A close-up photograph of several hands of different skin tones working together to assemble white puzzle pieces on a light-colored wooden table. The puzzle pieces are interlocking and form a large, abstract shape. The lighting is warm and soft, creating a sense of collaboration and teamwork.

MILITARY EQUAL OPPORTUNITY SELF HELP GUIDE

Military Law Task Force

MILITARY EQUAL OPPORTUNITY SELF HELP GUIDE

Racism, sexual harassment and just plain harassment are serious problems in the military, no matter what DoD officials say about the military being the best equal opportunity employer. Sometimes servicemembers just put up with discrimination and harassment, concerned that complaints will do no good and may lead to pushback or retaliation.

But sometimes people make quiet, informal complaints, and other times they file formal complaints through the Military Equal Opportunity (MEO) system or other complaint procedures.

MEO complaints have a bad rep for being ineffective and leading to retaliation, and that rep is pretty well deserved. But these complaints can be more successful, and retaliation can be prevented or challenged, with some preparation and outside help. Reading the regs and working with a civilian military counselor or attorney can make MEO complaints work.

You don't have to go it alone. Start with finding allies.

It's really helpful to have the support of co-workers and others in your command who can back you up, make complaints of their own if they experienced the same problems, and support you if they're questioned by the command about your complaint. **if you're not isolated, it's harder for the offender to retaliate against you for the complaint.**



Support from civilian friends and organizations can also be really helpful. Look for local groups and people who could offer moral and emotional support, or political back-up. Think about community groups, NAACP, Church groups, service member and veterans groups like About Face Veterans, the GI RIGHTS Hotline or support from activist groups like Black Lives Matter affiliates.

In most cases, it's helpful to let the command know that a civilian group is keeping an eye on the case.

It's also very valuable to work with an attorney experienced in military law or with a military counselor (a non-attorney trained in military law, usually working with the Military Law Task Force (mltf.org) or the GI Rights Hotline (girightshotline.org.)

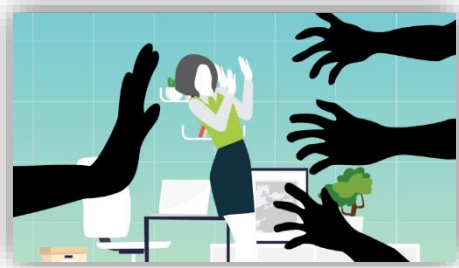
They can help you decide what kind of complaint you want to make, help put together the complaint and the evidence to support it, and talk to MEO or the CO on your behalf if the case isn't being handled properly.

The main regulation on Military Equal Opportunity is Department of Defense Instruction 1350.02. There are also service regs, including Army Regulation 600-20, chapters 6 and 7; Department of the Air Force 36-2710, OPNAV Instruction 5354.1H, and Marine Corps Order 5354.1F.

MEO regulations define “prohibited discrimination” as:

Discrimination, including disparate treatment, of an individual or group on the basis of race, color, national origin, religion, sex (including pregnancy), gender identity, or sexual orientation that is not otherwise authorized by law or regulation and detracts from military readiness.” (DoD Instruction 1350.02; DoD instructions are “controlling,” and the services are required to follow them.)

Sexual harassment can also be the subject of an MEO complaint. It's defined as:



Conduct that:

1. Involves unwelcome sexual advances, requests for sexual favors, and deliberate or repeated offensive comments or gestures of a sexual nature when:
 - Submission to such conduct is, either explicitly or implicitly, made a term or condition of a person's job, pay, or career;
 - Submission to or rejection of such conduct by a person is used as a basis for career or employment decisions affecting that person; or
 - Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creates an intimidating, hostile, or offensive working environment.
2. Is so severe or pervasive that a reasonable person would perceive, and the victim does perceive, the environment as hostile or offensive.
3. Any use or condonation, by any person in a supervisory or command position, of any form of sexual behavior to control, influence, or affect the career, pay, or job of a member of the Armed Forces or a civilian employee of the Department of Defense.

4. Any deliberate or repeated unwelcome verbal comments or gesture of a sexual nature by any member of the Armed Forces or a civilian employee of the Department of Defense.

There is no requirement for concrete psychological harm to the complainant for behavior to constitute sexual harassment. Behavior is sufficient to constitute sexual harassment if it is so severe or pervasive that a reasonable person would perceive, and the complainant does perceive, the environment as hostile or offensive.

