



Regulation against Sexual Harrassment in Employment

2020

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INTRODUCTION

The practice of sexual harassment, in any of its manifestations, infringes the inviolability of the dignity of the human being and is illegal. The Institutional Trust of the Puerto Rico National Guard (FIGNA) has an affirmative responsibility to discourage and prevent sexual harassment in employment. It also has the responsibility to take the necessary measures to achieve that purpose.

The practice of sexual harassment in employment, in any of its manifestations, violates the inviolability of the dignity of the human being and constitutes a clear discrimination against the man or woman who suffers it.

For this reason, we have a moral and legal obligation not to discriminate on the basis of sex and to take affirmative action to eliminate any practice that promotes the modality known as sexual harassment. This Regulation has been evaluated and approved by the Board of Directors. The Executive Director or his authorized representative shall inform the Chief Executive Officer of any situation, action or possible circumstances that occur related to this regulation and/or subject matter.

Article 1 – Title.

This regulation will be known as the *Regulation Against Sexual Harassment in Employment* of the Institutional Trust of the Puerto Rico National Guard.

Article 2 - Legal Basis.

This regulation is established in accordance with the provisions of:

- a. Law Number 23 of July 23, 1991, as amended, better known as the "Law of the Institutional Trust of the Puerto Rico National Guard";

- b. The Bill of Rights of the Constitution of the Commonwealth of Puerto Rico, Article II Section 1, which expressly prohibits discrimination on grounds of sex;
- c. Title VII of the Federal Civil Rights Act of 1964, which has been interpreted as a statute under which actions for sexual harassment can be brought;
- d. Law No. 69 of July 6, 1985, which prohibits discriminatory actions on grounds of sex; and
- e. Article 10(d) of Law No. 17 of April 22, 1988, prohibiting sexual harassment in employment and provides that any employer covered by it shall establish an appropriate and effective internal procedure to address sexual harassment complaints.

Article 3 – Purpose.

This Regulation is intended to prevent and prohibit any sexual harassment conduct in the Institutional Trust of the Puerto Rico National Guard in accordance with our laws. In addition, it establishes the internal administrative procedure to address sexual harassment complaints and to implement an education and advisory program on the Trust's public policy on sexual harassment in employment.

Article 4 – Statement of Public Policy.

- a. Harassment or sexual harassment in employment is a form of discrimination on the basis of sex. It is an illegal and undesirable practice that violates the constitutional principle that the dignity of the human being is inviolable and that it expressly prohibits discrimination.
- b. The Institutional Trust of the Puerto Rico National Guard is extremely committed to combating sexual harassment in employment. For this reason, it has adopted a program of education, prevention, detection and investigation of any manifestation of sexual

harassment. Our program is aimed at eliminating any possibility of sexual harassment by any means including the electronic means of the Trust.

c. In accordance with the foregoing, this illegal and discriminatory practice is strongly prohibited, and it will not tolerate its employees, regardless of the hierarchy or position they occupy, who incur such undesirable practice with impunity. FIGNA has an affirmative duty to keep its workplace free from sexual harassment and intimidation in relation to the following persons or groups of people:

1. Applicants or Job Applicants.
2. Employees, and/or Contractors.
3. Trust Participants.

d. In the case of contractors, service suppliers, guests or visitors, FIGNA shall not be liable unless the following conditions are present:

1. FIGNA has been notified of the offensive conduct;
2. FIGNA is in a position to take action on such conduct;
3. FIGNA does not take immediate and appropriate corrective action to the situation.

Article 5 - Definitions.

Any provision of this regulation referring to male persons shall be deemed to include females and vice versa or persons of the same sex. For purposes of this regulation, the following terms shall have the meaning set out below:

- a. **"FIGNA" or "Trust"** – Means the Institutional Trust of the Puerto Rico National Guard.
- b. **"Legal Division"** – Means the support unit involved in the process related to the establishment of a grievance or claim of alleged conduct of corruption or unethical, discriminatory, illegal and criminal conduct.
- c. **"Executive Director"** – Means the Executive Director of the Institutional Trust of the Puerto Rico National Guard and the official responsible for the administration of the Latter.
- d. **"Employee" or "Official"** – Means any person who works for and receives compensation for the Trust. For purposes of this regulation, the term employee includes persons shortlisted by FIGNA for employment.
- e. **"Complaints Officer"** - Person responsible for receiving and guiding the complaining person and performing the other functions set out in those mentioned in this document.
- f. **"Visitor"** – Means the not employed person who goes to the Trust in any endeavor.
- g. **"Supervisor"** – Means any official or employee of the Trust who exercises any control or whose recommendation is considered for the hiring, classification, dismissal, promotion, transfer, setting of compensation or other working conditions, such as schedule, place of work, tasks or functions performed by an employee or group of employees or on any other terms or conditions of employment, or any person who day-to-day performs supervisory duties.

