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THE LEGAL GUARDIAN

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DON'T ASK, DON'T TELL

10 USC sec. 654 prohibits anyone who "demonstrates a propensity or intent to engage in homosexual acts from serving in the Armed Forces of the U.S., because "it 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". In 2000, the Don't Ask, Don't Tell Policy was amended to include the Anti-Harassment Action Plan, in response to a DoD Inspector General's Report on the Military Environment with respect to the Homosexual Conduct Policy.

Specifically, the law states that a member of the Armed Forces shall be separated from the Armed Forces under the regulations prescribed by the Secretary of Defense if (1) that member has engaged in, attempted to engage in, or solicited another to engage in a homosexual act or acts; (2) the member has stated that he/she is a homosexual or bisexual, or words to that effect; and (3) the member has married or attempted to marry a person known to be of the same biological sex.

DON'T ASK. Under this Act, superiors should not initiate an investigation of a service member's sexual orientation in the absence of disallowed behaviors. However, suspicion of homosexual behavior can cause the initiation of an investigation.

DON'T TELL. The Act prohibits a homosexual or bisexual person from disclosing his/her sexual orientation or from speaking about any homosexual relationships, including marriages or other familial attributes, such as civil unions, while serving in the military.

DON'T HARASS. The Amendment to the Act prohibits the mistreatment, harassment, and the making of inappropriate comments or gestures based on an individual's sexual orientation.

If a soldier is found to have admitted to being a homosexual or bisexual; has engaged or attempted to engage in homosexual act(s); or marries or attempts to marry a person of the same sex they can be discharged and would receive an "under other than honorable conditions discharge".

Did you know?

All service members who are authorized to live in a privately leased or owned quarters (home or apartment) are entitled to an Overseas Housing Allowance (OHA) to defray a significant amount of housing costs. In order to recieve OHA, you must submit a DD Form 2367 listing the leased or owned quarters where you reside. Any attempt to or submittal of a DD Form 2367 for a leased or privately owned residence where you do not reside constitutes fraud on the federal government. Making a fraudulent claim on the federal government can result in adverse action being taken against you, which may include a dishonorable discharge and confinement.

#1 In the Bottle!

It is DoD policy to use drug testing to deter military service members from abusing drugs (including illegal drugs and other illicit substances); to permit commanders to detect drug abuse and assess the security, military fitness, readiness, good order and discipline of their commands; and to use drug testing as a basis to take action, adverse or otherwise (including referral for treatment), against a service member based on a positive test result. *See* DoD Directive 1010.1, dated December 9, 1994.

A urinalysis testing can occur under the following circumstances: 1) During an inspection or examination of all or part of a unit; 2) during a probable cause search or seizure when there is a reasonable belief that the urine to be collected contains evidence of illegal drug use; 3) when provided voluntarily by a service member as part of a consent search; 4) during a service member's participation in a drug treatment and rehabilitation program; 5) following any incident that may be considered a safety mishap under the regulation of the Service involved, a specimen may be collected from any individual directly or indirectly involved; 6) during a command directed examination of a service member to determine his/her competence for duty or the need for counseling, rehabilitation, or other medical treatment when the commander has reason to question the service member's competence for duty; 7) during any exam for a valid medical purpose; and 8) during the preaccession physical or initial period of military service.

The results of the urinalysis may be used as evidence in all administrative actions, including separation from military service, except when a service member **voluntarily submits to a DoD treatment rehabilitation program <u>before</u>** the receipt of an order to appear for a lawful urinalysis; or the urinalysis is administered as an integral part of a rehabilitation program.

It is important to remember that while a commander can order that either all or a random selected sample of his/her unit be tested, at any time, the commander cannot order specific individuals to take a random test. Those selected must be truly random through the use of such methods as testing individuals whose social security number ends in specific numbers. Just as important is the fact that a service member does not have the right to refuse to take a urinalysis. Refusal to take a urinalysis is equivalent to testing positive!

Did you know?

On 1 October 2009, President Barack Obama issued an Executive Order prohibiting federal employees from engaging in text messaging (a) when driving government owned, leased or rented vehicles or (b) when using electronic equipment supplied by the government while driving.