

**HEADQUARTERS, UNITED STATES ARMY EUROPE, AS THE
HIGHEST SERVICE AUTHORITY OF THE U.S. ARMY IN GERMANY**

- Hereinafter referred to as „the employer“-

AND

**THE HEAD WORKS COUNCIL OF THE UNITED STATES ARMY
EUROPE**

- hereinafter referred to as „the Head Works
Council“ -

conclude the following

SHOP AGREEMENT

concerning the

**Prevention of Sexual Harassment at the Workplace
as well as Handling such Incidents**

References and legal basis:

1. Section 73(1) et sqq. of the German Personnel Representation Law (GPRL),
2. Section 12(1), (2) of the German Equal Treatment Act (ETA),
3. German Criminal Code (StGB),
4. AR 600-20 dated 6 November 2014,
5. AR 690-12 dated 12 December 2019,
6. AER 690-64 dated 28 January 2021,
7. AER 690-64-G dated 28 January 2021.

Preamble

The parties to this shop agreement agree that the working atmosphere should be characterized by mutual respect and tolerance, and that sexual assault and harassment are a significant impairment and violation of human dignity, which will not be tolerated.

This shop agreement is intended to help avoid cases of sexual harassment in the workplace through procedural regulations and options for punishing misconduct, and/or to clarify and pursue them in a targeted manner. Affected persons should be encouraged to file complaints. Harassers should be made aware of the clear boundaries and the possible consequences of their behavior.

The U.S. Army is an international employer, present on a global scale, employing a global and multinational workforce and for whom the military bases in Germany are of particular importance.

It is valid – anywhere, at all times and without exception – that sexual harassment can have considerable negative consequences for the lives of the individuals concerned. Employer, employees and elected employee representatives jointly share the obligation to undertake everything in their power to exclude sexual harassment at the workplace. With this shop agreement, the employer and the Head Works Council, taking into consideration the aforementioned but also the fact that false reporting could seriously impact the life and career of the accused person, shall establish guidelines for an appropriate and balanced procedure, which respects the dignity of all employees.

The aim of both German legal provisions and U.S. legal norms is to ensure a workplace free of conflicts. They guarantee the protection of the individual rights of the affected employees, and at the same time empower the employer with the necessary scope of action to offer preventive measures or adjust existing consultation and complaint structures to the needs of the Local National workforce.

The employer and the Head Works Council are pursuing the objective of establishing procedures and practices that protect the dignity of all employees and enhance a working environment free of conflicts.

The current shop agreement does not restrict any legal or other rights of the involved persons. The use of rights and procedures under this shop agreement is without prejudice to the use of other legal rights and procedures guaranteed by relevant law.

I. Scope of application

This framework agreement shall apply to the entire Local National workforce within the scope of responsibility of the Head Works Council.

II. Definition

1. Definition of sexual harassment according to section 3(4) of the German Equal Treatment Act (ETA) and analogously to Army Regulation (AR) 600-20:

Sexual harassment shall be deemed to be any unwanted conduct of a sexual nature, including unwanted sexual acts and explicit and implicit requests to carry out sexual acts, physical contact of a sexual nature, comments of a sexual nature, as well as the unwanted showing or public exhibition of images that are sexist or pornographic in nature. Such behavior basically has the intent or effect of violating the dignity of the person concerned. Sexual harassment can include words, acts or gestures. It can also be nonverbal. Usually it creates a degrading, humiliating, intimidating, offensive or hostile environment.

Examples of sexual harassment may include, but are not restricted, to the following behaviors:

- Unwanted solicitation and/or coercion to sexual acts,
- Unwanted physical contact,
- Sexual discrimination, harassment, violence and exploitation of a relationship of dependence at the place of work or apprenticeship using „quid pro quo“, which implies implicit and explicit threats of disadvantages or promises of career advancement in return for sexual acts.
- An inappropriate approach using salutations and terms of endearment, which are inappropriate and unprofessional at the workplace,
- Obscene comments and jokes about a person’s body, behavior or private life,
- Displaying and affixing sexist and pornographic pictures, regardless of their form (e.g. calendar, screen saver, poster),
- Sexually oriented gestures and nonverbal behaviors (e.g. staring at someone, winking, whistling).
- And in particular any criminal sexual conduct and sexual acts.

The list is not exhaustive.

