



Don't Ask, Don't Tell (DADT) Repeal Implementation Tier 1 Education Army G-1 (Version 14, 24 Feb 11)



Outline

Supporting Soldiers, Civilians & Families – Active, Guard, Reserve and Retired



- **The Basics of DADT Repeal**
- **Historical Context**
- **Army Guiding Principles**
- **Overview of Policy Changes and Considerations**
- **Top 10 Things to Know About DADT Repeal**
- **Discussion**



The Basics of DADT Repeal

Supporting Soldiers, Civilians & Families – Active, Guard, Reserve and Retired



What will change after repeal of DADT?

- Statements about sexual orientation or lawful acts of homosexual conduct will no longer be a bar to military service.
- Soldiers will no longer be separated solely on the basis of legal homosexual acts; statements that they are gay, lesbian or bisexual (GLB); or marriage (see DOMA) to a person of the same sex.

What can you expect?

- Sexual orientation will continue to be a **personal and private matter**.
- All Soldiers will be held to the same standards. All policies regarding personal/professional conduct, dress/appearance, and harassment will be **sexual orientation neutral**.
- For the purpose of benefits, under the Defense of Marriage Act (DOMA), **“marriage”** is defined as **a legal union between a man and woman**, and **“spouse”** refers **only to a member of the opposite sex**.

Repeal will be effective ...

60 days after The President, SecDef, and CJCS certify that implementation is **consistent with the standards of military readiness, military effectiveness, unit cohesion, and recruiting and retention.**



Historical Context

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In 1993, Congress conducted 12 hearings on the issue of homosexuality in the military, and made this key finding:

“The presence in the armed forces of persons who demonstrate a propensity or intent to engage in **homosexual acts** would create an unacceptable risk to the high standards of morale, good order and discipline, and unit cohesion that are the essence of military capability.”

As a result, Congress enacted 10 U.S.C. § 654, which stated that Service Members may be separated by identifying themselves as homosexual by act, statement, or marriage.



Historical Context

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Congress voted to repeal 10 U.S.C. § 654 (Don't Ask, Don't Tell) and the President signed into law on 22 December 2010.

Repeal would take effect 60 days after the President, SecDef, and CJCS certify that the following conditions are met:

- After receipt of the comprehensive review;
- The Secretary of Defense, Chairman of the Joint Chiefs of Staff and the President certify that the repeal is not inconsistent with military readiness, military effectiveness, unit cohesion and recruiting, **and** that the implementation of necessary policies and regulations pursuant to the discretion **is consistent with the standards of military readiness, military effectiveness, unit cohesion, and recruiting and retention of the Armed Forces.**



Army Guiding Principles

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- 1. Leadership matters most.**
- 2. Standards of conduct apply to everyone regardless of sexual orientation.**
- 3. Treat each other with dignity and respect.**
- 4. Application of our rules and policies must be sexual orientation neutral.**
- 5. Emphasize our role as professional Soldiers.**
- 6. Keep it simple.**
- 7. There is no expectation to change religious or moral views.**
- 8. Good order and discipline will be maintained at all times.**
- 9. Chaplains have both the right to serve and conduct religious services according to their faith and a duty to perform or provide religious support.**
- 10. Stay focused on your mission.**



Policy Changes and Considerations

Supporting Soldiers, Civilians & Families – Active, Guard, Reserve and Retired



In Summary...

- All policies dealing with personal/professional conduct and harassment will be applied **without regard to sexual orientation**.
- Sexual orientation **will not** be made a protected class with respect to equal opportunity; the Army **will not** request, collect, or maintain information about sexual orientation.
- DOMA **prohibits the extension of dependent-related benefits** to same-sex partners of Soldiers.
- Soldiers can name same-sex partners as **beneficiaries of Soldier-designated benefits** such as Service-members Group Life Insurance (SGLI) and death gratuity.
- When analyzing benefit eligibility, **same-sex partners should be treated the same as an unrelated third party** (e.g. girlfriend, boyfriend).
- Sexual orientation **will not bar entry into the Army**, Soldiers previously separated under DADT **may apply for re-entry**, and **Soldiers will no longer be discharged** because of their sexual orientation.
- Sexual orientation **will not be used as a factor in duty assignments**, and Soldiers **will not be allowed** to request discharge because they are opposed to repeal of DADT.
- Compensation is **not authorized** for Soldiers previously separated under DADT.



