

ORM NEWS

**From the Office of the Deputy Assistant
Secretary for Resolution Management
Department of Veterans Affairs**



July 2002

From the Deputy Assistant Secretary



It should be unmistakably clear to all of us in ORM that the expert and timely processing of complaints is the primary reason ORM was established. I cannot over emphasize the importance of this mission and my support in doing all I can to help ensure that we use our resources to help us accomplish this important service. We have no other task that takes precedence over the timely and expert processing of complaints.

Our vision is to be the best in government. I want to look beyond this and to work towards becoming the best in both the federal and private sectors. To accomplish this goal, we will continue to invest in our employees (our most valuable and important asset) and our other resources to help us continue improving and delivering the services that satisfy our customers.

The number of cases pending at the end of FY 2001 was 1,474, it is now 1,269 cases. This represents a 14 percent decrease in our cases pending. Our backlog of cases pending more than 180 days has decreased by 52 percent since the beginning of FY 2001, from 481 cases to 233 cases. We have reduced the time to complete counseling. The EEOC standard is 30 days. We are completing counseling within 25 days. Another goal is to complete investigations in fewer days than the EEOC standard of 180 days. We believe we can reach this goal by the end of FY 2002.

You have done great work. Your record of accomplishments in the four plus years of ORM's existence is commendable. I am proud of your accomplishments and know that we will continue to improve as the best organizations do because we are one of the best!

/s/
James S. Jones

Highlights of Regulations and Programs

Part I Settlement Agreement Techniques and Tips

Settlement: A voluntary agreement between an employee and an agency that brings closure to a dispute over a disciplinary or performance-based action or other matter related to conditions of employment.

Settlement agreements are indispensable. Each day, they resolve thousands of controversies, both real and imagined, between employees and employers. Settlement agreements make great business sense for the agency. The agency not only avoids the possibility of a larger financial hit down the road but, more importantly, it saves thousands of man-hours for employees, managers, attorneys, and personnel specialists. On the other hand, in cases where the agency has solid, legitimate, business-related, non-discriminatory reasons for doing what it did, a settlement could have a disastrous effect. It could encourage marginal employees to file complaints in order to obtain what they want, knowing that the agency will most likely remove or bargain the action to a lesser offense.

So Why Settle?

The Equal Employment Opportunity Commission (EEOC) has encouraged and continues to encourage settlement of cases. EEOC places a high value on the voluntary settlement of EEO complaints. Participation in settlement negotiations is viewed as just as much a part of the EEO process as filing and pursuing a complaint. There are many reasons for settling a complaint. A few of the most commonly cited include: that settlement agreements are a way of eradicating discrimination from the workplace; that each party will get something they want as opposed to the win or lose situation of a final decision; that both parties save the time, energy and expense of litigation; that both the agency and employee can focus on the business of the day rather than dwelling on the past events; and that settlement provides a means of dispute resolution without assigning fault. EEOC's current regulation reflecting its settlement policy simply states: *"Each agency shall make reasonable efforts to voluntarily settle complaints of discrimination as early as possible, in, and throughout, the administrative processing of complaints, including the pre-complaint counseling stage. Any settlement reached shall be in writing and signed by both parties and shall identify the allegations resolved."*

The word Settlement is a wonderful word and can conjure warm and fuzzy feelings in even the coldest of hearts. We assume that the parties have reached a mutually satisfying end to a potential volatile dispute. Everyone is back at work and happy. Or are they? There are times when the parties challenge settlement agreements, arguing everything from "breach", "coercion", "distress", "validity", and "reprisal" to name a few. Drafting a valid settlement agreement requires careful attention to detail. Over the next few months, we will provide "Settlement Agreement Techniques and Tips" to this complex issue.

TIP #1

MAKE SURE THERE IS AN EXCHANGE OF CONSIDERATION.

As a matter of law, a promise to refrain from retaliation cannot constitute consideration in a settlement agreement. The law already prohibits reprisal and discrimination. Such terms or provisions have no real effect, and the complainant gains nothing through such clause.

EEOC has held that in order for a settlement agreement to be valid, there must be an exchange of consideration. The consideration need not be great, but "some right, interest, profit, or benefit must accrue to one party or some forbearance, detriment, loss or responsibility is given, suffered, or undertaken by the other. Where the promisor receives no benefit and the promisee suffers no detriment, the whole transaction is "*nudum pactum*." Tamura-Wageman v. Dept' of the Army, No. 01A11459, 2002). See also *Cockrell v. Postmaster General*, No. 01956101, 1996 and *Rowe v. Postmaster General* 01963176 (1998).