2. Sexual harassment and sexual assault according to German criminal law:

According to section 184i of the German Criminal Code (StGB), sexual harassment implies a physical contact of a sexual nature with a person, which bothers him/her. In Germany, this is punishable with imprisonment of up to two years or with a monetary fine.

Sexual assaults in form of sexual coercion or rape are severe crimes according to section 177 of the German Criminal Code (StGB). Whoever, against a person’s discernable will, performs sexual acts on that person or has that person perform sexual acts on them, or causes that person to perform or acquiesce to sexual acts being performed on or by a third person, incurs a penalty of imprisonment for a term of between six months and five years, according to section 177 StGB.

Furthermore, sexual harassment includes all criminal offences against the sexual self-determination stipulated in sections 174-184j StGB.

III. Prohibition of harassment

Sexual assault and sexual harassment at work are considered misconduct, constituting severe contract violations. They are inadmissible and shall not be tolerated. They can lead - according to the factual background of the given case and following rules and procedures stipulated in Army in Europe and Africa Regulation (AEAR) 690-64 - to disciplinary actions in form of oral or written admonishment and

even to termination of employment, when serious violations and incidents are identified and where it is evident that only termination of employment, as “ultima ratio measure”, could solve the problem.

IV. Obligation of the employer

Any need for action must be identified at an early stage. Supervisors should facilitate a collegial exchange of information about possible incidents and personal concern in everyday working life.

The employer is committed to taking effective action against sexual harassment/assault and to creating a work environment where the dignity of all employees is protected. The HWC, USAREUR-AF and local work councils will support the employer in this effort.

The employer shall create a work environment that enhances protection against sexual harassment and makes sexual harassment difficult to occur. In order to achieve the above mentioned commitment, the employer shall implement the following measures:

1. Prevention

Employer, Head Works Council and local work councils shall advocate for a full information of all employees about the notion of sexual harassment and any potential legal implications.

The responsibility to prevent sexual harassment rests primarily with supervisors.

Information will be disseminated via publications and leaflets, also in German, distributed to all employees and discussed yearly in the internal Sexual Harassment/Assault Response & Prevention (SHARP) and the Equal Employment Opportunity (EEO) trainings.

Participation in such training sessions is mandatory. Managers with responsibility for staff will ensure their employees are informed of upcoming training and are released from duties on that day with the purpose to participate in such training. Due to the special responsibility assumed by managers, they will be offered a special „executive training“, adapted to the operational key role of that group. In such training sessions managers’ awareness of their role model and “leading by example” function shall be increased.

Furthermore, all personnel with responsibility for staff who could be chosen to serve as counseling or complaint body with the roles, tasks and obligations described in the below paragraph 2 shall receive a qualifying training session, helping them to understand their role and their responsibility.

2. The right of counseling and the right to submit a complaint

a. The right to get confidential counseling

Persons feeling sexually harassed are entitled, but not obligated, to have a personal and confidential counseling session. Such sessions should be initiated promptly, ideally within 24 hours after the incident. They can turn to the following contact persons:

- direct supervisors,
- next-line supervisor within the chain of command,
- a Management-Employee Relations (MER) specialist at the servicing CPAC
- elected workforce representation (works council, youth and apprentice representative, severely handicapped representative).
- Appointed representative, e.g., mediator; cross-organizational responsibility of the appointed representative can be agreed upon between unit supervisors.

The person asking for counseling can request a trusted colleague to accompany him/her to the meeting. Further, he/she can ask the elected employee representative within her/his organization to be present.

The contact person chosen for counseling may decline the requested counseling only in exceptional cases (e.g., to recuse oneself; in case of a legitimate interest), otherwise she/he has to name an alternative contact person. He/she will promptly schedule a date for the counseling session and initiate organizational and content-related preparation of the meeting, making sure it can take place in a trustful and constructive ambiance, and, if necessary, involve a translator. In consideration of the specific circumstances of the individual case, the contact person shall weigh and opt for one or several of the following measures, according to what seems appropriate in the specific situation:

- The contact person will listen, counsel and encourage the aggrieved person, helping him/her to manage the problematic situation by facing the alleged harasser and making it clear that the unwelcomed behavior must stop.
- The contact person will speak with the alleged harasser in order to hear his/her view of the accusations made against him/her.
- The contact person will initiate a joint counseling meeting, which – similar to a mediation – has the objective to stop the unwelcome behavior and to reconcile the involved individuals. Concrete solutions for a collaboration free of conflicts should be worked out. The contact person will support the implementation of the chosen option, and will remain available as a trusted person for both sides. He/she will support the restoration of a peaceful and cooperative atmosphere at the workplace.
- If necessary, the contact person can contact and consult the respective legal office or HR/MER specialist.