- h. **"Complaint"** – Means the internal administrative procedure for processing, investigating and clarifying allegations of sexual harassment in the Trust.
- i. **"Complainant"** – Means any employee or official of the Trust or unemployed person affected by an act of sexual harassment, as defined by this regulation and our current laws with the right to file a complaint in accordance with the internal administrative procedure established by these regulations.
- j. **"Respondent"** – Means the employee or official of the Trust or any other person against whom the commission of acts constituting sexual harassment in employment is alleged.
- k. **"Chief Executive Officer"** – Means the chairman of the Board of Directors, an ex officio position occupied by the Adjutant General of Puerto Rico.

Article 6 - Conduct That Constitutes Sexual Harassment.

- a. Sexual harassment consists of any type of unwanted sexual approach, requirement of sexual favors and any other verbal or physical behavior of a sexual nature or that is reproduced using any means of communication including, but not limited to the use of multimedia tools through the cyber network or by any electronic means, where one or more of the following circumstances occur:
 - 1. When the subjecting himself/herself to such conduct becomes implicitly or explicitly a term or condition of a person's employment. The person submits so as not to expose himself to losing opportunities, losing benefits and other conditions of his or her work.
 - 2. When the submission or rejection of such conduct by a person becomes the basis for decision-making in employment or in respect of employment affecting that person.

3. When such conduct has the effect or purpose of unreasonably interfering with the performance of that person's work.
 4. When you create an intimidating, hostile, severe, abusive, offensive work environment that affects any term or condition of your employment, even if it does not have an economic effect, or that violates your dignity.
- b. Sexual harassment can be expressed in the following ways:
1. Simple manifestations such as: unwanted flirts, winks and sexual innuendo, comments and behavior that hint at the intention to make sexual approaches.
 2. More direct and more violent expressions of sexual assault such as: uninvited love phrases, pinches, unsolicited body frictions, insistent invitations to unwanted outings, kissing, hugging and forced grips.
 3. Extreme cases of physical and psychic violence, including nonconsensual or non-desired sexual acts.
- c. Types of Sexual Harassment Discrimination.
1. American casuistics have delimited two types or classes of claims in the field of sexual harassment. These are:
 - (a) **QUID PRO QUO** case - This type of claim arises because, explicitly or implicitly, the terms or conditions of employment, favorable or unfavorable, depend on the person submitting to sexual, illegal and unwanted behavior. That is, submitting or refusing such conduct is used as a basis for making employment decisions regarding the individual.

(b) **OFFENSIVE OR HOSTILE WORK ENVIRONMENT** Case - Refers to the case where sexual, illegal and unwanted conduct has the effect of unreasonably interfering with the execution of the person's work, or creates an intimidating, hostile or offensive work environment.

d. Examples of Prohibited Conduct. Types of behavior that are considered unacceptable include:

1. Performances, comments, jokes, posters of a sexual nature, in the workplace.
2. Threats, demands or suggestions of a sexual nature where the harassed person believes will lose their job or be affected in their qualifications if they do not access the behavior desired by the harassing person.
3. Pressing for the harassed person to accompany the harasser to a specific unwanted place (romantic date or outing).
4. Attentions, unwanted or inappropriate compliments.
5. Pressure from supervisors for sexual favors in exchange for employment benefits.

Article 7 – Prohibitions.

- a. Sexual harassment by Trust staff without distinction of gender, levels or years of service is strictly prohibited.
- b. In addition, sexual harassment by any employee under contract, subcontract and independent contractor or his agents performing services in or to the Trust during the term of their contracts is prohibited.

Article 8 - Factors for Determining Sexual Harassment.

In determining whether alleged conduct constitutes sexual harassment in employment, the following shall be taken into consideration:

- a. The entire circumstances in which the events occurred, as well as the nature of the sexual approaches or requirements and the context in which the alleged conduct occurred, shall be considered. The determination of the legality of the alleged conduct shall be made based on the facts of each particular case and taking into account the rule of law in force at the time of the facts.
- b. The particular employment relationship will be examined to determine whether the person who committed the sexual harassment acted in his or her capacity as an agent or supervisor of the employer. It will not be necessary to establish that the agent or supervisor who committed the sexual harassment directly supervised the complainant.