In English, this means that when the only consideration the complainant receives is a "work place free of reprisal or discrimination" there is a lack of exchange of consideration and the settlement agreement is void. The parties did not commit themselves to do something they were not already obligated to do. Although it may seem elementary, there can be no enforcement of a settlement agreement where the agreement is void. When a settlement agreement is void, EEOC sets aside the settlement agreement and remands the matter to the agency to reinstate the settled complaint from the point processing ceased prior to the execution of the settlement agreement.

TIP #2

DO NOT INCLUDE A "NO REPRISAL" CLAUSE.

Settlement of an EEO complaint does not insulate an employee from any future actions that the agency may take. When a settlement agreement contains a "fair and equal treatment" or "no reprisal" clause, or when subsequent events will be treated as a separate complaint of discrimination, EEOC has held that a complaint which alleges reprisal or

further discrimination in violation of a settlement agreement's "no reprisal" clause, is to be processed as a separate complaints and not as a breach of settlement. *Cain v. Postmaster General*, 01981420 (1999). See also *Bindal v. Dept of Veterans Affairs*, 05900225 (1990); 29 C.F.R. 1614.504 (c).

It is imperative that ORM employees, and other VA officials responsible for assisting with the processing of EEO complaints, advise complainants that such allegations do not constitute a breach claim. When the Office of Policy and Compliance (OPC) makes a breach determination, they will treat subsequent events as a new complaint and the complainant will be referred to the ORM Field Office for EEO counseling. Unlike amendment determinations, which allow like or related claims to be added to the initial complaint, breach allegations are treated differently. Breach allegations consisting of subsequent acts, or events occurring after the agreement, will be processed as a new complaint.

(Gina Rusnov, ORM, Office of Policy & Compliance)

Reasonable Accommodation Program Update

During the past year, several changes have been made to the federal government's reasonable accommodation programs. Supreme Court decisions in *Williams v. Toyota* 00-1089, 102 FEOR 90001, and *Barnett v. U.S. Airways* 00-1250, 102 FEOR 90005, changed the definition of an individual with a disability and how agencies' seniority systems are impacted by reasonable accommodation.

This June also marks the one-year anniversary of the Section 508 amendment to the Rehabilitation Act. The regulation not only made the government more accessible to employees and citizens with disabilities, but also instituted penalties for agencies failing to comply.

Finally, almost 10 years after Congress merged the Americans with Disabilities Act with the Rehabilitation Act, the EEOC has issued final regulations to clear up lingering differences between the laws and also compel the federal government to be a "model employer" for individuals with disabilities. For more information on reasonable accommodation program updates go to the EEOC web site at

<http://www.eeoc.gov/docs/accommodation.html>.

Source is CyberFEDS

New OPM web site on Federal

Employment of People with Disabilities



The Office of Personal Management (OPM) has a new web site on Federal Employment of People with Disabilities. For more information go to

<http://www.opm.gov/disability/>

Light-Duty Options Due to Temporary Medical Conditions

(Excerpt from an article in Federal Human Resources Week written by *Michael Corum*)



Managers who supervise employees suffering from temporary medical impairments due to injury or illness often come to HR asking for advice on leave and light-duty options. What do you tell them? You should keep two principles in mind:

1. The Rehabilitation Act and the Americans with Disabilities Act cover only permanent medical impairments. The courts have stated repeatedly that requirements for "reasonable accommodation" do not extend to temporary medical conditions.

2. There is no government-wide requirement that employees be given light duty for either permanent or temporary conditions.

This is where you must know your own agency's regulations. If your agency has a light-duty program, then you must follow your agency's regulations. If you are with an activity that does not have a light-duty requirement, you are not required to permit it. "Accommodation" or relief for temporarily ill or injured employees can be provided through leave.

However, many agencies do routinely give light-duty assignments to employees with temporary medical problems that stem from on-the-job, compensable injuries. They are being paid in any case. And a return-to-

work program for those with compensable injuries is likely to hasten a return to full duty and to lessen the total cost to the agency.

But beyond this exception and specific agency regulations, if an employee is temporarily incapacitated from performing the full range of duties of the job, that's why Congress created sick leave and if the employee has no sick leave or annual leave, then the employee is entitled to 12 weeks of leave without pay under the Family and Medical Leave Act. If the employee has exhausted both sick leave and the FMLA entitlement, any further granting of LWOP is purely discretionary.

If you do not have a light-duty program, do not routinely grant requests for light duty except for temporary problems from compensable injuries. Remember, it's not the employee's doctor who determines whether the employee gets light duty, it's the supervisor.

Much of your application of this admonition depends upon the type of employee you're dealing with. Is this a valued employee or someone who routinely takes advantage? Supervisors have a great deal of discretion here, but HR should try to keep a handle on this. Differential handling of light-duty requests can easily lead to discrimination complaints.

