

REGULATORY PROVISIONS PERTAINING TO RETALIATION IN THE MILITARY

	Army	Air Force	Navy/MC	DOD
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Retaliation Regulations

Punitive Regulations Prohibiting Retaliation	<p><u>AD 2014-20 “Prohibition of Retaliation Against Soldiers for Reporting a Criminal Offense” (19 Jun 2014)</u></p> <p>(2) No Soldier may retaliate against a victim, an alleged victim or another member of the Armed Forces based on that individual’s report of a criminal offense.</p> <p>(3) This directive implements FY14 NDAA section 1709 effective immediately. The provisions of this directive are punitive, and violations may be punished under Article 92, UCMJ.</p>	<p><u>AFI 36-2909 AFGM2014-01 “Air Force Guidance Memorandum to AFI 36-2909, “Professional and Unprofessional Relationships” (19 Jun 2014)</u></p> <p>Military members, including Reserve members on active duty or inactive duty for training and ANG members in Federal service, who violate the specific prohibitions contained in paragraph 11 of this instruction can be prosecuted under either Article 92 or Article 134 of the Uniform code of Military Justice (UCMJ), or both, as well as any other applicable Article of the UCMJ, as appropriate.</p> <p>11. Prohibition on Retaliation. Military members shall not retaliate against an alleged victim or other military member who reports a criminal offense.</p>	<p><u>ALNAV 030/14 Retaliation Against Members of the Armed Forces Reporting a Criminal Offense (Apr 2014)</u></p> <p>RMKS/1. Retaliation against alleged victims or other members of the Armed Forces who report a criminal offense is prohibited. This prohibition constitutes a lawful general order, is punitive, and is applicable to all Department of the Navy (DON) personnel without further implementation. A violation by a person subject to the Uniform Code of Military Justice (UCMJ) (Chapter 47 of Title 10, United States Code) is punishable as a violation of Article 92 of the UCMJ.</p> <p>A violation by civilian personnel may be punishable under regulations governing disciplinary actions.</p> <p><u>SECNAVINST 5370.7D Military Whistleblower Protection (4 Dec 2014) 4.d</u></p>	<p><u>FY14 NDAA 1709 – Prohibition of Retaliation Against Members of the Armed Forces for Reporting A Criminal Offense. (Dec 26, 2013)</u></p> <p>(a)(1) REGULATIONS REQUIRED.— The SecDef shall prescribe regulations, or require the Secretaries of the military departments to prescribe regulations, that prohibit retaliation against an alleged victim or other member of the Armed Forces who reports a criminal offense. The regulations shall prescribe that a violation of the regulations is an offense punishable under article 92 of the Uniform Code of Military Justice).</p> <p>(2) DEADLINE.—The regulations required by this subsection shall be prescribed not later than 120 days after the date of the enactment of this Act.</p> <p><u>10 U.S.C. 1034 – Protected communications; prohibition of retaliatory personnel actions</u></p>
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Implementation Guidance	<p>(AD 2014-20 (7))</p> <p>Commanders should consult with their servicing legal advisor and/or IG for guidance on implementation of this directive at the command level.</p>	<p>(AFI 36-2909 AFGM2014-01)</p> <p>14. Actions in Response to Retaliation. A commander or supervisor must take appropriate action if it is reasonable to believe retaliation has occurred. At a minimum, the member or members suspected of engaging in retaliation will be ordered to cease from engaging in any further retaliation. As soon as practicable, the alleged victim, or other military member who is believed to have been retaliated against will be informed that command is aware of the suspected act or acts of retaliation, and that the alleged offenders have been ordered to cease from engaging in any further retaliation. The individual retaliated against will be advised to report any further acts of retaliation.</p> <p>17. Questions Regarding Retaliation. Military members who have questions as to the application or interpretation of the policy should consult their commander. Commanders are highly encouraged to consult their staff judge advocates or servicing legal offices for assistance in interpretation.</p>	<p>(ALNAV 030/14 (3))</p> <p>The DON is revising all appropriate instructions to incorporate these changes. In the interim, consult and coordinate with Command IGs on matters involving allegations of suspected retaliation. Additionally, recommend you consult with your Staff Judge Advocate, Office of General Counsel Attorney, Region Legal Service Office, or Legal Services Support Section, as appropriate, with any questions regarding this message.</p>	<p>SecDef Memorandum for Secretaries of the Military Departments re: Sexual Assault Prevention and Response (Dec 3, 2014)</p> <p>Engage Command to Prevent Retaliation: the Chiefs of the Military Services and the NGB will develop new procedures for installation commanders who serve as the SAPR Case Management Group Chair. These procedures will require installation commanders to regularly assess, and refer for appropriate corrective action, all reports from a victim, witness, or first responder of retaliation, ostracism, maltreatment, or reprisal in conjunction with a report of sexual assault. These procedures will be provided to the USD(P&R) by January 30, 2015.</p>