Policy Changes and Considerations

Supporting Soldiers, Civilians & Families – Active, Guard, Reserve and Retired



Topics we will cover related to policy...

- **Standards of Conduct**
- **Equal Opportunity**
- **Sexual Harassment/Sexual Assault**
- **Benefits and Beneficiaries**
- **Personnel Management (Accessions, Discharges, Early Release, Duty Assignments)**
- **Claims for Compensation Due to Separation Under DADT**
- **Collection of Sexual Orientation Data**



Policy Changes and Considerations

Supporting Soldiers, Civilians & Families – Active, Guard, Reserve and Retired



Standards of Conduct (UCMJ)

- The UCMJ is the foundation for good order and discipline and the vehicle for enforcement of proper conduct.
- The UCMJ remains unchanged.
- Article 125:
 - Forcible Sodomy
 - Consensual Sodomy
 - Sodomy involving minors
- Application of the UCMJ must always be without regard to sexual orientation.



Policy Changes and Considerations

Supporting Soldiers, Civilians & Families – Active, Guard, Reserve and Retired



Standards of Conduct (Displays of Affection)

- There is no codified Public Display of Affection (PDA) policy.
- Standards for personal and professional conduct apply uniformly without regard to sexual orientation.
- Orders establishing local PDA standards and enforcement of such standards should always be sexual orientation neutral.



Policy Changes and Considerations

Supporting Soldiers, Civilians & Families – Active, Guard, Reserve and Retired



Standards of Conduct (Appearance)

- AR 670-1 prescribes the standards for grooming and wear of Army uniforms.
- The only basis for differences in appearance within AR 670-1 continues to be gender.
- There is no codified standard addressing civilian clothes.
- Orders establishing local appearance standards should always be sexual orientation neutral.
- Enforcement of appearance violations should always be sexual orientation neutral.



Policy Changes and Considerations

Supporting Soldiers, Civilians & Families – Active, Guard, Reserve and Retired



Standards of Conduct (Fraternization)

- AR 600-20 prescribes the Army's policy on fraternization.
- The repeal of DADT will not change the Army's policy on fraternization.
- Application of fraternization rules should always be sexual orientation neutral.
- The Army's fraternization policy has always been sexual orientation neutral.



Policy Changes and Considerations

Supporting Soldiers, Civilians & Families – Active, Guard, Reserve and Retired



Standards of Conduct (Hazing)

- AR 600-20 prescribes the Army's policy on hazing.
- The repeal of DADT does not change the Army's policy on hazing.
- Application of hazing rules must always be sexual orientation neutral.
- The Army's hazing policy has always been sexual orientation neutral.



Policy Changes and Considerations

Supporting Soldiers, Civilians & Families – Active, Guard, Reserve and Retired



Equal Opportunity (EO)

- AR 600-20 prescribes the Army's policy on equal opportunity.
- DoD and DA policies on EO have always prescribed that all Soldiers be evaluated on individual merit.
- Protected classes may utilize the Army's EO system for complaints of unlawful discrimination.
- Sexual orientation is not a protected class in the same category as race, color, religion, gender, and national origin.
- However, DA now expressly prohibits sexual orientation from being a factor in accession, promotion, or other personnel decision-making.
- Soldiers may address complaints of discrimination based on sexual orientation by reporting it to the chain of command or the Inspector General.
- The addition of sexual orientation as a protected class would contradict a key component of DADT repeal implementation.



Policy Changes and Considerations

Supporting Soldiers, Civilians & Families – Active, Guard, Reserve and Retired



Sexual Harassment/Sexual Assault

- AR 600-20 (Ch. 7 and 8) covers the Army's Sexual Harassment /Assault Response and Prevention (SHARP) program
- The repeal of DADT does not change the Army's SHARP policy.
- Application of SHARP rules must always be sexual orientation neutral.
- Any Soldier, regardless of sexual orientation, may use the existing system for complaints of sexual harassment or sexual assault.
- Sexual Assault Response Coordinators (SARC) and SHARP Specialists will assist Soldiers on sexual harassment and sexual assault issues.



