

Personnel Management

Workplace Anti-Violence

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Applicability. California National Guard Full-time Personnel Regulation (CNGFPR) applies to all California Army and California Air National Guard technician and AGR employees and to commanders, managers and supervisors (military or civilian) with authority or responsibility over full-time personnel management.

Proponent and Exception Authority. The proponent of this regulation is the Joint Force Headquarters, J-1, Directorate for Human Resources. The proponent has authority to approve exceptions to this regulation when they are consistent with controlling laws and regulation.

Supplementation. Supplementation of this regulation is prohibited.

Suggested Improvements. Users of this regulation are invited to send comments and suggested improvements to Joint Force Headquarters, Directorate for Human Resources, 9800 Goethe Road, Sacramento, CA 95826-9101.

Distribution. Distribution of the regulation is Army - A and Air Force - AF.

History. None

Summary. This regulation replaces the earlier version, dated 1 May 2006. It adds the description of the Metz Factors which are evidentiary factors used to determine if a threat has actually occurred. This regulation also replaces any Technician AGR Administrative Instruction (TAAI) concerning this subject published before 15 October 2007.

Content (listed by paragraph number)

	Paragraph
Purpose	1
Policy	2
Covered Acts	3
The Metz Factors	4
Guideline	5
Responsibilities	6
Reporting Procedures	7
Follow up Actions	8
Disciplinary Action	9

1. Purpose.

a. All employees/service members of the Military Department have the right to a safe, secure and violence-free work environment. The Military Department recognizes this right and acknowledges that nothing is more important than the safety and security of its employees/service members.

b. The Military Department's prohibition against violent, threatening, or intimidating behavior applies to all persons involved in the Military Department's operation. As such, the Military Department shall protect its

employees/service members and visitors against acts of violent, threatening or intimidating behavior that may occur in the work environment and herein establishes the Military Department's Workplace Anti-Violence Policy.

2. Policy.

a. Violence in the workplace is unacceptable and will not be tolerated. Every employee/service member has the right to work in an atmosphere free from verbal, written, physical, and psychological violence. Violent, threatening, or intimidating behavior involving or affecting Military Department employees/service member will not be tolerated. It is the Military Department's policy to ensure that employees/service members are protected from assaults, threats, intimidation, harassment and/or coercion and to take appropriate actions whenever such incidents occur.

b. All employees/service members will treat co-workers, customers, and visitors responsibly and respectfully by adhering to The Adjutant General's core values. Any employee/service member, customer, and/or visitor who exhibit violent, threatening, or intimidating behavior will be subject to immediate investigation and necessary remedial/disciplinary action.

c. Consequences of violent behavior may include but are not limited to forced leave, suspension, or even removal.

3. Covered Acts.

a. Any physical action which can cause physical or mental injury/harm to employees or government property.

b. Any nonphysical, verbal, or written threats, against employees or governmental property (see para 4).

c. Other assaulting or abusive behavior outlined in the State of California Code of Civil Procedure, Section 527.8.

4. The Metz Factors.

a. In deciding whether an employee threatened his/her supervisors or co-workers, management must consider several factors. A well known Merit Systems Protection Board (MSPB) case (*Metz v. Dept. of Treasury*, 780 F.2d 1001 (Fed. Cir. 1986) addresses this issue in detail. The MSPB held the following evidentiary factors must be considered:

- (1). listener's reactions;
- (2). listener's apprehension of harm;
- (3). speaker's intent;
- (4). any conditional nature of the statements;
- (5). and attendant circumstances.

Note: *Meehan v United States Postal Service* (718 F2d 1069, 1075 (Fed. Cir 1983)) initially established these evidentiary factors.

b. Management must weigh the evidence in order to determine if a "threat" has actually occurred. Evidence of an employee's intent in making a statement can show the statement was or was not a threat. Rumors, or fear based on rumors, cannot suffice to prove an employee threatened anyone. Management should not, however, disregard subjective evidence of fear or intent. Remember objective evidence typically bears the heaviest weight. The five "Metz Factors" provide a framework to weigh the evidence fairly and must all be considered.

c. An example: the MSPB overturned the removal of an employee for threatening a supervisor because the "Metz Factors" were not in evidence. An employee was removed because the employee told his supervisor over the telephone the supervisor's "career and family are going to suffer" because of what the supervisor had done to the employee. First, the threat was not specific; allowing the employee to argue he merely meant his successful grievance would get the supervisor fired and in turn, affect his family. Secondly, and even more damaging, the supervisor apparently did not take it seriously at the time the statement was made since he waited a week before writing up a report of the incident. Third, the agency took no immediate actions in the form of precautions or discipline.

d. Especially in these days of increased awareness of workplace violence, threats against supervisors and co-workers usually justify the most severe penalties. However, you must be able to prove the words the employee used were indeed intended as a threat. One of the ways to make that decision is whether or not you responded in a manner consistent with the perceived threat.