Article 9 - General Coordination.

The Complaints Officer is responsible for:

- a. Design and implement an effective continuing education and advisory program for all employees of the Trust. This program shall include a general guidance to any new employee on the Trust's public policy regarding sexual harassment in employment and the relevant provisions of this Regulation or any other existing regulation. In addition, continuous guidance, not less than one (1) credit hour per year, will be offered to the Staff of the Trust to keep you up to date on everything related to sexual harassment in employment. In the

first orientation, they will provide employees with a copy of this Regulation and any other literature related to sexual harassment in employment.

- b. Keep in the employee's file a copy of the acknowledgement of receipt of Regulation and evidence or record of attendance at the guidance offered on Sexual Harassment.
- c. Ensure that the Trust complies with the provisions of Law No. 17 of April 22, 1988, with respect to sexual harassment in employment, as well as any other provisions of applicable law in accordance with our current laws.
- d. Ensure strict compliance with the procedures established by regulation for the processing, investigation and adjudication of sexual harassment complaints under this regulation.
- e. Follow up on submitted complaints.

Article 10 - Complaint Procedure.

Employees of the Trust shall notify of any act of sexual harassment committed by both regular employees and contract employees, subcontracts, independent contractors or their agents and any visitors. An employee or visitor who understands that an act of sexual harassment has been committed against him in the Trust may file a complaint in accordance with the procedures described below:

- a. It shall communicate the facts immediately or as soon as possible, verbally or in writing, to any of the following officials:
 - 1. Your direct supervisor
 - 2. Executive Director
 - 3. Trust's Complaints Officer

4. Chief Executive Officer

- b. Any employee or official of the Trust who receives a complaint about sexual harassment must guide the person and refer them to one of those officers. The information you receive must be kept strictly confidential.
- c. The authorized official who receives the information will initially refer the matter to the Executive Director for the beginning of the official process. The latter is responsible for keeping the matter strictly confidential and for keeping the Chief Executive Officer informed throughout the process.
- d. The complaint shall describe the facts or acts constituting sexual harassment with clarity and specificity. It must be signed by the complainant and sworn before Legal Counsel.
- e. Content. The minimum information suggested to be given at the time of filing is as follows:
 - 1. Name of the official, employee, facility or contractor of FIGNA against whom the allegations are made.
 - 2. Department, program, or office where the official, employee, or contractor of FIGNA works.
 - 3. Detail of facts or circumstances that give rise to the complaint, complaint or request.
Detailed and specific description.
 - 4. Place where the alleged events occurred.
 - 5. Date when the alleged facts occurred.
 - 6. Frequency of acts.

7. Manner in which the person gained knowledge of the facts.
8. Documentary or witness evidence about the facts.
9. Name of people who have additional knowledge of the facts.
10. Information of the person submitting the complaint (optional):
 - (a) Name
 - (b) Residential and/or mailing address
 - (c) Home, cell or work phone
 - (d) Email
 - (e) If you authorize, if necessary, to disclose your name for investigative purposes.
 - (f) If you are willing, if necessary, to cooperate or provide additional information.
- f. In the case that the complaint is directed against the Executive Director, it will be received and processed by the Chief Executive Officer, Adjutant General of the Puerto Rico National Guard and/or the Board of Directors of FIGNA.
- g. In these cases, if the supervisor or director determines that he/she should be recused, he/she will delegate his/her participation in the process to another supervisor or director.
- h. The fact that a complaint is not sworn shall not, in itself, constitute an impediment to an investigation of the alleged facts and to take any provisional action or other appropriate action.
- i. Within three (3) working days of receiving the complaint, the Executive Director shall appoint a person to conduct an investigation of the facts and provide him with a written report on the matter. This report shall be submitted to the Executive Director within fifteen (15) working days of the appointment.