Policy Changes and Considerations

Supporting Soldiers, Civilians & Families – Active, Guard, Reserve and Retired



Benefits and Beneficiaries (1 U.S.C § 7)

- DOMA, 1 U.S.C. § 7, defines the following terms for the purposes of Federal statute, regulation, or ruling:
 - “Marriage” only means a legal union between a man and woman;
 - “Spouse” only refers to a member of the opposite sex.
- 10 U.S.C § 1072, 37 U.S.C. § 401, and the Joint Travel Federal Regulation define “dependent” with language that triggers DOMA.
- DOMA prohibits DA from recognizing married or civil union partners of GLB Soldiers as “dependents.”
- DOMA will not prohibit GLB Soldiers from receiving benefits for selected dependents other than a spouse (e.g., adopted children).



Policy Changes and Considerations

Supporting Soldiers, Civilians & Families – Active, Guard, Reserve and Retired



Benefits and Beneficiaries (Soldier Designated)

- All Soldiers can still extend some benefits provided by the Army to third parties:
 - SGLI Beneficiary
 - Death Gratuity Beneficiary (DD 93)
 - Survivor Benefit Plan Beneficiary (spouse or child while living/ third party may be designated in retirement)
 - G.I. Bill Death Beneficiary
 - Final Settlement of Accounts Beneficiary
 - Thrift Savings Plan Beneficiary
 - Wounded Warrior Act Designated Caregiver
 - Post-Vietnam Era Veterans Assistance Program Beneficiary
- Same-sex partners should be treated the same as an unrelated third party (e.g. girlfriend, boyfriend) for benefits eligibility analysis



Policy Changes and Considerations

Supporting Soldiers, Civilians & Families – Active, Guard, Reserve and Retired



Benefits and Beneficiaries (A Third Category)

- A third category of benefits consists of benefits that do not trigger DOMA.
- However, Services cannot extend these benefits to all Soldiers due to existing regulations.
- DoD and DA will continue to study existing benefits to determine if they should modify the regulations so that the Services can extend the benefits to all Soldiers.



Policy Changes and Considerations

Supporting Soldiers, Civilians & Families – Active, Guard, Reserve and Retired



Personnel Management (Accessions)

- Upon repeal, statements about sexual orientation will not bar entry into the Army.
- All applicants must meet existing entrance standards
- Soldiers separated under DADT may apply for re-entry.
- The Army will waive DD 214 re-entry codes based on DADT, and applications will be considered under existing re-entry standards.



Policy Changes and Considerations

Supporting Soldiers, Civilians & Families – Active, Guard, Reserve and Retired



Personnel Management (Discharges)

- Upon repeal, Services may no longer separate under DADT.
- Soldiers with an approved separation date after the date of repeal will have that separation cancelled.
- All pending separation actions and investigations under DADT will cease.
- The Army will discontinue discharge codes used under DADT.



Policy Changes and Considerations

Supporting Soldiers, Civilians & Families – Active, Guard, Reserve and Retired



Personnel Management (Early Release)

- No policy for early discharge based on:
 - Opposition to repeal
 - Opposition to serving or living with gay, lesbian, or bisexual Soldiers
- Army regulations and policies change frequently. Those changes do not allow Soldiers to void their service obligations.
- Provision for voluntary discharge remains the same, and is granted only when in the best interest of the Army.



Policy Changes and Considerations

Supporting Soldiers, Civilians & Families – Active, Guard, Reserve and Retired



Personnel Management (Duty Assignments)

- There is no change to the Army's current policies with respect to duty assignments.
- “Needs of the Army.”
- All Soldiers can make individualized requests for accommodation in assignment.
- Soldiers assigned to countries that prohibit GLB conduct will adhere to guidance provided by local commanders.
- Rationale: The Army will not use sexual orientation as a basis or factor in official decision making.



Policy Changes and Considerations

Supporting Soldiers, Civilians & Families – Active, Guard, Reserve and Retired



Claims for Compensation Due to Separation Under DADT

- DoD has not authorized compensation of any type for Soldiers separated under DADT.
- When the Army separated Soldiers under DADT, it did so under valid law and regulations.



Policy Changes and Considerations

Supporting Soldiers, Civilians & Families – Active, Guard, Reserve and Retired



Collection of Sexual Orientation Data

- The Army is not authorized to request, collect, or maintain information about sexual orientation—**Except**:
 - If the *information is an essential part of an otherwise appropriate investigation or official action.*
- A Soldier's sexual orientation is a private matter.



