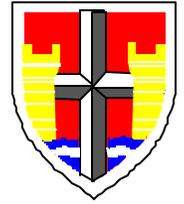




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PR-HRO-EEO

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Standard Operating Procedures (SOP) For Federal Employees Complaints Processing

This Standard Operating Procedure (SOP) establishes the technician complaints processing system within the Puerto Rico Army & Air National Guard. It applies to all personnel within their specific command.

1. **References:**

- a. NGR (AR) 690-600 / NGR (AF) 40-1614, National Guard Civilian Discrimination Complaint System.
- b. National Guard Bureau Investigators Procedural Manual.
- c. TAG policy letter on Equal Employment Opportunity.
- d. TAG policy letter on Sexual Harassment Prevention.

2. **Purpose:** The purpose of this operating procedures is to provide a standard policy and procedures for the administration of the civilian complaints system.

3. **Policy:** The basic policy for processing civilian (technician) equal employment complaints is contained in NGR (AR) 690-600/NGR (AF) 40-1614 and the Adjutant General's policy letters dated 19 October 2002 on Sexual Harassment Prevention and 20 October 2002 on Equal Employment Opportunity. While the complaints system is designed to respond to officially filed complaints, supervisors should correct inappropriate behavior in the workplace in an effort to maintain a healthy work environment. During the informal stage, even if a fact finding is held by an EEO Counselor, the agency, from the lowest level should try to get to a conflict resolution .

4. **Applicability:** This SOP applies to Puerto Rico Army & Air National Guard civilian (technician) personnel.

5. **Terminology:**

- a. Allegation: An assertion by a complainant that an act or personnel action has been discriminatory.

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b. Basis: A reason, claimed by a complainant, for a discriminatory action; specifically, race, color, religion, gender (to include sexual harassment), national origin, or retaliation.

c. Issue: A brief and clear statement of the act or personnel action that the complainant believes was discriminatory.

d. Formal Complaint: A written complaint filed under the regulation NGR (AR) 690/600/NGR (AF) 40-1614, using NGB Form 713-5-R, that alleges illegal discrimination. A formal complaint of discrimination may only be filed after completion of pre-complaint processing.

e. Informal Complaint: A complaint of alleging illegal discrimination expressed orally or in writing. Complainants must first present an informal complaint within 45 calendar days of the alleged discrimination.

f. Case number: A number assigned when a formal complaint is filed or when allegations of discrimination received by NGB are referred to the State National Guard. It is used by the State National Guard, NGB for statistical and identification purposes.

g. Civilian (Technician) Discrimination Complaint System: A compilation of policies, procedures, and responsibilities to ensure a just and effective avenue of redress for complainants and for the resolution, processing, management, and adjudication of discrimination complaints.

h. Complainant: An aggrieved technician, former technician, or applicant for technician employment who alleges that he or she has been discriminated against by reason of race, color, religion, gender (including sexual harassment), national origin, or retaliation under the provision of Regulation NGR (AR) 690-600 / NGR (AF) 40-1614, for past EEO activity, or involvement in protected EEO Complaint activity.

i. Complaint: One or more issues containing claims of discrimination. A formal complaint is in writing.

j. Conclusion: Based on the Report of Investigation (ROI). A clear and concise statement of fact that can be readily deduced from an analysis of the evidence and the record of the case.

k. Discrimination: Any act or failure to act, impermissibly based solely or in part on a person's race, color, religion, gender (including sexual harassment), or national origin, that adversely affects privileges, benefits, or working conditions or results in disparate treatment.

l. Dispute resolution process: A structured process, including mediation, authorized by the National Guard Bureau, to promote early resolution of discrimination complaints.

