



Annex 1: Status of Restricted Reporting for DoD Federal Civilian Employee Victims of Sexual Assault



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The following is provided to the congressional defense committees in response to recommendation 12 of the U.S. Government Accountability Office (GAO) Report, *SEXUAL HARASSMENT AND ASSAULT: Guidance Needed to Ensure Consistent Tracking, Response, and Training for DoD Civilians*, GAO-21-113, February 2021.

Recommendation 12 suggested the following: The Secretary of Defense should ensure that the Under Secretary of Defense for Personnel and Readiness (USD(P&R)), in collaboration with the Director of the Sexual Assault Prevention and Response Office and the Secretaries of the Military Departments, reports to the congressional defense committees on the status of restricted reporting for DoD federal civilian employee victims of sexual assault. This should include, but not be limited to, the history of Restricted Reporting for DoD federal civilian employees by Military Department, the anticipated benefits and challenges of extending restricted reporting to DoD federal civilian employees, and requests for congressional actions, if any, that are considered appropriate and necessary to extend restricted reporting to DoD federal civilian employees who are otherwise eligible to file Unrestricted Reports of sexual assault.

History of Restricted Reporting for DoD Federal Civilian Employees by Military Department

The employment relationship between civilian employees and the Department is governed by laws that are administered differently from those applicable to Service members. Unlike Service members who are statutorily authorized to file a restricted report with the Department (wherein the allegations are not investigated), civilian employees have no such statutory authority. Rather, the Equal Employment Opportunity Commission (EEOC), the agency charged with developing and enforcing policies/procedures necessary to effectuate the protections under Title VII, requires complaints of sexual harassment (sexual assault is considered a severe form of harassment for EEOC purposes) be investigated by the agency against which the complaints are made (29 CFR §1614.108). The primary objective of Title VII is “to avoid harm to employees.” An effective complaint procedure in cases covered under Title VII “encourages employees to report harassing conduct before it becomes severe and pervasive.” Moreover, “an employer should take all steps necessary to prevent sexual harassment from occurring,” including “developing appropriate sanctions” (29 CFR §1604.11 (f)). Additionally, 10 U.S.C. §1561 requires commanding officers to investigate allegations of sexual harassment made by civilian employees. Restricted reporting will hinder the agency’s ability to meet its obligations under Title VII, and 10 U.S.C. §1561.

Anticipated Benefits and Challenges of Extending Restricted Reporting to DoD Federal Civilian Employees

Reporting may represent a barrier for sexual assault victims to access services, when the victim desires no supervisor or law enforcement involvement. Consequently, the DoD recognizes a fundamental and humanitarian need to provide a confidential reporting option to their federal civilian employees in order to assist victims in their recovery. The Departments of the Army and of the Air Force have already provided this confidential reporting option to their federal civilian

employees in accordance with temporary exceptions to policy. Empirical research has shown that sexual assault victims who receive advocacy services are more likely to obtain medical care, engage with the criminal justice system, and stay engaged with the criminal justice system than those victims do not receive advocacy. This is critical to empowering federal civilian employees to report sexual assault, obtain assistance to recover, and maintain a safe working environment.

Requests for Congressional Actions

The Department is working on a legislative proposal to be submitted for National Defense Authorization Act for Fiscal Year 2023 that would, notwithstanding any other provision of Federal or State law, allow a Federal civilian employee of the Department of Defense who alleges to have been sexually assaulted [hereinafter victim] to confidentially report these allegations to designated DoD personnel and receive assistance. The purpose of this legislative proposal is to allow federal civilian employees of the DoD to disclose that they have been sexually assaulted to obtain information about services and assistance, without having that disclosure trigger a mandatory report to their supervisor in accordance with Title VII and other federal employee regulations. This legislative proposal would exempt the DoD from the Title VII provisions concerning employer responsibility to detect and address sexual misconduct.