DADT Regulations Updates (1 of 2)

Supporting Soldiers, Civilians & Families – Active, Guard, Reserve and Retired



NUMBER	REGULATION	PROPONENT	INPUT	PCT COMPLETE	
				DRAFT	STAFF
AR 27-1	Judge Advocate Legal Services	OTJAG		100	
AR 27-3	The Army Legal Assistance Program	OTJAG		100	
AR 40-400	Patient Administration	G-1, DMPM		100	
AR 40-501	Standards of Medical Fitness	G-1, DMPM		100	
AR 135-175	Separation of Officers	G-1, DMPM	USAR	100	
AR 135-178	Enlisted Administrative Separations	G-1, DMPM	USAR	100	
AR 140-111	U.S. Army Reserve Reenlistment Program	G-1, DMPM	USAR	100	
AR 145-1	Senior Reserve Officers Training Corps Program Organization, Administration, and Training	G-1, DMPM	USAR	100	
AR 195-2	Criminal Investigation Activities	G-1, DMPM		100	
AR 210-26	United States Military Academy	G-1, DMPM	USMA	100	
AR 350-1	Training and Leader Development	G-3/5/7		100	
AR 380-67	Personnel Security Program	G-2		100	
AR 600-8-10	Leaves and Passes	G-1, DAPE-PR		100	
AR 600-8-22	Military Awards	G-1, HRC		100	
AR 600-8-24	Officer Transfers and Discharges	G-1, DMPM	USAR	100	
AR 600-20	Army Command Policy	G-1, DAPE-HR	USAR	100	
AR 600-110	Identification, Surveillance, and Administration of Personnel Infected with Human Immunodeficiency Virus (HIV)	G-1, DAPE-HR		100	
AR 601-1	Assignment of Enlisted Personnel to the U.S. Army Recruiting Command Active and Reserve Components Enlistment Program	G-1, DMPM		100	

****NOTE:** Aligned with DRAFT EXORD Annex B (V3)

G-1, Human Resources Policy Directorate

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7 FEB 11 (v1)



DADT Regulations Status (2 of 2)

Supporting Soldiers, Civilians & Families – Active, Guard, Reserve and Retired



NUMBER	REGULATION	PROPONENT	INPUT	PCT COMPLETE	
				DRAFT	STAFF
AR 601-210	Active and Reserve Component Enlistment Program	G-1, DMPM		100	
AR 601-270	Military Entrance Processing Station (MEPS)	G-1, DMPM	USMC, USN, USAF	100	
AR 601-280	Army Retention program	G-1, DMPM		100	
AR 612-201	Initial Entry/Prior Service Trainee Support (RCS MILPC-17(R1))	G-1, HRC		100	
AR 621-202	Army Education Incentives and Entitlements	G-1, DMPM		100	
AR 635-5-1	Separation Program Designator (SPD) Codes	G-1, HRC		100	
AR 635-10	Processing Personnel for Separation	G-1, DMPM	USAR	100	
AR 635-200	Active Duty Enlisted Administrative Separations	G-1, DMPM	USAR	100	
DA PAM 600-8-11	Military Personnel Office Separation Processing Procedures	G-1, DMPM		100	
NGR 600-200	Enlisted Personnel Management	ARNG		100	*
NGR 635-101	Efficiency and Physical Fitness Boards	NGB		100	*

****NOTE:** Aligned with DRAFT EXORD Annex B

* Policy memorandum to be issued pending receipt of Army Directive



Top 10 Things to Know About DADT Repeal

Supporting Soldiers, Civilians & Families – Active, Guard, Reserve and Retired



- 1. Accessions & Separations Policies.**
- 2. Standards of Conduct Apply Equally to Everyone.**
- 3. Personal Privacy.**
- 4. Moral and Religious Concerns/Freedom of Speech.**
- 5. Benefits.**
- 6. Equal Opportunity.**
- 7. Duty Assignments.**
- 8. Medical Policy.**
- 9. Release and Service Commitments.**
- 10. Collection and Retention of Sexual Orientation Data.**



Discussion



Back-Up (Selected FAQs and Vignettes)



Frequently Asked Questions

Supporting Soldiers, Civilians & Families – Active, Guard, Reserve and Retired



Will Soldiers honorably discharged under DADT be allowed to reenter the Army?

All honorably discharged Soldiers have an equal opportunity to apply for reentry. The Army will determine re-accession based on need and a number of other factors, but sexual orientation will not be a factor.

(Support Plan for Implementation, Appendix D, Q3)

What education will be required for Soldiers and their families when repeal occurs?

