. This is typically accomplished through some or all of group or individual interviews, observations, questionnaires, and reviews of other pertinent records or reports.

Complainant. A person who makes a claim or assertion that a person subject to this policy has committed an act in violation of this policy. A complainant may be a person other than the recipient of the prohibited conduct.

Convening Authority. A person who is authorized to appoint an investigating officer to conduct an investigation, as defined in this manual.

Investigation. An examination into allegations of wrongdoing or misconduct.

Legal Sufficiency Review (including review standard). A review by the servicing legal office of an investigation into an allegation to determine whether any errors or irregularities exist, and to determine whether:

- The investigation complies with all applicable legal and administrative requirements;
- The investigation adequately addresses the matters complained of; and
- The evidence supports the findings and opinions regarding facts of the investigating officer.

Protected Activities. Protected activities for which retaliation or reprisal is prohibited include:

- Reporting harassing conduct, discrimination, or retaliation;
- Filing a complaint of harassment;
- Engaging in EO/EEO activity, whether as an aggrieved person or witness;
- Providing evidence in any investigation or administrative or judicial proceeding;
- Intervening to assist or protect others who may have suffered harassing conduct, discrimination, or retaliation;

- Refusing to follow orders to engage in conduct that constitutes or results in discrimination, or otherwise opposing any practice made unlawful under the employment discrimination statutes;
- Making a request for a reasonable accommodation based on disability or religion;
- Making communications protected by whistleblower laws applicable to civilian employees and military members including protected communications to Congress, the Inspector General, and the Office of Special Counsel;⁴ or
- Reporting a sexual assault or any other criminal offense.

Protected Status. Protected status includes race, color, national origin, religion, sex (including gender identity, sexual orientation, and pregnancy), age, disability, genetic information, marital status, parental status, political affiliation, engagement in a protected Equal Opportunity/Equal Employment Opportunity (EO/EEO) activity, whistleblower activity, or any other basis protected by law and policy.

Recipient or Aggrieved. A person alleging having been subjected to the prohibited conduct defined in this policy.

Substantiate/Substantiation. A determination by a commander, commanding officer, or officer-in-charge, that a preponderance of the evidence supports the truth of an aggrieved party's or the complainant's allegation.

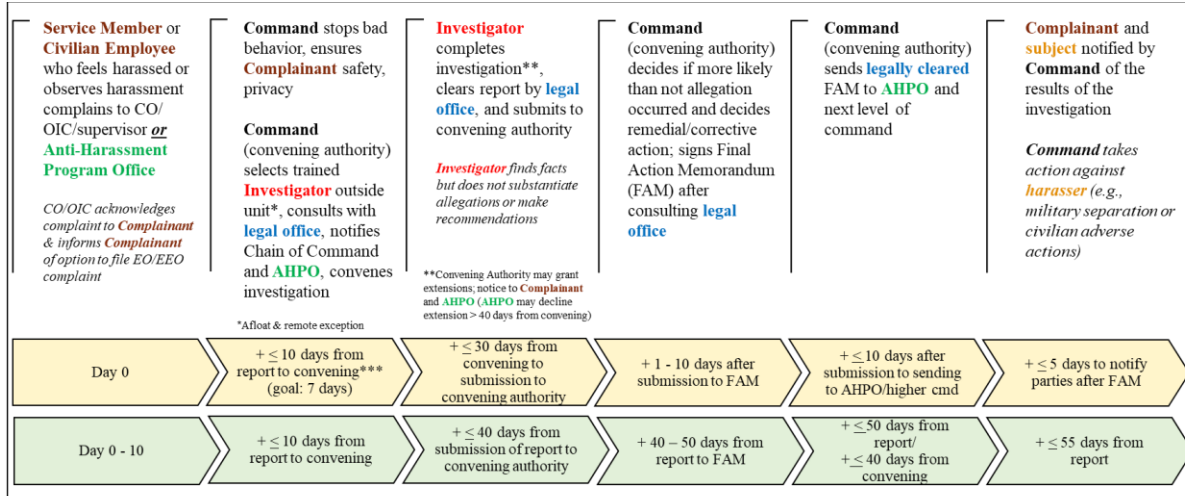
Unwelcome. Conduct that is not solicited and which is considered objectionable by the person to whom it is directed, and which is found to be undesirable or offensive using a reasonable person standard.