The statements, the process and the findings of every counseling will be documented in writing by the person leading the counseling. The documentation is confidential and will be kept under lock for a period of 2 years. After expiration of the two years, the documentation will be destroyed.

b. The right to submit a complaint

Individuals who feel sexually harassed have the right to a personal, confidential consultation. Further measures may only be initiated with the consent of the person concerned.

Individuals who feel harassed and have attended a confidential counseling session without being satisfied with the suggested solution in their individual case, or who have not made use of a counseling session as it would have caused unreasonable burden, have the right to submit a complaint.

Complaints should be submitted no later than 45 calendar days after the incident or immediately after the end of the counseling session IAW 2a to one of the following complaint bodies:

- direct supervisor of the aggrieved person,
- direct supervisor of the alleged harasser,
- next-line supervisor within the chain of command,
- servicing HR agency (CPAC),
- respective works council.

The complainant shall submit his/her complaint in writing and confirm with his/her signature the accuracy of the submitted information.

The chosen complaint body shall promptly investigate each complaint.

If a cooperation between the involved employees is not possible during the investigation process, the employer shall undertake interim measures in order to ensure that the involved persons are not obligated to work together as long as the case is pending.

The statements, the process and the findings of every complaint will be documented in written form by the complaint body. The documentation is confidential and will be kept under lock.

3. Sanctions

Where a complaint has been found justified, the employer shall take suitable, necessary and appropriate remedial measures. The employer can initiate disciplinary measures pursuant to rules and procedures described in AEAR 690-64. Such disciplinary measures can be, according to the circumstances of the individual case, an oral or written admonishment. Even termination of employment can be implemented according to AEAR 690-64 when termination may be unavoidable because the found violations or incidents have to be considered so severe that discipline and efficiency of the organization or morale of other employees may be adversely affected to a considerable degree and continuation of employment cannot be reasonably expected of the employer.

Without prejudice to the above mentioned disciplinary measures, the employer can at any time make use of the right to direct internal organizational measures, with the purpose to physically/organizationally separate the involved persons and make sure they do not need to work together.

When choosing a concrete measure, whether a disciplinary or an organizational one, the employer will consider always consider the principle of commensurability, i.e. the severity and/or frequency of the harassing behavior, as well as harasser's understanding and willingness to change it.

When it comes to choosing internal organizational (interim) measures, the individual and professional situation of the harassed person should receive particular consideration. When it comes to all measures, this principle is to guarantee that the complainant will not experience any (additional) disadvantages because of the initiated complaint.

The process described above will be documented, kept under lock for 2 years, and then destroyed.

V. Confidentiality

All persons involved in a sexual harassment complaint shall keep confidentiality towards uninvolved third parties.

VI. Prohibition to retaliate / Protection against disadvantages

At no time may individuals submitting a sexual harassment complaint experience disadvantages. The same applies to employees assisting their colleagues in a sexual harassment case.

VII. Implementation and publication

1. This shop agreement will be made public.
2. The shop agreement allows the application of similar policies by subordinate organizations, not affecting any employee rights they may guarantee.
3. If individual provisions of this agreement are or become legally invalid or reveal to be unenforceable, this agreement shall not lose its legal validity as a whole. Such invalid or unenforceable provisions shall be replaced by those provisions that come as close as possible to the intended objectives, consented by the parties and considered by them when adopting the invalid provisions.
4. Above provisions shall also apply in case the shop agreement proves to have gaps.

VIII. Final provisions

The shop agreement becomes effective on the date of its signature. It may be terminated with a notice period of three months to the end of a year.

IX. Individual shop agreements

Further details and special provisions regarding the prevention of sexual harassment at the workplace and the handling of such cases can be regulated in the form of individual shop agreements on the basis of this framework agreement. Rules already established by this framework agreement are mandatory and may not be changed by individual shop agreements.

X. Place, Date, Signatures:

Signed at Wiesbaden, 1 October 2021

-----Original signed by-----

Highest Service Authority

-----Original signed by-----

HWC Chair

-----Original signed by-----

HSHE Rep