Soldiers will be informed of the change in policy and expectations for behavior. Members involved in certain functions (e.g., administrative, legal or investigative) may receive additional education focused on specific changes to their specialty. Family members will be informed of the changed policy and advised where to go to seek any specific information they need. Further guidance is available from the chain of command, and Army policy staff, lawyers, chaplains and medical personnel. *(Support Plan for Implementation, Appendix D, Q17)*



Frequently Asked Questions

Supporting Soldiers, Civilians & Families – Active, Guard, Reserve and Retired



What is the changed policy on sexual orientation in the military?

Soldiers will not be involuntarily separated for lawful homosexual conduct. Sexual orientation remains a personal and private matter. Sexual orientation and lawful homosexual conduct (statements, acts or same-sex marriage) are not a basis for separation, reassignment or special consideration. Soldiers may inform others of their sexual orientation at their own discretion. The Army will not ask Soldiers to identify their sexual orientation. The Army will not collect or maintain data on an individual's sexual orientation. *(Support Plan for Implementation, Appendix D, Q1)*

Does the changed policy apply equally to all Active, Reserve and Guard components?

Yes. DoD policy on sexual orientation applies equally to all members of the Active, Reserve and National Guard Components. *(Support Plan for Implementation, Appendix D, Q10)*



Frequently Asked Questions

Supporting Soldiers, Civilians & Families – Active, Guard, Reserve and Retired



Will the Army establish a new category of early release from service commitments for Soldiers based on moral, religious or other objections to the repeal of DADT?

No. The Army does not permit the early discharge of Soldiers based upon their opposition to the repeal of any new policy. This includes DADT or objection to serving with or living in the company of any Soldier. Existing DoD regulations allow Soldiers with a service commitment to request early, voluntary discharge under their Service Secretary's plenary authority. Granting these types of requests is at the discretion of the Service Secretary and is granted only when the early separation would be in the best interest of the Army. Commanders retain their current authority under existing Army personnel management policies to assist personnel within their units who desire to separate from the Army when in the best interest of the Army, the unit and/or the individual in question. Soldiers are advised to talk to their chain of command and/or seek legal assistance to ensure they understand the available options within the Army for pursuing separation for any reason. (*Support Plan for Implementation, Appendix D, Q8*)



Frequently Asked Questions

Supporting Soldiers, Civilians & Families – Active, Guard, Reserve and Retired



How will the military handle discrimination towards gay, lesbian and bisexual Soldiers?

Unlawful discrimination against any individual or group is unacceptable. General military equal opportunity (EO) policy requires the promotion of “an environment free from personal, social or institutional barriers that prevent Soldiers from rising to the highest level of responsibility possible” and prohibits the evaluation of Soldiers on bases other than “individual merit, fitness and capability.” Complaints regarding harassment or discrimination based on sexual orientation are dealt with through the chain of command, the Inspector General (IG) and other means established by the Army. Criminal harassment should be referred to appropriate law enforcement agencies for investigation. *(Support Plan for Implementation, Appendix D, Q16)*



Frequently Asked Questions

Supporting Soldiers, Civilians & Families – Active, Guard, Reserve and Retired



Are there any new restrictions on duty assignments or employment?

No. There will be no special treatment or special arrangement for the assignment or employment of gay, lesbian and bisexual Soldiers. In these matters, all Soldiers will be considered equally regardless of sexual orientation. *(Support Plan for Implementation, Appendix D, Q11)*

How will repeal of DADT affect recruitment and retention policies?

If otherwise qualified, individuals may join and serve in the Army without regard to sexual orientation. Sexual orientation is not a factor in recruitment or retention in the Army, and the Department of Defense does not have sexual orientation targets or quotas for recruiting. *(Support Plan for Implementation, Appendix D, Q2)*



Frequently Asked Questions

Supporting Soldiers, Civilians & Families – Active, Guard, Reserve and Retired



Does repeal affect standards of conduct?

Standards for personal and professional conduct apply uniformly without regard to sexual orientation. Soldiers will continue to conduct themselves consistent with the law and with Army customs and traditions. Soldiers are expected to conduct themselves professionally at all times. Unprofessional behavior by any Soldier that fails to meet standards of conduct should be corrected by explanation, counseling, administrative action or legal action depending on the nature, severity or repetition of the offense. Sexual misconduct of any kind is inconsistent with our values and will be dealt with swiftly and severely. Harassment or violence of any kind between Soldiers will not be tolerated.