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Whistleblower Protection/IG Complaint Regulations	<p><u>AR 600-20 Ch 5-12 (11/6/2014) Military Whistleblower Protection Act</u></p> <p>Dept of the Army personnel are prohibited from taking acts of reprisal against any Soldier for filing a complaint of unlawful discrimination or sexual harassment (see DoDD 7050.06)(5-12)</p> <p>The Chain of command will ensure complainants are protected from reprisal or retaliation for filing EO complaints. Should Soldiers be threatened with such an act, or should an act of reprisal occur, they must report these circumstances to the DoD IG. (5-12e)</p> <p><u>AR 20-1, Inspector General Activities and Procedures (3 Jul 2012)</u></p> <p><u>AR 15-6, Procedure for Investigating Officers and Boards of Officers (30 Sep 1996)</u></p>	<p><u>AFI90-301 Inspector General Complaints Resolution (23 Aug 2011, Inc Ch 1, 6 Jun 2012)</u></p> <p>6.3.1. Members of the armed forces shall be free from reprisal for making or preparing to make a protected communication (PC).</p> <p>6.3.1.1. No person may take (or threaten to take) an unfavorable personnel action; or withhold (or threaten to withhold) a favorable personnel action as reprisal against a member of the armed forces for making or preparing to make a protected communication.</p> <p>6.3.1.2. Military members who violate this prohibition are subject to prosecution and/or disciplinary and administrative action under Article 92 of the UCMJ.</p> <p><u>JAG Guide to IG Investigations (14 Apr 2010)</u></p> <p><u>IG Guide for Investigating Officers (Feb 2012)</u></p> <p><u>Commander-Directed Investigation (CDI) Guide (26 Apr 2010)</u></p> <p><u>IG Reference Guide for Commanders/Agency Chiefs</u></p>	<p><u>SECNAVINST 5370.7D Military Whistleblower Protection (4 Dec 2014)</u></p> <p>5d. No person shall restrict or attempt to restrict service members from making lawful communications to a member of Congress or an IG.</p> <p>5e. Service members and DON personnel shall not take or threaten to take an unfavorable personnel action, or withhold or threaten to withhold a favorable personnel action, in reprisal against any service member for making or preparing to make, or who is perceived as making or preparing to make, a protected communication.</p> <p>5f. Service members and DON personnel shall not retaliate against a service member because the member reported a criminal offense.</p> <p><u>Marine Corps Inspector General Program Investigations Guide Part 2 (Special Topic IG Inquiries/Investigations) (August 2009)</u></p> <p><u>Marine Corps Inspector General Program Assistance Guide (August 2009)</u></p> <p><u>MCO 5430.1 Marine Corps Inspector General Program (13 Nov 2006)</u></p>	<p><u>DoDD 7050.06 - Military Whistleblower Protection (Jul 23, 2007)</u></p> <p>4.1. Members of the Armed Forces shall be free to make a protected communication.</p> <p>4.2. No person shall restrict a member of the Armed Forces from making lawful communications to a Member of Congress or an IG.</p> <p>4.3. Members of the Armed Forces shall be free from reprisal for making or preparing to make a protected communication.</p> <p>4.4. No person may take or threaten to take an unfavorable personnel action, or withhold or threaten to withhold a favorable personnel action, in reprisal against any member of the Armed Forces for making or preparing to make a protected communication.</p> <p>4.5. The Secretaries of the Military Departments shall issue general regulations making punishable under Article 92, Uniform Code of Military Justice (UCMJ), "Failure to Obey Order or Regulation," any violation of the prohibitions of paragraphs 4.2. and 4.4. by persons subject to the UCMJ.</p>