Sexual harassment can occur through electronic communications, including social media, other forms of communication, and in person. (DoD Instruction 1020.03)

You can also use MEO complaints for other harassment. The same DoD Instruction also defines general harassment, including bullying and hazing, as follows:

The conduct prohibited by this policy includes, but is broader than, the legal definitions of harassment and sexual harassment. Behavior that is unwelcome or offensive to a reasonable person and that interferes with work performance or creates an intimidating, hostile, or offensive work environment is prohibited. All allegations of harassment must be evaluated under the totality of the circumstances, to include an assessment of the nature of the conduct and the context in which the conduct occurred. In some circumstances, a single incident of harassing behavior is prohibited harassment whereas, in other circumstances, repeated or recurring harassing behavior may be required to constitute prohibited harassment.

PROHIBITED HARASSMENT BEHAVIORS.

a. Harassing behavior may include, but is not limited to:

- (1) Unwanted physical contact.
- (2) Offensive jokes.
- (3) Epithets or name-calling.
- (4) Ridicule or mockery.
- (5) Insults or put-downs.
- (6) Displays of offensive objects or imagery.
- (7) Offensive non-verbal gestures.
- (8) Stereotyping.
- (9) Intimidating acts.
- (10) Veiled threats of violence.
- (11) Threatening or provoking remarks.



- (12) Racial or other slurs.
 - (13) Derogatory remarks about a person's accent or disability.
 - (14) Displays of racially offensive symbols.
 - (15) Hazing.
 - (16) Bullying.
- b. Unlawful harassing conduct may include, but is not limited to:
- (1) Unlawful discriminatory harassment.
 - (2) Sexual harassment.
 - (3) Stalking.

Means of Harassment. Harassment can be oral, visual, written, physical, or electronic. Harassment can occur through electronic communications, including social media, other forms of communication, and in person. (DoD Instruction 1020.03)

To prove that prohibited discrimination occurred, you need to show that there was “discriminatory intent,” but this isn’t true for harassment and bullying. Sometimes that means it’s easier and more effective to complain about the behavior under general harassment provisions. This is a good thing to discuss first with an attorney or a military counselor.

Doing things the military way?

The MEO regulations, and military culture in general, say that **complaints about problems like racist behavior, sexual harassment or any other harassment should be resolved at the lowest possible level.**

Usually that means just talking to the harasser, going to the lowest senior enlisted person above the harasser in your chain of command, or bringing in a third person to “mediate.” “Informal” MEO complaints usually take these forms, often with help from the command’s MEO officer.



These are not the strongest ways to complain, and they can still result in retaliation, but they can be helpful for people who want to be low key but still deal with the problem, and for people whose commands may be sympathetic to them.

Informal complaints can be made verbally or in writing and submitted to the MEO professional. He or she must report the complaint to the command, but informal complaints don’t necessarily involve a full investigation of the problem or create a strong paper trail.

If the informal complaint is denied or isn’t effective, you can move on to a formal MEO complaint. The formal complaint should be submitted within 60 days of the

discrimination or harassment (or of the last incident in a series of discriminatory or harassing acts), though the Marine Corps allows 90 days.

The regulations say that you don't have to use these low-key approaches. You can file a formal MEO complaint, or use other complaint procedures, without first trying the informal way. **It is a good idea to talk this over first with an attorney or military counselor familiar with MEO procedures.**

Formal MEO complaints

A formal MEO complaint is taken more seriously, usually involving an investigation, and must be reviewed by folks higher in the chain of command than the commanding officer (CO) who organizes the investigation. **Because they can be more effective and leave a stronger paper trail, these formal complaints may also increase the risk of retaliation.**

How to do a formal complaint

These are written, using your service's MEO complaint form. It's best to prepare a complaint before going to the MEO professional, to avoid him or her trying to write it for you or edit it.

It helps to go over the complaint with outside legal help.

Don't feel that you need to limit the complaint to the space provided on the form! You can add additional pages and, of course, you can attach evidence of the problem to the complaint.

Evidence should include witness statements, incriminating emails or texts, statements from others who've experienced the same or similar problems, a journal or notes you've kept about each incident, etc. As above, complaints are supposed to be submitted within 60 days of the actions complained of, though the Marines give you 90 days.



Once you've done the complaint, it is normally submitted to the MEO professional. He or she may try to edit the complaint or tell you that you have to take things out of it. This is rarely true.

You can ask where in the regs it says you can't do the complaint your way, and you should only accept changes if you agree with them.

The MEO professional, and sometimes the CO, should also advise you about your rights in the complaint process, your rights if there's any retaliation, and the timeframe for the investigation and decision. As part of this, they may warn you that it's illegal to make false official statements, which we think is just designed to get some complainants to back off.