Frequently Asked Questions

Supporting Soldiers, Civilians & Families – Active, Guard, Reserve and Retired



What is the impact of repeal on Family Programs?

Impact on family programs is dependent on the definition of “family member.” Military family working definition (from draft DoDI 1342.22, Military Family Readiness Systems) states: “group composed of one Soldier and such Soldier’s dependents, two married Soldiers or two married Soldiers and such Soldiers’ dependents. To the extent authorized by law and in accordance with Army implementing guidance, the term may also include other nondependent family members.”

With respect to Family Readiness Groups (FRGs), anyone interested in providing assistance to Soldiers and their Family members can join an FRG. This includes but is not limited to:

- Soldiers
- Spouses
- Children
- Friends
- Relatives
- Retirees from any service
- Employees
- Community members



Frequently Asked Questions

Supporting Soldiers, Civilians & Families – Active, Guard, Reserve and Retired



How will DADT policy information be disseminated to military families?

DADT repeal education information materials will be posted on the following websites that provide timely, accurate information to military families:

- Military OneSource (MOS)
- Military HOMEFRONT (MHF)
- Military Service specific Family Support websites
- Family Matters Blog
- Appropriate Facebook and Twitter pages

The Deputy Assistant Secretary of Defense for Military Community and Family Policy will provide links to DoD DADT policy change information to the National Military Family Association (NMFA) and other non-government offices supporting military families.



Frequently Asked Questions

Supporting Soldiers, Civilians & Families – Active, Guard, Reserve and Retired



Does repeal of DADT affect benefits for partners of gay, lesbian and bisexual Soldiers?

GLB Soldiers are eligible for the same benefits as any single Soldier. For example, any single Soldier may extend to someone of their choosing benefits such as notification instructions on their DD Forms 93, *Record of Emergency Data (RED)*, and may list the designated individual as an SGLI beneficiary. The Department of Defense is examining other benefits that may be included in this set.

Context: *Under the Defense of Marriage Act (DOMA), the Federal Government defines marriage as a legal union between one man and one woman as husband and wife. The word “spouse” refers only to a person of the opposite sex who is a husband or a wife. Under DOMA, married/spouse benefits cannot be extended to an unmarried partner, to include same-sex partners. (Support Plan for Implementation, Appendix D, Q5)*



Vignettes

Supporting Soldiers, Civilians & Families – Active, Guard, Reserve and Retired



SITUATION: You are the Noncommissioned Officer in Charge at a high tempo recruiting office. Your top notch, high performing recruiter who has served in the military for 15 years asks to meet with you. Due to his personal religious beliefs, he tells you he cannot process an outstanding applicant who voluntarily states he is gay.

Issue: Accessions and Recruiting Policy. What actions should the NCOIC take? Has the Soldier committed misconduct?

Discussion: Normally, counseling and education should be your first course of action. As his supervisor, you counsel him on the new policy, informing him that sexual orientation is not a bar to military service, and his duty is to recruit the best qualified applicants within the enlistment standards set by the Service. Due to the Soldier's stated religious concern, you may suggest the Soldier meet with the chaplain or another spiritual advisor. If, the recruiter continues to refuse to process an otherwise qualified recruit, he could be subject to disciplinary or adverse administrative action. However, if the recruiter's performance and professionalism are otherwise high, and he is able to carry out assigned duties but still cannot resolve the conflict with his personal beliefs, the NCOIC could work with the chain of command to explore their available options to include possible reassignment. In all situations, leaders are expected to enforce standards and correct behaviors that undermine unit cohesion. Positive leadership with a focus on professional obligations to uphold the policy while recruiting the best qualified applicants should be reinforced. Soldiers are expected to obey lawful orders and could be subject to discipline or adverse administrative action if they refuse orders, even if such refusal is based on strong, sincerely held, moral or religious beliefs.



Vignettes

Supporting Soldiers, Civilians & Families – Active, Guard, Reserve and Retired



SITUATION: You are the Noncommissioned Officer in Charge at a high tempo recruiting office. A top notch, high performing recruiter has been doing a good job for the past couple of months after your discussion with him about DADT. He requested a reassignment but it was denied. The recruiter asks to see you and informs you that while he appreciates how the situation was handled, he has tried but he cannot resolve his personal beliefs with the repeal of Don't Ask, Don't Tell. He has two years remaining on his current enlistment and wants to know how he can request an early separation.