- j. The investigator must have knowledge in the field of sexual harassment in the employment and administration of personnel.
- k. The appointment of the investigator shall be informed to the complaining party and the respondent party in person or by registered mail.
- l. Either party may challenge the investigator's appointment and request a new investigator to be assigned where there is reason to believe that there is a conflict of interest, bias or any other situation, which finds that the investigation is not being carried out or can be done with objectivity and impartiality. The application must be submitted in writing to the Executive Director no later than two (2) working days after the party receives notification of the identity of the investigator. This term may be extended for good cause. The Executive Director shall decide on the application within the next two (2) working days. In every complaint where the investigator's appointment is challenged, the investigator's term for completing his work will be interrupted and will not begin to count until his appointment is final.
- m. During the investigation, the complainant may not be questioned about his sexual conduct prior to the complaint.
- n. If, after reviewing the investigator's report, the Executive Director understands that any disciplinary action is appropriate, the process will be in accordance with the current Regulations for personnel management. These procedures will be consulted and validated in writing with the Chief Executive Officer.
- o. In cases where the respondent requests a hearing, the Executive Director shall grant the hearing within ten (10) working days from the date on which such request is received. The

hearing will be informal, so that the employee can offer his/her version of events and will be intended to determine whether there is a reasonable basis for believing that the charges are true and upholding the disciplinary action. This shall be held before the Executive Director or his authorized representative. If the hearing is held before a representative, the representative shall report on this matter to the Executive Director with his recommendations.

- p. After the hearing, if the Executive Director considers that the facts support the disciplinary action, he may submit administrative charges against the employee and notify them in writing, the process shall be in accordance with the current Regulation for personnel management.
- q. In the case of contract, subcontract, independent contractors or their agents or visitors, the Executive Director shall take appropriate action. These procedures will be consulted and validated in writing with the Chief Executive Officer.

Article 11 - Witness Protection.

Any person who gives a statement or who in any way cooperates in the investigation of a sexual harassment claim in employment shall have the following rights and should be warned about them during the investigation:

- a. Their participation in the investigation will not be recorded in their personnel file.
- b. You may file a complaint if decisions are made about your employment status or when it is affected by the actions of supervisors or co-workers due to your participation in the

investigation. That is, if the person is penalized or discriminated against for cooperating in a proceeding under these regulations.

Article 12 - Provisional Measures.

The following provisional measures are established with the aim of protecting the complainant from possible acts of retaliation:

- a. In cases where the direct supervisor is the respondent, the complainant shall report to another supervisor.
- b. Appropriate measures shall be taken in such a way that the complainant in the course of his work does not have to work alone with the respondent, having the working relationship in the presence of other persons, in writing or by other means.
- c. These provisional measures or any other that, under the particular circumstances of the case, may be requested immediately after the filing of the complaint and if imposed, shall be effective during the time in which the investigation and until the claim is adjudged.
- d. The provisional measures referred to above do not constitute a penalty against the respondent.

Article 13 – Sanctions.

- a. Any supervisor, agent or employee of the Trust who engages in sexual harassment shall be sanctioned in accordance with the Trust's regulations for career employees and trusted personnel.

- b. Personnel under contract, subcontract and/or independent contractors or their agents performing services in or for the Trust, who engage in sexual harassment in accordance with the provisions of this regulation, shall determine sufficient cause to terminate the relevant contract.
- c. If the investigation carried out as part of the complaint procedure cannot be established that the respondent committed sexual harassment in employment, but the evidence demonstrates conduct that is inappropriate or harmful to relationships on-the-job, such employee may be punished in accordance with the Trust's regulations of career and trusted employees.

Article 14 - Sexual Harassment by Persons Not Employed by the Trust.

- a. Employees of the Trust shall notify any of the officers referred to in Article 9(a) of this Regulation of acts of sexual harassment committed against them by persons not employed by the Trust.
- b. The complaint shall be processed in accordance with Article 9 of the Regulations. The Director shall take appropriate action depending on the Trust's control with respect to the respondent and any other legal liability the Trust may have.
- c. The Executive Director may order any visitor who commit acts of sexual harassment against an employee or official of the Trust to immediately leave the premises. You may also prohibit entry to any person or visitor who has previously engaged in acts of sexual harassment against an employee or visitor of the Trust.

Article 15 - Other Remedies.

The employee affected by sexual harassment may benefit from the procedures established in Law No. 17 of April 22, 1988, filing a complaint in the Anti-Discrimination Unit of the Department of Labor or with the Federal Office for Equal Employment Opportunities Commission (EEOC) or directly to the Court of First Instance, without the need to exhaust the administrative remedies set out in this regulation. In addition, the complainant shall be aware that the administrative procedure established under this regulation does not have the effect of interrupting the prescriptive term of one (1) year for the filing of legal proceedings under Law No. 17 cited above.

Article 16 - Frivolous Complaints or False Information.