Workplace / Work Environment. The workplace or any other place that is work-connected, as well as the conditions or atmosphere under which people are required to work.

⁴ See section 13.e of this Instruction for more information.

Appendix B – Processes and Timelines

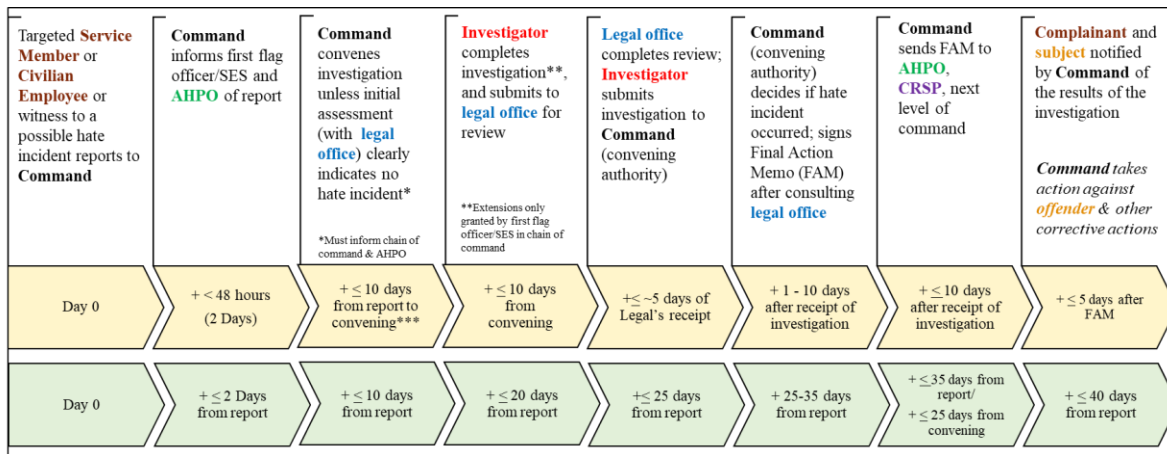
Harassment Investigation Process & Timeline



*** When CGIS notified, timeline extended for up to 10 days while CGIS decides whether to investigate

What’s harassing behavior? Harassment (unwelcome conduct with purpose or effect of unreasonably interfering with work or creating an intimidating, offensive, or hostile environment), sexual harassment (conduct is a condition of employment, may affect employment, unreasonably interferes with work, or creates an intimidating, offensive, or hostile environment), hazing, bullying, and/or retaliation/reprisal

Hate Incident Investigation Process & Timeline



***This timeline is suspended until the earlier of CGIS declination or 10 days, where a commander engages with CGIS to see whether CGIS wishes to investigate.

The Hate Incident Investigation Process quickly identifies & remedies hate incidents because of their unit impact; procedural requirements are additional to Harassment Investigation Process that applies when somebody is targeted

What’s a hate incident? Intentional act of intolerance committed against a person, a group, or property motivated by bias and intended, or is more likely than not, to have effect of intimidating or inciting others

Enclosures: (1) File 1
(2) File 2

Dist:

Appendix D – Potential Hate Incident – 48 Hour Report Template

Using the most current memo format:

From: Name of CO/OIC
CG Unit Name

Reply to
Attn of:

To: [first flag officer/SES in the chain of command]
Thru: Chain of Command

Subj: POTENTIAL HATE INCIDENT – 48 HOUR REPORT

1. Date, time and location of the incident. What day did the incident occur? What time? Where did the incident occur? Were there multiple or repeated incidents? Who were the parties involved? How was the incident brought to the Command's attention?
2. Status information and description of the incident. Specify the legally protected status on which the report is based. (*i.e. race, color, religion, sexual harassment, gender based, national origin, disability, age, or sexual orientation*) Also, provide any relevant information about the incident not already stated above. This report should be filed within 48 hours of the complaint and should not be delayed for additional investigation. Units are not required to complete extensive investigation prior to reporting and are encouraged to follow up as more information becomes available.
3. Action taken by command to investigate and secure evidence. Identify immediate and future command actions. If there is any evidence to support a claim it should be included with this or follow up reports. Evidence can include photographs, emails, etc.
4. Does this incident represent a local hate or bias motivated incident trend?
5. Is there media or Congressional interest? Is there media attention at the national or local level? Has the unit been contacted by any reporters or congressional staff?