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Oversight	<p>(AD 2014-20 (8))</p> <p>The Deputy Chief of Staff, G-1 is the proponent for this policy and will incorporate the provisions of this directive into the next revision of Army Regulation 600-20 as soon as practicable. This directive is rescinded upon publication of the revised regulation.</p>	<p>(AFI 36-2909 AFGM2014-01 (13))</p> <p>Commanders and supervisors at all levels have the authority and responsibility to ensure subordinates do not retaliate against an alleged victim or other military member who reports a criminal offense. Commanders and supervisors have a duty to prevent retaliation and may be held accountable for failing to act in appropriate cases.</p>	<p>SECNAVINST 5370.7D Enclosure 3</p> <p>1. The Naval IG and the IGMC have overall responsibility for assisting SECNAV in ensuring full implementation of 10 U.S.C. 1034 and the part of FY14 NDAA 1709 that prohibits retaliation in the form of an unfavorable personnel action for reporting, or preparing to report, a criminal offense.</p> <p>(ALNAV 030/14(4))4. Point of contact at Naval Inspector General is Mr. Richard Gambino, Branch Head, Whistleblower Reprisal, at (202) 433-2097, or via e-mail at richard.gambino@navy.mil.</p>	<p>SecDef Memorandum for Secretaries of the Military Departments re: Sexual Assault Prevention and Response (Dec 3, 2014)</p> <p>Engage Command to Prevent Retaliation: the Chiefs of the Military Services and the NGB will develop new procedures for installation commanders who serve as the SAPR Case Management Group Chair. These procedures will require installation commanders to regularly assess, and refer for appropriate corrective action, all reports from a victim, witness, or first responder of retaliation, ostracism, maltreatment, or reprisal in conjunction with a report of sexual assault. These procedures will be provided to the USD(P&R) by January 30, 2015.</p>

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Retaliation Defined	<p>(AD 2014-20 (4)(a)(1))(19 Jun 2014)</p> <p>Taking or threatening to take an adverse or unfavorable personnel action, or withholding or threatening to withhold a favorable personnel action, with respect to a victim or other member of the Armed Forces because the individual reported a criminal offense or was believed to have reported a criminal offense; or</p> <p>(AD 2014-20(4)(a)(2)) ostracism, which is defined as excluding from social acceptance, privilege or friendship a victim or other member of the Armed Forces because: (a) the individual reported a criminal offense; (b) the individual was believed to have reported a criminal offense; or (c) the ostracism was motivated by the intent to discourage reporting of a criminal offense or otherwise to discourage the due administration of justice; or</p> <p>(AD 2014-20(4)(a)(3)) acts of cruelty, oppression or maltreatment (as these terms are described in paragraph 17c(2) of MCM Part IV), committed against a victim, an alleged victim or another member of the Armed Forces by peers or other persons, because the individual reported a criminal offense or was believed to have reported a criminal offense.</p> <p>(see AR 600-20, 5-12d – narrower definition of retaliation)</p>	<p>(AFI 36-2909 AFGM2014-01)(19 Jun 2014)</p> <p>11.1. Retaliation is taking or threatening to take an adverse personnel action, or withholding or threatening to withhold a favorable personnel action, with respect to a military member because the member reported a criminal offense.</p> <p>11.2. Ostracism, which is a form of retaliation under this instruction, is the exclusion, from social acceptance, privilege or friendship with the intent to discourage reporting of a criminal offense or otherwise discourage the due administration of justice.</p> <p>11.3. Maltreatment, which is a form of retaliation under this instruction, is treatment by peers or by other persons, that, when viewed objectively under all the circumstances, is abusive or otherwise unnecessary for any lawful purpose, that is done with the intent to discourage reporting of a criminal offense or otherwise discourage the due administration of justice, and that results in physical or mental harm or suffering, or reasonably could have caused, physical or mental harm or suffering. Maltreatment under this instruction is prohibited by the FY14 NDAA, Section 1709(b), and does not require a senior-subordinate relationship as is required for maltreatment under Article 93, UCMJ.</p> <p>(See narrower def.: 2.1.1. Reprisal. IG Guide for Investigating Officers)</p>	<p>SECNAVINST 5370.7D (4 Dec 2014) Encl 1</p> <p>15. a. Per reference FY14 NDAA 1709, retaliation against a service member is one of the following actions when taken because that member reported, either formally or informally, a criminal offense:</p> <p>(1) Taking or threatening to take an unfavorable or adverse personnel action, or withholding or threatening to withhold a favorable personnel action;</p> <p>(2) Ostracism, which is the exclusion from social acceptance, privilege, or friendship with intent to discourage reporting of a criminal offense or otherwise discourage the due administration of justice; or</p> <p>(3) Maltreatment, which is treatment by peers or by other persons, that, when viewed objectively under all the circumstances, is abusive or otherwise unwarranted, unjustified, and unnecessary for any lawful purpose, that is done with intent to discourage reporting of a criminal offense or otherwise discourage the due administration of justice, and that results in physical or mental harm or suffering, or reasonably could have caused, physical or mental harm or suffering. Maltreatment under this instruction does not require a senior-subordinate relationship as is required for maltreatment under Article 93, UCMJ.</p> <p>See also ALNAV 030/14</p>	<p>FY14 NDAA 1709(b)</p> <p>(1) RETALIATION —For purposes of the regulations required by the FY14 NDAA 1709(b)</p> <p>(a), the Secretary of Defense shall define retaliation to include, at a minimum—</p> <p>(A) taking or threatening to take an adverse personnel action, or withholding or threatening to withhold a favorable personnel action, with respect to a member of the Armed Forces because the member reported a criminal offense; and</p> <p>(B) ostracism and such of acts of maltreatment, as designated by the Secretary of Defense, committed by peers of a member of the Armed Forces or by other persons because the member reported a criminal offense.</p>