Issue: Release from Service Commitments. What actions should the NCOIC take? Can the recruiter be released early from his service commitment?

Discussion: The Army does not permit the early discharge of Soldiers based upon their opposition to a new policy. This includes a repeal of Don't Ask, Don't Tell. "Any Soldier may request early discharge at any time. However, the Army will only approve in cases where it is in the best interest of the Army."



Vignettes

Supporting Soldiers, Civilians & Families – Active, Guard, Reserve and Retired



SITUATION: An applicant comes into a recruiting station and says that he would like to enlist. In accordance with Army policy, the recruiter does not ask any questions about the applicant's sexual orientation; however, the applicant reveals of his own accord that he is gay.

Issue: Accessions and Recruiting Policy; Collection and Retention of Sexual Orientation Data. What should the recruiter do after hearing the applicant's statement?

Discussion: Applicants will not be asked or required to reveal their sexual orientation during the accession process. If an applicant comes into a recruiting office and volunteers a statement that he or she is gay or lesbian, the recruiter should explain to the applicant that sexual orientation is considered a personal and private matter, and the comments about their sexual orientation is not part of administration and will not be used in their application into the Army. No Soldier is required to declare their sexual orientation. The recruiter should continue to administer the application unless the applicant is otherwise ineligible for service in the military.



Vignettes

Supporting Soldiers, Civilians & Families – Active, Guard, Reserve and Retired



SITUATION: A Lieutenant complains to her immediate supervisor that she believes the reason for her non-selection to a much-desired school was due to her sexual orientation. The supervisor informs the Soldier that the panel used for the selection process had no way of knowing her orientation, but he would check into the situation and get back to her. After an informal inquiry of the panel members, the supervisor concludes that the selection process used was fair and equitable. The Soldier is still not satisfied and wants to know what other course of action she can take. You refer her to the Commander who understands the Soldier has a right to redress suspected wrongs in the selection process, but is unsure if this is a matter for the Equal Opportunity Advisor (EOA), the IG or the chain of command.

Issue: Equal opportunity. The commander wonders if this is an issue under the Military Equal Opportunity (EO) Program, the Inspector General (IG), or something the chain of command should be made aware of to determine if the selection board acted appropriately.

Discussion: Soldiers should be evaluated only on individual merit. The IG and commanders work allegations of unfair treatment not associated with EO on a regular basis. The supervisor's attempt to resolve the complaint.



Vignettes

Supporting Soldiers, Civilians & Families – Active, Guard, Reserve and Retired



SITUATION: A Soldier requests emergency leave after receiving a Red Cross message concerning the critical condition of his same-sex partner.

Issue: Benefits. Is the Soldier eligible for Emergency Leave?

Discussion: The Soldier may be eligible for emergency leave. The sexual orientation of the Soldier's partner has no bearing on the decision. DoDI 1327.06 states that emergency leave may be appropriate in the following circumstance: the Soldier's failure to return home places a severe or unusual hardship on the Soldier, his or her household or immediate family. Commanders may grant up to 30 days of emergency leave. The Commanding Officer should meet with the Soldier to obtain information about the emergency and verify that the Soldier's presence can resolve or alleviate the situation. If in doubt, the Commander should seek legal advice and consult the chain of command. If circumstances and the military mission warrant granting emergency leave, the Commanding Officer should ensure swift processing of the request. If the situation does not fall within the guidelines of emergency leave and the mission will not be unacceptably impacted, every attempt should be made to resolve the situation swiftly and compassionately through other authorized alternatives. Considerate, professional understanding is the humane approach to granting leave requests, regardless of the situation or circumstances.



Vignettes

Supporting Soldiers, Civilians & Families – Active, Guard, Reserve and Retired



SITUATION: You are the administrative chief of a unit personnel office. A newly commissioned Lieutenant reports to the unit with the expectation of starting his BAH at the “with dependent” rate. He informs you that he got married while executing PCS orders. He presents his marriage certificate. While reviewing the documents, you notice the Soldier was married to his same-sex partner in Vermont where same-sex marriage is legal. The newly-reported member informs you he thought he would receive BAH at the “with dependent” rate once DADT was rescinded.

Issue: Benefits. What entitlements are available to same-sex partners?