NOTE: The CRSP will receive a copy of Final Action Memoranda for an investigations conducted into hate incidents.

Units are encouraged to email this report as soon as possible. If email is not available, the report may be sent via phone, fax or other means as operations permit. The report should not be delayed to collect additional evidence or conduct further investigation.

#

Enclosure: Photos or other attachments

Copy: AHPO
File

Appendix E – Investigation Convening Order – Alleged Harassing Behavior

Using the most current memo format:

From: Name of convening authority
CG Unit Name

Reply to Title
Attn of: Name
(123) 456-7890

To: Name, Rank
[Investigating Officer]

Subj: INVESTIGATION INTO ALLEGED HARASSING BEHAVIOR

Ref: (a) Administrative Investigations Manual, COMDTINST M5830.1 (series)
(b) Harassing Behavior Prevention, Response, and Accountability, COMDTINST #####
(series)
(c) Military Justice Manual, COMDTINST M5810.1 (series)

1. You shall conduct a single-officer, standard investigation in accordance with Chapter 4 of Reference (a) and paragraph 16.c of Reference (b), into all the circumstances surrounding . . . made by . . . pertaining to . . . on [Date] at [Location]. [Name(s)] reportedly witnessed the event. The purpose of this investigation is to document whether a civilian or military member engaged in harassing behavior. You are neither required nor authorized to conduct a hearing, and you shall submit an investigative report in standard investigation format per Chapter 4.F and exhibit 5-A of Reference (a). Your report shall not include an opinion substantiating or unsubstantiating the claim or recommendations, *see* paragraphs 16.b.5 and 16.c.4 of Reference (b). If your report includes exhibits, you shall electronically scan all exhibits and submit these exhibits with the final investigation report.

2. You shall consult with legal counsel before beginning the investigation and during it if you need assistance. Your legal counsel is [Name][Office], who you may contact [e-mail address] or [(123) 456-7890]. You shall also provide a preliminary copy of the investigation to your legal counsel for review before submitting it to me and consider this requirement in meeting the deadlines I describe below.

3. Consult with your legal counsel to determine whether to obtain written statements, sworn statements, or both from witnesses and the nature of any advice or warnings you must provide, including Rights Advisements described in Chapter 4.E.4 of Reference (a) and Chapter 2.G of Reference (c). You shall also comply with the Privacy Act of 1974 during the investigation, *see* Chapters 1.H, 10.H, and Exhibit 4-C of Reference (a).

4. You shall at all times respect the confidentiality of the complainant(s), the individual(s) accused of harassing behavior, and all witnesses. While it may be impossible not to share the name of the complainant with witnesses during the course of your investigation, you shall ensure that information regarding the allegations is limited to only those with a need to know. You shall arrange to conduct interviews in a location that protects the confidentiality of the witnesses. At the conclusion of each interview, you shall instruct the witness not to further discuss the matter

with any person except yourself in your capacity as investigating officer and the assigned legal counsel, until the conclusion of the investigative process.

5. [If investigation involves an alleged civilian offender] You must consult with the Coast Guard Headquarters Office of Workforce Labor Relations (CG-124) prior to commencing the investigation and/or interviewing an alleged civilian employee offender. Your Labor Relations POC is [name and contact information]. You may also contact [legal counsel] if you have questions related to civilian personnel matters. You are reminded that all civilian employees within a bargaining unit are entitled to union representation during an investigatory meeting.
6. If, at any time during the course of your investigation, you discover that you have personal or professional associations with the complainant or alleged offender such that a reasonable member of the public, with knowledge of all the facts and circumstances, would question your impartiality, you shall immediately notify me in writing, after first notifying your legal counsel. After notification to me, you shall cease conducting witness interviews or otherwise working on the investigation until you receive further direction from me.
7. Contact your legal advisor if you discover additional allegations during your investigation. Your legal advisor will then contact me to amend the convening order, as appropriate.
8. You should initiate the investigation no later than [Date], or as soon thereafter as practicable. Submit the investigation to me by [Date] after legal review. If you are unable to complete this investigation by [Date], you shall state the reasons to me and include an explanation of the delay in the first paragraph of the report.
9. You may contact me, in writing, with unresolved issues or recommendations that you may have after first discussing them with your legal advisor.