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Personnel Action Defined	<p>(AD 2014-20 (4)(b))</p> <p>Any action taken against a member of the Armed Forces that affects, or has the potential to affect, that member's current position or career. Such actions include a promotion; a disciplinary or other corrective action; a transfer or reassignment; a performance evaluation; a decision on pay, benefits, awards or training; referral for mental health evaluations; and any other significant change in duties or responsibilities inconsistent with the member's grade.</p>	<p>(AFI 36-2909 AFGM2014-01)</p> <p>11.4. Personnel Action. Any action taken on a military member that affects or has the potential to affect that military member's current position or career. Such actions include a promotion; a disciplinary or other corrective action; a transfer or reassignment; a performance evaluation; a decision on pay, benefits, awards or training; and any other significant change in duties or responsibilities inconsistent with the military member's grade.</p>	<p>(SECNAVINST 5370.7D)</p> <p>11. Personnel Action: Per DoDD 7050.06, any action taken with respect to a service member that affects, or has the potential to affect, that member's current position or career. Such actions include a promotion; a disciplinary or other corrective action; a transfer or reassignment; a performance evaluation; a decision on pay, benefits, awards, or training; referral for mental health evaluations under DoDD 7050.06; and any other significant change in duties or responsibilities inconsistent with the service member's grade.</p>	<p>FY14 NDAA 1709(b)</p> <p>(2) PERSONNEL ACTIONS.—For purposes of retaliation by adverse personnel action, the Secretary of Defense shall define the personnel actions to be covered by the regulations.</p>

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Investigations of Retaliation Complaints