If you do give light duty, always set a time limit. Most agencies that do this use 30 days. They tell the employee at the outset and when the end of the period approaches, they send what they call a "get-well" letter. The letter tells the employee that the light-duty period is almost over and gives the employee a specific date by which one of three options must be acted on:

- 1. Return to work with no medical restrictions on any job functions.**
- 2. Apply for disability retirement.**
- 3. Take leave.**

In agencies where they do this, the employees almost always come back to work at full duty. If they neither return to work nor request leave or disability retirement, the agency has the right to remove them.

Waltrunette M. Gardner, HR Manager

Notes from the Field

VA Leaders' Conference Update - Atlanta, July 15th -18th, 2002

Anyone needing to confirm their reservation for the conference should call Lew Henson. Lew is maintaining the rooming list for the conference.

650 have registered to attend to date. This includes 160 executives and 140 HR Specialists from throughout VA. Expected total attendance is approximately 800 for the conference. ORM will also have a booth set up at the conference to provide information on our programs and services.

Office of Policy and Compliance (OPC)

The Office of Policy and Compliance (OPC) wishes a fond farewell to [Carolyn Wakefield](#), EEO Investigator/Specialist, who recently transferred to the Field Office in Lyons New Jersey. Carolyn's assignments during her tenure in OPC included conducting investigations that were sensitive and complex in nature, including age discrimination cases where there was a notice of intent to sue. Carolyn was also instrumental in creating the curriculum for the Basic EEO Investigator Training course and the 8-hour mandatory EEO Investigator Refresher Training course. She is currently providing investigator training to ORM employees on these topics. She recently conducted two fact-finding conferences that resulted in settlements. Carolyn has made outstanding contributions to ORM's Investigator Program. She will continue to demonstrate her expertise at the Lyons Field Office where she will be doing complex investigations, procedural determinations, and other national assignments.

We will miss Carolyn and wish her well in her new endeavor.

Bay Pines Field Office

On May 4, 2002, [Diana Ford](#), [Linnell Baker](#), [Brenda Smith](#) and [Florine McCall](#) volunteered for the City of St. Petersburg, FL, Weed and Seed, Family Fun Day. This is an annual event with emphasis on

community and family. Diana has been a volunteer for many years and was instrumental in recruiting volunteers from the Bay Pines office. Diana's sister, Janis Ford is the Coordinator for the Weed and Seed program and extended her Thanks and Gratitude for the continued support from these dedicated volunteers from the Bay Pines office for this very important event.

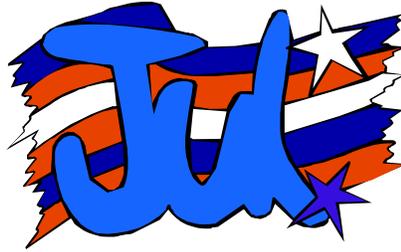
It should be noted that over the past three years there have been other members of the Bay Pines Family who have volunteered for this important event, but due to other commitments they were unable to attend this year's event. Those employees are [Ricky Rowe](#), [Monique Dismuke](#) and [Maryann Leloia](#).

Washington Field Office

[John H. Jones](#), EEO C1 Specialist and Master Mediator Trainer, recently received a Letter of Appreciation from Mr. Daniel F. Hoffman, Network Director, VA Mid-Atlantic Health Care Network VISN 6, for the significant contribution he made during the Basic Mediation Skills training held in Durham, NC on May 13-17.

[Vanessa Deal](#), EEO C2 Specialist, walked in the Komen Race for the Cure (for Breast Cancer) on June 1, 2002. She also participated (walked) in the Relay for Life (American Cancer Society), which is a team walkathon that took place from 7:00p Friday, June 7th and continued until noon on June 8th and was held at Richard Montgomery High School in Rockville, MD. She participated with her team, SI of Montgomery County.

Did You Know?



July 4th - Independence Day



Independence Day, observed on July 4, commemorates the birthday of the United States. As the anniversary of the adoption of the Declaration of Independence, it is a major American holiday and an important time for celebration.

In 1941, Congress declared July 4 a legal Federal holiday. Today, communities across the nation mark this major midsummer holiday with parades, fireworks, picnics and the playing of the "Star Spangled Banner" and marches by John Philip Sousa.

(Source is <http://www.pbs.org/capitolfourth/history.html>)

Heat Stroke Prevention

Be safe this summer!

A beautiful, sunny day can bring with it loads of fun and excitement or life threatening illness. Heat sickness is a fast acting, dangerous killer. Heat cramps, heat exhaustion and heat stroke can bring about an irreversible coma and even, death.



Know the difference

It's important to note the differences between the three main heat related illnesses. While heat cramps can be uncomfortable, they are not life threatening. Heat stroke, on the other hand, needs immediate medical attention.

Heat Cramps

Heat cramps are caused by muscle contractions in both the gastrocnemius or hamstring area (back of calves). Feeling most like a severe muscle pull, heat cramps are forceful and painful. Heat cramps are associated with lack of fluids, high temperatures and lack of physical conditioning. A heat cramp, while painful, is not life threatening. Ignoring heat cramps however, can bring about the progression of other, more serious heat related illnesses. Heat cramps can be treated with water, cool air and rest.