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m. EEO Counselor: (Collateral duty) A person appointed to assist and advise complainants, make inquiries into discrimination complaints brought to their attention, and to seek resolution of complaints. Counselors report their counseling activities to the SEEM.

n. Equal Employment Opportunity Commission (EEOC): The Federal agency vested with the responsibility for administration and enforcement of equal opportunity in Federal employment, to include responsibility for issuing policy and regulations on the discrimination complaint system established by Federal Agencies. EEOC also renders decisions on discrimination complaint appeals.

o. Final decision: A decision on the merits of a discrimination complaint filed under the NGR (AR) 690-600/NGB (AF) 40-1614 regulation, issued in the name of the Chief, NGB, the Director, EEO, or the Chief NGB NGB-EO.

p. Inquiry: An informal fact-finding process used in the pre-complaint processing stage to obtain sufficient information to resolve an informal complaint. It may involve the review of records and directives, examination of material evidence, and interview of persons who may have direct knowledge of the facts.

q. Investigation: A duly authorized, systematic, detailed examination to uncover facts and determine the truth. It is a formal process which must produce sufficient detail to support a finding of discrimination or no discrimination. Investigations of allegations of discrimination are conducted under the authority of this regulation. They are conducted in accordance with the provisions of the NGB Investigators Procedural Manual, chapter 5 of this regulation, 29 CFR 1614, and EEOC Management Directives.

r. Mediation: Is a method of the National Guard, Alternative Dispute Resolution (ADR) process. It is a process of reconciling the differences between the complainant and management official (s) by the use of a neutral third party. The objective of this intervention is to assist the parties to voluntarily reach a mutually acceptable resolution of issues in dispute.

s. Negotiated grievance procedure: A grievance procedure contained in a collective bargaining agreement negotiated between an activity and a recognized labor organization. Unless otherwise excluded by such a grievance procedure, an allegation of discrimination may be processed under the Labor Relation Office or under the EEO Office, but not both.

t. Official discrimination complaint case file: A management document containing all correspondence and other documentation relating to a formal complaint and used to make recommendations and decisions regarding the complaint.

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u. Pre-complaint processing: It begins when the claims which gave rise to the complaint are brought to the attention of an EEO counselor or the SEEM. It ends with resolution or filing of a formal complaint.

v. Preponderance of evidence: The standard of proof used in discrimination complaint cases. This standard requires that the findings and conclusions be supported by greater evidence than contrary findings in conclusion. That is, considering all evidence, it is more likely than not that discrimination did or did not take place. This is a lesser standard than “substantial credible evidence”, “clear and convincing evidence”, or “beyond a reasonable doubt”.

w. Recommendation (based on the ROI): An investigator’s proposal to the appointing authority for actions or remedies based on the facts and evidence gathered in the investigation.

x. Remedial action: Upon a finding of discrimination, a complainant is entitled to remedial action which makes him/her whole unless the evidence of record establishes by clear and convincing evidence that the action complained of would have occurred even absent the discrimination identified. This includes, as appropriate, retroactive appointment or promotion, back pay, attorney’s fees, cancellation of an unwarranted personnel action, or expunction from the State National Guard and NGB records of an unwarranted personnel action. Remedial action may also be taken in the settlement of a complaint without a finding of discrimination.

y. Remedy: Redress available under the law to a victim of illegal discrimination. See also remedial action.

z. Retaliation: Discrimination based on a person’s prior EEO activity, including opposing any practice made unlawful by the applicable statutes, or participating in any stage of administrative or judicial proceeding under the statutes 29 C.F.R. 1614.

aa. Resolution (of a complaint): A voluntary, written agreement between the complainant and a representative of the State National Guard which results in the settlement of the complaint to the satisfaction of both parties and terminates the administrative processing of the complaint.

bb. Sexual Harassment: Sexual Harassment is a form of gender discrimination that involves unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when:

1. Submission to or rejection of such conduct is made either explicitly or implicitly a term or condition of a person’s job, pay, or career; or

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2. Submission to or rejection of such conduct by a person is used as a basis for career or employment decisions affecting that person; or

3. Such conduct interferes with an individual's performance or creates an intimidating, hostile, or offensive environment. Any person in a supervisory or command position who uses or condones implicit or explicit 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 is also engaging in sexual harassment.

cc. Withdrawal (of the complaint): A voluntary, written, signed and dated statement by the complainant indicating an unconditional willingness to stop further processing and pursuit of the complaint.

