

REGULATORY PROVISIONS PERTAINING TO RETALIATION IN THE MILITARY

	Army	Air Force	Navy/MC	Coast Guard
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Retaliation Regulations

[FY14 NDAA 1709\(a\) – Prohibition of Retaliation Against Members of the Armed Forces for Reporting A Criminal Offense.](#) (Dec 26, 2013)

(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).

(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.

Services’ Punitive Regulations Prohibiting Retaliation	<p><u>AD 2014-20 “Prohibition of Retaliation Against Soldiers for Reporting a Criminal Offense”</u> (19 Jun 2014)</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”</u> (19 Jun 2014)</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</u> (Apr 2014)</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>ALCOAST281/14: MILITARY WHISTLEBLOWER PROTECTION</u> (May 2014)</p> <p>2.... Coast Guard personnel shall not retaliate against an alleged victim or other member of the Armed Forces who reports a criminal offense. This prohibition constitutes a lawful general order, is punitive, and is applicable to all Coast Guard personnel without further implementation. A violation by a person subject to the Uniform Code of Military Justice (UCMJ) is punishable as a violation of Article 92, UCMJ.</p>
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FY14 NDAA 1709(b) – DEFINITION OF RETALIATION

(1) RETALIATION —For purposes of the regulations required by the FY14 NDAA 1709(b)

(a) the Secretary of Defense shall define retaliation to include, at a minimum—

(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

(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.

Retaliation Defined	(AD 2014-20 (4)(a)(1))(19 Jun 2014)	(AFI 36-2909 AFGM2014-01)(19 Jun 2014)	SECNAVINST 5370.7D (4 Dec 2014)	ALCOAST281/14: (May 2014)
<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>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</p>	<p>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>(3) 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. For the purpose of this order, retaliation against a military member is one of the following actions taken because that member, either formally or informally, reported a criminal offense:</p> <p>A. Taking or threatening to take an unfavorable or adverse personnel action, or withholding or threatening to withhold a favorable personnel action,</p> <p>B. Ostracism, which is the exclusion from social acceptance, privilege, or friendship with the intent to discourage that individual from reporting a criminal offense or otherwise discourage the due administration of justice, or</p> <p>C. Maltreatment, which is treatment</p>	

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	<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>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>(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>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 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 does not require a senior-subordiante relationship as is required for maltreatment under Article 93, UCMJ.</p>

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Services' Regulations and Instructions: Prohibition of Retaliation

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</u></p>	<p><u>Coast Guard Whistleblower Protection Regulation, 33 C.F.R. Part 53,</u></p> <p>§ 53.7 Requirements.</p> <p>(a) No person within the Department of Homeland Security may restrict a member of the Coast Guard from lawfully communicating with a Member of Congress or an Inspector General.</p> <p>(b) Members of the Coast Guard shall be free from reprisal for making or preparing to make lawful communications to Members of Congress or an Inspector General.</p> <p>(c) Any employee or member of the Coast Guard who has the authority to take, direct others to take, or recommend or approve any personnel action shall not, under such authority, take, withhold, threaten to take, or threaten to withhold a personnel action regarding any member of the Coast Guard in reprisal for making or preparing to make a</p>
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			<p>Part 2 (Special Topic IG Inquiries/Investigations) (August 2009) Marine Corps Inspector General Program Assistance Guide (August 2009) MCO 5430.1 Marine Corps Inspector General Program (13 Nov 2006)</p>	<p>lawful communication to a Member of Congress or an Inspector General.</p> <p>COMDTINST M1600.2 Discipline and Conduct, (September 2011)</p>