Heat Exhaustion

This condition is exactly what it sounds like. It is severe exhaustion caused by extreme body heat. Excessive heat and dehydration can cause the body to overreact, thus raising your body temperature to over 102-degrees. Symptoms of heat exhaustion include paleness, nausea, extreme fatigue, dizziness, lightheadedness, vomiting, fainting and cool, clammy skin. Heat exhaustion is a serious illness and should be carefully monitored. Cool, shady environments, liquids, cool rags placed on various areas of the body and replacement of electrolytes (such as those found in sports drinks) are used to treat this condition. If body temperature remains elevated even after treatment, it's best to consult your doctor for further information and instruction.

Heat Stroke

Heat Stroke is a medical emergency, and the most severe form of heat related illness. Anyone exhibiting the signs and symptoms of Heat Stroke should be rushed to the nearest hospital or clinic. Unlike other forms of heat illness, heat stroke does not have to be caused by exercise or exertion. High temperatures, lack of body fluids and overexposure to the elements can all bring about heat stroke. The very young and old are especially susceptible to the hazards of this heat related illness.

Symptoms

The first sign to look for in a victim of Heat Stroke is red, flushed skin. People, who are suffering heat stroke, do not sweat, so it is critical that they receive emergency care immediately to relieve their body of heat. Other signs of heat stroke include:

A body temperature of 106-degrees or higher
Seizures
Headache
Rapid pulse
Unconsciousness

Prevention of Heat Stroke

It is possible to avoid suffering the ill effects of heat related disorders by taking a few simple precautions.

Hydration

The easiest way to avoid heat stroke and other heat disorders is to keep your body well hydrated. This means drinking plenty of water before, during and after exposure to the elements. Sports drinks are a good choice if you're exercising or working in hot conditions, but water is fine, too.

Ventilation

Staying in a place where there is plenty of airspace which will help allow your body to naturally cool itself. Sitting in a shaded, wide-open area will help your body rid itself of heat through sweating. If you're indoors, always-open windows, use a fan, central air or air conditioning during excessively hot days.

Clothing

What you wear can play a big factor in how your body will handle the heat. Light colored, loose fitting clothing will aid your body in breathing and cooling itself down naturally. Tight clothing restricts such a process and dark colors absorb the sun's light and heat. It's okay to wear a hat to shield yourself from the sun, but once you feel yourself getting warm, it's best to remove any items that are covering your head. Continuing to wear head garments will only keep more heat trapped inside of your body.

Limit Yourself

Watching how much activity you're participating in during hot days is also important. Don't overdue it. You can get heat stroke in less than an hour. If you feel yourself getting warm or lightheaded, it's best to take a time out and rest in the shade.

Heat related illnesses are preventable. Like many sicknesses, it's easier to take steps against heat stroke than it is to treat it. Most doctors recommend consuming eight or more glasses of water a day during normal weather conditions and twice that during high heat periods.

Author's name omitted by request
(Thanks to Elizabeth "Liz Hawkins, of Policy and Compliance for this timely article)

How to Spot a Change Agent



Change agents – workers who can embrace the unfamiliar technological demands of e-government and use them to their advantage – can be found at every level of the federal workplace.

Rick Otis – Deputy Assistant Administrator of the Office of Environment Protection Agency, has studied change agents and found that they share certain characteristics, including:

- Creativity. Change agents look at technologies in new and different ways. “They see things other people don’t see, and then they figure out how to make it real for others,” Otis said.
- The ability to understand processes from several perspectives. Many employees are so involved in their day-to-day routines that they can’t step back and look at issues from different angles, Otis said. Change agents, however, “often are able to think in the same mind-set of all the various actors involved in the process.
- The ability to translate for others. Along with the ability to see different perspectives, change agents are able to “speak the language of their colleagues, in a practical sense, so they get it.”
- Understanding the need to enlist the support of a sponsor. Change agents “know how to manipulate the system around them to their end. They recognize who it is they need to get involved in the changing process.”

Greame Browning –Federal Computer Week

Travel Update:



- Employee’s should **not** use their Government credit card for **personal travel**. The government travel card should be used **only for Government travel**.

- Employee’s may add personal travel to government travel, however, you **will only be reimbursed by the government for the round-trip ticket to a government travel site and back to your official duty site**.

- You must contact World-Wide Travel (Leisure Division) and use a **personal credit card** for the personal travel portion of your trip.

For more information on travel policy go to:

http://www.policyworks.gov/org/main/mt/homepage/mtt/fttr/newftr/301-73_202.html

Barbara Scott, Program Analyst, ORM Travel

Reminders:

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