- a. Any employee or official who knowingly presents a frivolous complaint for sexual harassment against an official or employee of the Trust or other person shall constitute a violation of the Trust's Rules.
- b. Any employee or official who knowingly provides false information, in whole or in part, commits perjury or conceals information relevant to the investigation or adjudication of a sexual harassment claim, where this has been required by competent authority, will also violate the Trust's Regulations.

Article 17 – Confidentiality.

- a. Any employee or official of the Trust who takes part in the proceedings related to the establishment or the processing of a complaint will keep the matter strictly confidential to safeguard the rights of the parties. The intentional or malicious disclosure of information acquired as part of the process established by this regulation for the establishment and

processing of sexual harassment claims may be sanctioned in accordance with the ethical conduct provisions in the Trust's Regulations.

- b. Nothing in this Article shall be construed as limiting or preventing someone from collaborating in the investigation process of a complaint or serving as a witness in the investigation or adjudgment of a complaint under this Regulation.

Article 18 – Repeal and Previous Provisions.

The "Regulation against Sexual Harassment in Employment" of June 30, 2015 is repealed. Any prior communication, verbal or written or part thereof that conflicts with this Regulation, is void after it enters into force.

Article 19 – Amendments.

The provisions of this Regulation may be amended at any time, as required by the Trust's operations and in accordance with the provisions of Law No. 38 of 2017, as amended, known as the "Law on Uniform Administrative Procedures for the Government of Puerto Rico."

Article 20 - Separability Clause.

If any part of this Regulation is annulled or declared unconstitutional, the decision, opinion or judgment to that effect has been delivered shall not affect, prejudice or invalidate the remainder of this Regulation. The effect of that judgment shall be limited to the part thereof which has thus been annulled or declared unconstitutional. If the application to a person or a circumstance of any part of this Regulation is invalidated or declared unconstitutional, the decision, opinion or judgment for that effect given shall not affect or invalidate the application of the remnant of this Regulation to persons or circumstances in which it can be validly applied.

Article 21– Effective Date.

Upon approval by the Board of Directors, this Regulation will take effect immediately upon completion of the Department of State filing process, in accordance with the provisions of Law No. 38 of 2017, as amended, known as the "Law on Uniform Administrative Procedures for the Government of Puerto Rico".

APPROVED:

José J. Reyes Peredo
President
Board of Directors
Institutional Trust of the
Puerto Rico National Guard

I, Andrés Ruíz, Secretary of the Board of Directors of the Institutional Trust of the Puerto Rico National Guard (FIGNA), **certify** that this Regulation against Sexual Harassment in Employment of the Institutional Trust of the Puerto Rico National Guard was duly approved by the Board of Directors of FIGNA at the meeting held on February 12, 2020. As provided by the State Department, it shall enter into force immediately after its establishment in the State Department, in accordance with the provisions of Law No. 38 of 2017, as amended, known as the "Law on Uniform Administrative Procedures for the Government of Puerto Rico".

Andrés Ruíz
Secretary
Board of Directors
Institutional Trust of the
Puerto Rico National Guard



GOVERNMENT OF PUERTO RICO
Institutional Trust of the
Puerto Rico National Guard
Box 12000, San Juan, PR 00922

ACKNOWLEDGEMENT

I certify that I received a copy of the Regulation Against Sexual Harassment in Employment from the Institutional Trust of the Puerto Rico National Guard. I accept this Regulation and understand that its strict compliance is a condition of employment, as it appears on the copy given to me.

Date

Signature



GOVERNMENT OF PUERTO RICO
Institutional Trust of the
Puerto Rico National Guard
Box 12000, San Juan, PR 00922

POSSIBLE SEXUAL HARASSMENT IN EMPLOYMENT COMPLAINT FORM

Date: _____

NAME of person against whom the complaint is made: _____

PLACE where the above-mentioned person works: _____

DESCRIPTION OF FACTS: *(To the fullest extent possible, provide the most complete information, including place, date and frequency of events, manner and manner in which the facts were gained)*

DOCUMENTAL OR TESTIFICAL EVIDENCE: *(Specify documents that support the information provided and/or names of persons who have additional information about the facts)*

Name of persons who have additional knowledge of the facts:

Name of the person who submits the complaint (*optional*):

MAILING ADDRESS: _____

RESIDENTIAL ADDRESS: _____

TELEPHONE (*Residential, Cell or Work*): _____

EMAIL: _____

Officer or employee against whom you complain: (respondent):

Department, program or office:

If necessary, do you authorize the disclosure of your name for investigative purposes?

Yes _____ No _____

If necessary, are you willing to cooperate and/or provide additional information?

Yes _____ No _____