6. Responsibilities:

a. State Adjutant General (AG): Administers the EEO program, implements and manages the Civilian (technician) Discrimination Complaint System ensuring that the work atmosphere is free from illegal discrimination and does not discourage personnel from participating in the complaint process due to fear of retaliation. Policies and requirements of this regulation are followed and procedures are established for expeditious processing of discrimination complaints and adherence to the established time limits. Complaints are accepted or dismissed accordingly. Attempts to resolve complaints early and expeditiously. Full relief is provided, in accordance with 29 CFR 1614 and NGR (AR) 690-600 / NGR (AF) 40-1614 to make the victim whole. Information on how to file complaints and on time limits for filing is regularly publicized and permanently posted on bulletin boards with easy access to all technicians.

b. Human Resources Officer (HRO): Is responsible to ensure the Civilian Complaint Discrimination System of the National Guard is in compliance with the rules and regulations governing the complaint processing by all parties. Provides assistance throughout the complaint processing by ensuring and providing access to personnel records and documents as well as maintain records relative to the complaint to the SEEM, EEO Counselor, Investigators, Judge Advocate personnel and other parties legally entitled to review and retrieve relevant data. Ensures actions related to the EEO Complaint process are accomplished in a timely manner.

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c. State Equal Employment Manager (SEEM): Manages the Civilian Discrimination Complaint System on behalf of the Adjutant General. Ensures that complaints are processed in accordance with the provisions and regulations provided. Provides advice and recommendations to the Human Resources Officer and Adjutant General on all aspects of discrimination complaints to include the acceptance/dismissal decisions, settlements/resolutions to complaint and to coordinate legal aspects of complaint claim with the State JA. Provides EEO training to National Guard personnel and counselors. Monitors and provides maintenance of complaint activity and official records for statistical reporting purpose to NGB-EO. Coordinates all legal aspects of Discrimination Complaint with the JA.

d. EEO Counselors: Advise complainants of provisions of the law governing EEO complaints of discrimination, Federal and National Guard regulations regarding the complaint process and procedures. Assist complainants in identifying specific acts they perceive to be discriminatory and in stating clear and concise issues. Conduct fact-finding inquiries into alleged complaints of discrimination; provide counseling; advise complainant's of rights and responsibilities and proper forum to pursue complaint; attempt to resolve complaints at the lowest level possible; maintain a thorough record of counseling and interviews between parties and assist complainants to clarify clear and concise claim.

e. State Judge Advocate (SJA): Provides legal review and advice on all aspects of discrimination complaints. Reviews formally filed complaints to recommend their acceptance or dismissal in accordance with applicable case law, CFR, DOD and NGB regulations. Serves as the Agency representative on behalf of the National Guard during the investigative and EEOC hearings, preparing and presenting case law on behalf of the Guard. In conjunction with the SEEM, assist to identify appropriate witnesses for the State. Responsible to provide notification to NGB-EO and NGB JA on the status of civil action suits initiated or terminated against the state. Advises the AG on settlement agreements and claims for attorney fees and costs. Ensures full cooperation with EEO counselor, SEEM's Investigators, Administrative Judges, and parties in the processing and fact-finding of the complaint.

f. Supervisors, Managers, and Commanders: Prevent or correct situations that may give rise to complaints of discrimination. Ensure that all members of their organization refrain from actions or comments that might be viewed as discriminatory. Allow employees with collateral EEO duties enough duty time to perform their EEO functions and allow complainants and their representatives reasonable amount of duty time, both at the informal and the formal stages of a complaint, to pursue their complaints. Ensure full cooperation with EEO counselors, SEEMs, investigators, and administrative judges in discrimination complaint processing.

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g. EEO Complaint Investigators: Examine formal complaints in depth and develop a complete and thorough record to include all applicable exhibits and statements of witnesses. The investigation includes a thorough review of the circumstances under which the discrimination is alleged to have occurred, the records of treatment of members of the complainant's group as compared with the treatment of other technicians in the organization, and policy practices that may constitute discrimination. The investigator submits the report of investigation to NGB-EO for approval and transmittal to the state.

h. EEOC Administrative Judges: The administrative judge will be responsible for conducting hearings and overseeing the development of the record. The administrative judge shall issue decisions of acceptance and dismissal and decisions on the merits of the complaint, with appropriate remedies and relief.