#

Copy: [Servicing Legal Office]
[AHPO

Appendix F – Investigation Convening Order – Suspected Hate Incident

Using the most current memo format:

From: Name of convening authority
CG Unit Name

Reply to Title
Attn of: Name
(123) 456-7890

To: Name, Rank
[Investigating Officer]

Subj: INVESTIGATION INTO SUSPECTED HATE INCIDENT

Ref: (a) Administrative Investigations Manual, COMDTINST M5830.1 (series)
(b) Harassing Behavior Prevention, Response, and Accountability, COMDTINST #####
(series)
(c) Military Justice Manual, COMDTINST M5810.1 (series)

1. You shall conduct a standard investigation in accordance with Chapter 4 of Reference (a) and paragraphs 16.c and 20 of Reference (b), into all the circumstances surrounding . . . made by . . . pertaining to . . . on [Date] at [Location]. [Name(s)] reportedly witnessed the event. The purpose of this investigation is to document whether a hate incident occurred and whether a civilian or military member committed hate-based harassing behavior. You are neither required nor authorized to conduct a hearing, and you shall submit an investigative report in standard investigation format per Chapter 4.F and exhibit 5-A of Reference (a). Your report shall not include an opinion substantiating or unsubstantiating the claim or recommendations, *see* paragraphs 16.b.5, 16.c.4, and 20.d.4 of Reference (b). If your report includes exhibits, you shall electronically scan all exhibits and submit these exhibits with the final investigation report.

2. You shall consult with legal counsel before beginning the investigation and during it if you need assistance. Your legal counsel is [Name][Office], who you may contact [e-mail address] or [(123) 456-7890]. You shall also provide a preliminary copy of the investigation to your legal counsel for review before submitting it to me and consider this requirement in meeting the deadlines I describe below.

3. Consult your legal counsel to determine whether to obtain written statements, sworn statements, or both from witnesses and the nature of any advice or warnings you must provide, including Rights Advisements described in Chapter 4.E.4 of Reference (a) and Chapter 2.G of Reference (c). You shall also comply with the Privacy Act of 1974 during the investigation, *see* Chapters 1.H, 10.H, and Exhibit 4-C of Reference (a).

4. You shall at all times respect the confidentiality of the complainant(s), the individual(s) accused of harassing behavior, and all witnesses. While it may be impossible not to share the name of the complainant with witnesses during the course of your investigation, you shall ensure that information regarding the allegations is limited to only those with a need to know. You shall arrange to conduct interviews in a location that protects the confidentiality of the witnesses. At the conclusion of each interview, you shall instruct the witness not to further discuss the matter

with any person except yourself in your capacity as investigating officer and the assigned legal counsel, until the conclusion of the investigative process.

5. [If investigation involves an alleged civilian offender] You must consult with the Coast Guard Headquarters Office of Workforce Labor Relations (CG-124) prior to commencing the investigation and/or interviewing an alleged civilian employee offender. Your Labor Relations POC is [name and contact information]. You may also contact [legal counsel] if you have questions related to civilian personnel matters. You are reminded that all civilian employees within a bargaining unit are entitled to union representation during an investigatory meeting.

6. If, at any time during the course of your investigation, you discover that you have personal or professional associations with the complainant or alleged offender such that a reasonable member of the public, with knowledge of all the facts and circumstances, would question your impartiality, you shall immediately notify me in writing, after first notifying your legal counsel. After notification to me, you shall cease conducting witness interviews or otherwise working on the investigation until you receive further direction from me.

7. Contact your legal advisor if you discover additional allegations during your investigation. Your legal advisor will then contact me to amend the convening order, as appropriate.

8. You should initiate the investigation no later than [Date], or as soon thereafter as practicable. Submit the investigation to me by [Date] after legal review. If you are unable to complete this investigation by [Date], you shall state the reasons to me and include an explanation of the delay in the first paragraph of the report.

9. You may contact me, in writing, with unresolved issues or recommendations that you may have after first discussing them with your legal advisor.