Discussion: The Defense of Marriage Act (DOMA) currently recognizes only opposite-sex marriages. Therefore, a Soldier cannot claim dependency for a same-sex partner, for BAH purposes. You inform the Lieutenant that he is not entitled to BAH at the “with dependent” rate based on a marriage to a same-sex partner. However, if the Soldier has a qualifying dependent such as a dependent child, then he is eligible for BAH at the “with dependent” rate. The question of benefits for unmarried partners is being studied by the DoD at this time. For further explanation of the law and current entitlements available to the Soldier and his family, refer the Lieutenant to the Legal Office.



Vignettes

Supporting Soldiers, Civilians & Families – Active, Guard, Reserve and Retired



SITUATION: You are the Executive Officer of your unit. While shopping at the local mall over the weekend, you observe two junior male Soldiers assigned to your unit and in civilian clothes kissing and hugging in the food court.

Issue: Standards of Conduct. Is this within standards of personal and professional conduct?

Discussion: If the observed behavior crosses acceptable boundaries as defined in applicable standards of conduct for your unit and the Army, then an appropriate correction should be made. Your assessment should be made without regard to sexual orientation.



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SITUATION: A Soldier has been observed entering, leaving and generally “hanging around” a gay bar. The Commander is notified of the observations but isn’t sure what action, if any, she should take.

Issue: Standards of Conduct. What should the Commander do? Can she take administrative disciplinary action and charge the Soldier for patronizing a gay bar? Should she conduct a Commander’s inquiry?

Discussion: Installation Commanders can place an establishment off-limits for certain reasons, such as known or suspected criminal activity or drug use. An establishment would not be placed off-limits just for catering to gay clientele. Unless the establishment is designated off-limits by the installation Commander or there is evidence of behavior by the Soldier that is counter to Army standards of conduct, there is no prohibition against going to a gay bar. In this case, the Commander should take no action.



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SITUATION: A Warrant Officer is watching the local TV news coverage of a gay rights parade when he notices a female Soldier assigned to his unit marching in the parade in civilian clothes, carrying a handmade placard. As the television camera zooms in on the Soldier's sign, the Warrant Officer can clearly read the handwritten words "Support Gays and Lesbians in the military!" The next morning, he reports the incident to his Commander.

Issue: Standards of Conduct. Is this prohibited activity? Should the Commander inquire into what meaning this Soldier had intended to convey by carrying that particular sign in the gay rights parade?

Discussion: A Soldier's participation and carrying a banner or sign in a gay rights activity would not in and of itself constitute misconduct unless the Soldier's actions are otherwise prohibited or would discredit the military. For example, participating in uniform or while on duty hours would be prohibited unless approved by authorized command authorities. In this case, the Soldier chose to carry a sign that acknowledged positive support for gay and lesbian Soldiers serving in the military. The parade was a local community-sanctioned event and was not a protest or dissident activity prohibited by existing policy. Furthermore, the Soldier was off-duty and in civilian clothes. Participation in the parade as described is within the Soldier's right of expression and consistent with good order and discipline. However, if there is any doubt about participating in any off-base event, the Commander should contact the SJA for advice.



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SITUATION: You are the Command Sergeant Major of a Garrison. A Soldier with sixteen years of service requests to see you about her next assignment. Due to a medical concern of her same-sex partner, she would like to request a base where her partner would have access to the medical care. She states that if she cannot get the care, she intends to turn down her next assignment. She wants to know if she can receive any assignment priority based on the needs of her partner.

Issue: Duty Assignments. What actions should the Command Sergeant Major take? Can the Assignment Officer take into consideration the member's honest acknowledgement concerning her partner and assign her to the desired location? Can the member decline assignment orders without consequences?

Discussion: Soldiers are assigned permanent change of station orders based on the needs of the Service. Soldiers can share personal information with assignment personnel for consideration in making assignments. Assignment personnel then make assignments within existing Service assignment policy. In general, a Soldier's sexual orientation should have no bearing on the assignments process. In this case, the same-sex partner would not qualify the Soldier for assignment priority under existing Army policy. However, the Soldier can provide any information that she is comfortable sharing for consideration. The Soldier could also share her concerns with the Commander who could make an input to the assignment process within existing Service regulations. If the assignment can be made within existing assignment policy and the needs of the Army, then this request should be considered. The Soldier may turn down the assignment and separate if she does not have an existing service commitment that would prevent her from separating. If the Soldier has further questions about assignment priority based on her situation, she should be referred to the legal office.