The MEO professional must report the complaint to the CO. The CO arranges an investigation if he/she feels the complaint is "substantiated," though the Air Force has its MEO professionals substantiate and investigate the complaint.

What does “substantiated” mean? The Army regulation, AR 600-20 puts it this way:

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

Once the CO gets the complaint from the MEO professional, he or she gets to decide whether to accept the complaint, dismiss it, or refer it to another agency, though the Army reg doesn’t mention this.

If it’s accepted, the CO has five days to initiate an investigation (three days in the Navy). Also within that five or three days, the CO should forward the complaint to higher authority.

The CO appoints an investigating officer (IO) to handle the investigation—except in the Air Force, where the MEO professional does the investigation. The IO should interview you, though surprisingly that doesn’t always happen. The IO also interviews witnesses, though not necessarily all the witnesses you name in the complaint, and he or she may interview other witnesses. *The MEO officer looks at evidence, sometimes takes a look at what the command thinks of you, and writes up a report for the CO.*

An investigation is supposed to be completed within 30 days of the time the IO is appointed in the Army, or 14 days in the Air Force and Navy. Complaints of sexual harassment must be investigated in a shorter time frame. The regs allow for requests for additional time to complete an investigation.

At the end of the investigation, IOs make “findings” about the facts of the case and recommendations for action, if any, by the CO. The IO suggests, and the CO normally decides, whether the complaint is substantiated. If it is, the CO decides what corrective action, if any, to take to solve the problem.

Appeals

If you’re not satisfied with the result, you have a right to appeal the CO’s decisions. So can the person you’ve complained about. The DoD Instruction says you have 30 days from the date you’re notified of the CO’s decision to do this, as do the Air Force and Marine Corps. The Army and Navy allow only seven days to appeal, which doesn’t give you very much time to put an appeal together. We think it violates the DoD’s 30-day policy, but you may not want to take the longer time and have to fight over your right to it.



The services have different appeal procedures. Most services have two or three levels of appeal, though the Marine Corps seems to have only one. And the service regs differ on what

can be covered in an appeal. **Having outside legal assistance here can be valuable in interpreting your service's regs, putting together the appeal, and documenting it.**

What if there's retaliation?

Retaliation is illegal under the MEO regs and the DoD Instruction on whistleblower protection--and now, some retaliation has been made a criminal offense under Article 132 of the UCMJ. While that Article doesn't cover all forms of retaliation, it can be a powerful response.

If retaliation takes place, it is important to document it. You may want to keep a journal with names, dates, names of witnesses and details of what happened. You can also get statements from witnesses who saw or heard the retaliation or heard the retaliator talking trash about you. You should keep copies of any offensive emails, texts or notes from the person retaliating.

Retaliation can be reported to the MEO professional and your CO. You can make a complaint to your service's Inspector General (IG) or the DoD IG, though this is usually a slow process. In some cases, you can make a separate MEO complaint about the retaliation.

With retaliation complaints, you want to show a retaliatory motive or intent for the actions. If you can't do that, you may decide to treat the retaliation as new harassment rather than retaliation, and make a new MEO complaint about it, so that you don't need to show why the offensive actions were done.

You can also complain to your Member of Congress and can consider a complaint under Article 138 of the UCMJ. If you have an outside attorney or counselor, they can communicate with your CO and/or his or her superior officers to demand that retaliation be stopped immediately. This last is especially important if you are threatened or otherwise in danger.

MEO isn't the only alternative.

MEO complaints aren't your only option, though commands tend to think that, if you're going to complain at all about discrimination or harassment, MEO is the proper procedure. But you're not bound by what your command thinks. You can be low-key by talking to your senior enlisted (if they aren't the problem) or using your command's open-door policy (called request mast in the Navy) to speak directly with the CO and ask for help with the problem.



You can mention that you may have to file an Article 138 complaint when you talk to him or her (sometimes the threat of a 138 is as powerful as actually using it).

If low-key doesn't seem appropriate or just isn't your style, you can also file a 138, or go directly to the IG. In both cases, you may be told that you should use the MEO process

instead, but a little persistence may make these complaints work. If you have an attorney or counselor, they can communicate with your CO's commanding officer or higher authority; they don't have to follow the chain of command as you usually do.

More information

- **Contact our Military Law Task Force at 619-463-2369 or nlgmltf@gmail.com.**
- **Contact the GI Rights Hotline at 877-447-4487 or girights@girightshotline.org.**
- **Check out our much more detailed MEO memo on the MLTF website at nlgmltf.org.**
- **Read the regs mentioned here and in the MEO memo.**