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Copy: [Servicing Legal Office]
[AHPO]
[CRSP]

Appendix G – Final Action Memo - Report of Prohibited Harassment or Hate

Using the most current memo format:

From: [Convening authority]
[Unit]

To: [First Flag or SES in Chain of Command]
[If convening authority is below O-6, send to first O-6 in chain of command]

Subj: FINAL ACTION MEMO REGARDING REPORT OF [PROHIBITED
HARASSMENT OR HATE]

Ref: (a) Harassing Behavior, Prevention, Response, and Accountability, COMDTINST M[XXXX.XX](series)
(b) Administrative Investigations Manual, COMDTINST M5830.1 (series)
(c) Commandant's [Year] Equal Opportunity Policy Statement
(d) Commandant's [Year] Anti-Discrimination/Anti-Harassment Policy Statement

1. Preliminary data: On [date], [insert person] made a report of harassing behavior to [insert person or office] on or about [date]. I directed a standard investigation on [said date]. The investigator was [insert name] and was selected pursuant to Reference (a). [Indicate if CGIS or another law enforcement agency was involved]. This investigation is appended at Enclosure (1).

2. [For harassing behaviors] I have determined, based on a preponderance of the evidence, that the allegations of harassing behavior are [substantiated or unsubstantiated], after review of Reference (a), enclosure (1), and after consultation with counsel, [insert rank and name]. The nature of the substantiated harassing behavior is [(pick all that apply), harassment, discriminatory harassment, sexual harassment, hate-based harassment, retaliation or reprisal, bullying or hazing.].

3. [For hate incidents] I have determined, based on a preponderance of the evidence, that the substantiated incident(s) also constitute(s) (a) hate incident(s). [Alternative: This investigation was convened to also determine whether a hate incident occurred. I have determined that the substantiated incident(s) (was) (were) not (a) hate incident(s).

4. Summary of pertinent facts: I have provided a summary of pertinent facts from the investigation pursuant to References (a) and (b).

a. *[Guidance in italics] Summarize pertinent facts in the determination. Include facts that help prove and disprove the complaint. In other words, summarize facts that relate directly and would be significant to the matter at hand. Per Reference (b), “[p]ertinent facts should be summarized in a “stand-alone” document. The Final Action Authority may “make additional findings of fact warranted by the evidence contained in the investigation.” See Article 6.E of Reference (b).*

b. *For further guidance as to summarizing facts, see Article 6.E of Reference (b).*

5. Opinions/Analysis:

a. I find that [insert alleged perpetrator] did [or did not] engage in harassing behavior [or a hate incident]. [If applicable,] The nature of the harassing behavior was [insert nature of behavior and specify if it involved protected status]. *Concisely articulate evidence and reason for findings. See Article 6.E of Reference (b) for guidance on how the FAM would provide opinions. In general, include an opinion addressing each allegation and perpetrator.*

b. [Name] is [complainant's supervisor] or [in complainant's chain of command]. I find that [name] knew or should have known of the alleged harassing behavior prior to the report. *Or* I [find] that [no one] in the chain of command knew or should have known of the alleged harassing behavior prior to the report] [Insert reasoning as appropriate].

c. I find that [name] failed to properly address the behavior or failed to follow the procedures in this Instruction *Or* I find that [no one] failed to properly address the behavior or failed to follow the procedures in this Instruction [Insert reasoning as appropriate].

6. Actions: I am taking the following actions [or taking no action]: *Direct action, monitoring, or execution by persons in your chain of command. See Article 6.E of Reference (b) for guidance. Consider providing an intent to pursue disciplinary action against an individual, any intent to counsel formally or informally, etc. Also consider any measures to prevent reoccurrence of the complained about behavior by the alleged perpetrator or others at the unit. If the convening authority substantiates an allegation and does not intend to take disciplinary action, provide the rationale.*

a. [Use bulleted list as necessary].

b.

7. I reiterate that all Coast Guard personnel shall be treated with respect. References (c) and (d) reinforce the Coast Guard's commitment to the core values of Honor, Respect, and Devotion to Duty. I am personally committed to maintaining a work environment that does not compromise those core values or any other Coast Guard policy.

8. I will cause the aggrieved to be notified, either verbally in writing, of the investigation's disposition and whether corrective action has been or will be taken.

9. I respectfully request your signature and date below to acknowledge receipt. Please return the signed copy to me for my records.

(Signature)

(Date)

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Copy: AHPO (omitting investigative report at Enclosure (1))
CRSP [Insert CRSP Region Number] (*Only for Hate Incident FAMs*)
[Insert Servicing Legal Office]