

April 14, 2009

**VETERANS HEALTH ADMINISTRATION ALTERNATIVE DISPUTE RESOLUTION  
PROGRAM FOR EEO-RELATED COMPLAINTS**

**1. PURPOSE:** This Veterans Health Administration (VHA) Directive establishes VHA policy regarding the use of Alternative Dispute Resolution (ADR) methods to resolve disputed issues pertaining only to matters involving Equal Employment Opportunity (EEO) complaints.

**2. BACKGROUND**

a. VHA is committed to providing its employees with a work environment that enables them to deliver quality patient care and services to the Nation's Veterans. To do this, employees must have access to effective and efficient mechanisms for resolving workplace disputes. In addition to the traditional administrative adjudication processes, every VHA employee must have the opportunity to utilize an ADR process to resolve workplace differences or disputes, which can be offered at any stage of the EEO complaint process.

b. There are numerous forms of ADR currently being used in the Federal sector with mediation being the most frequently used ADR process to resolve EEO complaints. The process must be conducted in accordance with Title 29 Code of Federal Regulations (CFR), Part 1614, Equal Employment Opportunity (EEO) Management Directive (MD) 110 (EEO MD-110), and in accordance with applicable collective bargaining agreements.

c. Mediation is an ADR process in which a skilled, impartial third-party, called a mediator, assists the parties in reaching a mutually agreeable resolution to a dispute by facilitating better communication, identifying interests, and helping explore possible solutions. *NOTE: Local facilities may find it beneficial to offer employees more than one type of ADR process for resolving disputes, such as facilitation, interest-based problem solving, peer review, neutral fact-finding, and early neutral evaluation.*

d. Issues for which it may be appropriate not to offer ADR are listed in subparagraph 4b and on VA Form 10-0413, Notice of Refusal to Mediate for EEO Related Issues (see Att. A). These issues need to be reviewed on a case-by-case basis to determine whether it is truly in VHA's best interest not to offer ADR in EEO complaints involving these issues.

e. When an aggrieved employee authorizes the agency to reveal the aggrieved employee's identity during the pre-complaint process and the issues raised are not identified as inappropriate for ADR, management must offer ADR and participate in the process if the employee accepts the offer and elects ADR in lieu of traditional EEO counseling.

**THIS VHA DIRECTIVE EXPIRES APRIL 30, 2014**

**VHA DIRECTIVE 2009-023**  
**April 14, 2009**

**3. POLICY:** It is VHA policy to offer ADR as broadly as possible and with few exceptions in order to have the highest possible ADR offer and participation rates for all EEO complaints.

**4. ACTION:** The following process must be implemented:

a. Upon receiving notification of an informal contact where the aggrieved individual has waived anonymity and the claims are specific enough to determine if the complaint is appropriate for ADR, the EEO Manager must send a notice, in writing, to the Office of Resolution Management (ORM) stating that the facility will offer ADR or refuse to offer it.

*NOTE: Management is strongly encouraged to expedite the ADR process and make every effort possible to complete it as early as possible.*

b. Management staff must participate in the ADR process when an aggrieved employee has elected ADR. In rare instances, indicators exist that may make the matter inappropriate for ADR; in these instances, the EEO Manager must conduct a case-by-case determination as to whether ADR will be offered. The matter may be inappropriate for ADR when the following indicators are present:

- (1) An indication that fraud, waste, or abuse has been committed;
- (2) An allegation of patient abuse;
- (3) An allegation of sustained, continuing sexual harassment;
- (4) A removal for cause, e.g., removal based upon the commission of a felony; or
- (5) The employee wishes to remain anonymous.

c. If the EEO complaint is deemed inappropriate for ADR, VA Form 10-0413 must be completed by the EEO Manager or ADR Coordinator; signed by the appropriate manager, supervisor, or key staff official and the facility Director; and routed through the appropriate channels (as shown on the form) within 5 working days following the refusal or the determination that the matter is inappropriate for mediation. A copy of the completed VA Form 10-0413 must be provided to ORM. *NOTE: VA Form 10-0413 can be accessed at the following intranet address: <http://vaww.va.gov/vaforms/medical/pdf/10-0413.pdf>; this is an internal Web site and is unavailable to the public.*

d. VHA EEO Managers and ADR Coordinators are responsible for entering data into VA's ADR tracking system. This data includes ADR offers, elections, and refusals, as well as uploading relevant supporting documentation.

**5. REFERENCES:** None.

**6. FOLLOW-UP RESPONSIBILITIES:** The Chief Workforce Management and Consulting Officer (10A2) is responsible for the contents of this Directive. Questions may be referred to VHA's National ADR Coordinator (10A2E) at 202-461-7274.

**VHA DIRECTIVE 2009-023**  
**April 14, 2009**

**7. RESCISSIONS:** VHA Directive 2004-023, is rescinded. This VHA Directive expires April 30, 2014.

Michael J. Kussman, MD, MS, MACP  
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Attachment

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