Investigation Process for Ostracism and/or Maltreatment (Social Retaliation)	<p>(AD 2014-20) (6))</p> <p>Allegations of retaliation described in paragraphs 4a(2) (ostracism) and 4a(3) (cruelty, maltreatment) will be referred to, and investigated by, the victim 's chain of command or supervision, or by any other appropriate investigative agency, organization or entity.</p>	<p>(AFI 36-2909 AFGM2014-01)(14))</p> <p>A commander or supervisor must take appropriate action if it is reasonable to believe retaliation has occurred. At a minimum, the member or members suspected of engaging in retaliation will be ordered to cease from engaging in any further retaliation. As soon as practicable, the alleged victim, or other military member who is believed to have been retaliated against will be informed that command is aware of the suspected act or acts of retaliation, and that the alleged offenders have been ordered to cease from engaging in any further retaliation. The individual retaliated against will be advised to report any further acts of retaliation.</p>	<p>(SECNAVINST 5370.7D, Encl 3</p> <p>(m) Navy IG and IGMC will refer allegations of ostracism or maltreatment to the appropriate command for action except in those circumstances where IG wishes to handle, such as those cases where a personnel action as well as ostracism and maltreatment are alleged or where subject is flag officer or SES.</p>	Not Addressed by DoD
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Investigation Process for Professional Retaliation	<p>(AD 2014-20 (5))</p> <p>Allegations of retaliation described in paragraph 4a(1) (personnel actions) will be referred to, and investigated by, the appropriate IG in accordance with DoDD 7050.06 and AR 20-1.</p>	<p>(AFI 36-2909 AFGM2014-01)</p> <p>16. Relationship of Retaliation to Inspector General Complaints Resolution Program. Cases involving retaliation or allegations of retaliation, should be evaluated to determine if they involve 1) reprisal for making protected communications, 2) restriction from making lawful communications, or 3) improper referral for a mental health evaluation, in violation of AFI 90-301, <i>Inspector General Complaints Resolution</i>, para. 1.13.6. If so, refer the matter to the Inspector General Complaints Resolution Program.</p>	<p>SECNAVINST 5370.7D, Encl 3</p> <p>Naval IG and IGMC must: (b) Notify DoD IG within 10 days of receiving a complaint of reprisal. Conduct preliminary inquiry to determine if sufficient evidence to conduct full investigation. Report decision to DoD IG within 30 days of receiving complaint. May task to Echelon II or Command IG. (c) If sufficient evidence, open full investigation, or if requested by DoD IG. Ensure only investigators with specialized training or experience conduct reprisal investigations. (d) Ensure complainant advised of their rights and offer to assist in preparing complaints or forwarding to DoD IG. (e) Complaint must be made within 1 yr. of complainant awareness of personnel action, but can be waived for compelling case. (f) Ensure investigator is outside immediate chain of command or at least one organization higher in the chain that either party. (g) Ensure preliminary report reviewed by attorney. (h) Ensure report contains recommendations for appropriate remedy for the complainant. Provide DoD IG report of investigation w/in 150 days of receipt of complaint. (m) refer allegations of ostracism or maltreatment to the appropriate command for action except in those circumstances where IG wishes to handle.</p>	<p>DoDD 7050.06 –</p> <p>DoD IG</p> <p>5.1.1. Determine whether sufficient evidence to warrant an investigation of complaint.</p> <p>5.1.2. Receive notification from Service Igs of all reprisal complaints and notify Service IG if DoD IG to retain case.</p> <p>5.1.3 Review and approve Service IG determinations that no investigation warranted.</p> <p>5.1.4. initiate or request Service IG to initiate investigations. Ensure that Service IG conducting investigation is outside chain of command of either party.</p> <p>5.1.5. Review and approve results of investigations conducted by Service Igs. Initiate a follow-up investigation. To correct any inadequacies.</p> <p>5.1.6. Issue a report of investigation w/in 180 days of receipt of complaint by DoD IG. Report MAY include recommendation(s) as to disposition of the complaint. Notify DUSD(PI)</p> <p>4.7. No investigation is required if complaint filed more than 60 days from date member learned of personnel action, but IG may still investigate if compelling case.</p>

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Retaliation – Corrective Actions and Appeals

Subject Disciplinary , Criminal Actions or Remedies (Prof/Social)	<p><u>AD 2014-20</u></p> <p>The provisions of this directive are punitive, and violations may be punished under Article 92, UCMJ.</p>	<p><u>AFI 36-2909 AFGM2014-01</u></p> <p>Military members, including Reserve members on active duty or inactive duty for training and ANG members in Federal service, who violate the specific prohibitions contained in paragraph 11 of this instruction can be prosecuted under either Article 92 or Article 134 of the UCMJ, or both, as well as any other applicable Article of the UCMJ, as appropriate.</p> <p>(AFI 36-2909_AFGM2014-01(14))</p> <p>At a minimum, the member or members suspected of engaging in retaliation will be ordered to cease from engaging in any further retaliation.</p>	<p><u>ALNAV 030/14</u></p> <p>A violation by a person subject to the UCMJ (Chapter 47 of Title 10, United States Code) is punishable as a violation of Article 92 of the UCMJ.</p> <p>A violation by civilian personnel may be punishable under regulations governing disciplinary actions.</p>	<p><u>FY14 NDAA 1709</u></p> <p>(a)The regulations shall prescribe that a violation of the regulations is an offense punishable under article 92 of the UCMJ.</p> <p>(c) REPORT ON SEPARATE PUNITIVE ARTICLE.—Not later than 180 days after the date of the enactment of this Act, the SecDef shall submit to the SASC and HASC a report setting forth the recommendations of the SecDef regarding whether the UCMJ should be amended to add a new punitive article to subchapter X of such chapter to prohibit retaliation against an alleged victim or other member of the Armed Forces who reports a criminal offense.</p>
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