4. Guidelines.

Intimidation, threats, harassment, and assaults are prohibited and distract from a positive work environment. Furthermore, intimidation, threats, and harassment can be precursors to workplace violence. Ignoring an individual who exhibits these behaviors sends the message that such behaviors are acceptable; consequently, the

behaviors are likely to continue and may even increase. Therefore, it is critical and incumbent upon all employees to identify and report these behaviors immediately so that appropriate action may commence.

5. Responsibilities.

All employees are responsible for promoting a safe, secure, and conducive work environment. The following outlines key responsibilities:

a. **Executive Staff/Senior Management** provide adequate resources and consistent authority to individuals assigned the duties of handling security matters related to workplace violence. Training goals and objectives will be resourced to provide all full-time staff with the tools and capabilities to insure a safe workplace environment.

b. **Senior management:**

- (1) Promote a safe, secure work environment.
- (2) Assures that all locations, practices and procedures are consistent with this policy.
- (3) Assures that all levels of employees/service members are held accountable for carrying out their responsibilities to maintain a violence-free work environment.
- (4) Exhibits leadership by example by refraining from conduct covered by this policy and taking appropriate action in response to reporting of violations or complaints.
- (5) Assures that all employees/service members are knowledgeable about the policy by a signed receipt of this policy to be kept in the employee's file.

c. **Managers and Supervisors** lead by example, communicate and support this policy, and assure all employees/service members are knowledgeable about the policy and their responsibilities. Upon notice of an alleged violation of this policy, immediate notification will be made to the immediate manager or supervisor and depending on the infraction, a possible incident report (IR) maybe be filed with the Joint Operations Center (JOC). Additionally, restraining orders brought to the attention of managers and supervisors should be immediately referred to the appropriate Personnel Director.

d. **All employees/service members** support and promote a violence-free work environment, and will be held accountable for adhering to policy. All employees/service members are responsible for notifying management of any threats they have witnessed, received, or have been told about. Even without an actual threat, employees/service members should also report any behavior they have witnessed which they regard as threatening or intimidating behavior. If an employee/service member feels that a reported violation of this policy is not being handled to their satisfaction by their manager/supervisor, it should be brought to the attention of their appropriate Personnel Director or to the Joint Operations Center.

(1) All persons involved in the Military Department operations that apply for or obtain a Protective/Restraining order are obligated to provide their supervisor a copy of any temporary or permanent Protective/Restraining order which is sought or granted. Supervisory staff will insure that the appropriate civil service/active duty personnel office receives a copy.

(2) All work sites will post the Military Departments Workplace Anti-Violence Policy.

6. Reporting Procedure.

a. If the threat is criminal and may create imminent danger, call 911 and follow up with the Joint Operations Center utilizing the serious incident reporting procedures and call (916) 854-3444.

b. If the threat is immediate and does not create imminent danger, call the Joint Operations Center (Serious Incident Reporting) (916) 854-3444.

c. All violent, threatening, or intimidating behavior will be taken seriously. The Military Department's Anti-Violence policy provides the reporting of incidents of violence without fear of retaliation. Reports will be made to the reporting individual's immediate supervisor.

d. Reports of such incidents may be made anonymously; however, anonymity cannot be guaranteed in a case requiring administrative and/or legal action. The extent to which anonymity can be preserved must be explained to the employee/service member upon such reporting. Employees/service members acting in good faith in reporting threats of violence will not be subject to reprisals, retaliation, threats, coercion or similar acts for having reported such activities.

7. Follow up Actions.

a. Supervisors will consider discussing what occurred, status of the workplace violence incident, and will reiterate The Adjutant General's workplace Anti-Violence policy with adversely affected employees.

b. Situations will be investigated with findings forwarded to the HRO. If findings confirm workplace violence, then adverse actions should pursue.

8. Disciplinary Action.

a. Violation of this policy by an employee/service member will result in disciplinary action. Depending on the severity of the violation, the Military Department shall seek legal action as may be appropriate.

b. Any employee/service member who commits an act of retaliation against another employee/service member for reporting a good-faith belief that an incident has or is likely to occur will be subject to prompt investigation and necessary remedial and/or disciplinary action.