7. Procedures for EEO counselors and/or SEEMs in processing complaints:

Step 1 – Receive an EEO Complaint. The complainant alleging discrimination and/or harassment has 45 days from the date of the event occurred to go to an EEO counselor. Said discrimination and/or harassment needs to be based on race, color, religion, gender (to include sexual harassment), national origin, or retaliation (base on EEO activity). If the complainant decides to go to the SEEM, he/she will appoint an EEO Counselor to:

- a. Conduct initial interview within 5 calendar days of call.
- b. Complainant may elect EEO counselor to conduct an inquiry or attempt resolution, within 30 calendar days.
- c. Or may elect, the Alternate Dispute Resolution process (ADR), (additional 60 days), but the complainant can not elect both. If not resolved go to step 2.

Step 2 – EEO counselor will proceed with the final interview and let the complainant know the right to file a formal complaint to be filed within 15 calendar days.

- a. EEO counselor will provide a copy of NGB Form 713-5-R to the complainant and assist complainant in preparing NGB Form 713-5-R to file with SEEM.

Step 3 – Once the formal complaint is filed,

- a. The complainant must give specific information on the alleged acts of discrimination and must be limited to the claims that were discussed with the counselor during pre-complaint counseling. Must identify an issue, a basis, and a remedy.

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b. EEO counselor and SEEM will assist complainants who wish to file a formal complaint to expedite evaluation of the complaint for proper procedural acceptance or dismissal.

Step 4 – SEEM will conduct an initial review of the case

a. Establish the official complaint file.

b. Review file to determine all issues are counseled.

c. Provide the complainant a copy of the EEO- Counselor's Report.

d. Within five calendar days of receipt of the complaint or within 5 calendar days after the completion of the clarification process, the SEEM will recommend to the AG whether the complaint is to be accepted or dismissed, in whole or in part.

e. Upon receipt of the complaint file, the NGB-EO will notify the SEEM by phone or e-mail as to what number is assigned to the case.

Step 5 – Request for NGB review and investigation.

a. Within 3 calendar days after the AG claims a notice of acceptance or dismissal, the SEEM will request that NGB review the acceptance or dismissal and assign an investigator, if appropriate.

b. Upon completion of the review, NGB will notify the Puerto Rico National Guard, the complainant and/or complainant's representative, if any.

c. When NGB determines that the matters raised in the formal complaint require an investigation, an investigator will be assigned.

d. The investigator is independent of control by any of the parties (the PR National Guard, the complainant, and or their representatives).

e. The investigator reports to the NGB-EO and represents neither the complainant or the PR National Guard.

f. Within 45 days and any extension authorized by NGB-EO, the investigator will prepare a Report of Investigation (ROI) and submit it to NGB-EO.

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Step 6 – Request NGB Decision

a. After NGB-EO has completed the review of the ROI and ensured that all deficiencies have been corrected, the NGB-EO will issue a notice of investigation completion to the complainant with a copy to the SEEM.

b. The notice will be accompanied by a copy of the ROI to both the complainant and the Puerto Rico National Guard (SEEM).

c. The notice of investigation completion will advise the complainant:

1. Of the right to request an immediate final decision from NGB-EO. This request must be submitted within 30 days.

2. Of the right to request a final decision by NGB-EO in conjunction with a hearing by an EEOC Administrative Judge (AJ). This request must be submitted within 30 days.

3. That if the complainant fails to submit a request for a final decision within 30 days, the NGB will issue a decision without a request.

4. That the complainant may be contacted by the Puerto Rico National Guard officials to attempt settlement of the complaint, but that any settlement attempts do not modify or extend the time limits listed above.

d. NGB is required to issue a notice of investigation completion after the filing of the formal complaint or within the time limit established by EEOC on an appeal from dismissal.

e. In the absence of such notice, the complainant may:

1. Request a hearing before an EEOC AJ by sending a request form to the appropriate EEOC office. A copy must be sent to NGB-EO.

2. File a civil action in the court.

8. Point of Contact. The Proponent of this SOP is the Equal Employment Opportunity Manager and the Human Resources Officer.

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FOR THE ADJUTANT GENERAL:

//////////////////SIGNED//////////////////

JOSE A. RODRIGUEZ-MUÑOZ

Colonel, PRANG

Human Resources Officer