

EQUAL EMPLOYMENT OPPORTUNITY POLICY

1. REASON FOR ISSUE: This Veterans Health Administration (VHA) Directive establishes the policy to provide Equal Employment Opportunity (EEO) to all VHA employees and applicants for employment without discrimination including workplace harassment, based on race, color, religion, national origin, sex (including gender identity, transgender status, sexual orientation, and pregnancy), age, disability, genetic information, marital/parental status, political affiliation, or retaliation for opposing discriminatory practices or for participating in the discrimination-complaint process. This applies to all terms and conditions of employment, including recruitment, hiring, promotions, transfers, reassignments, training, career development, benefits, and separation.

2. SUMMARY OF CONTENT: VHA is committed to ensuring EEO, constructively resolving workplace disputes at the lowest possible level, and promoting diversity and inclusion to maintain a high performing workforce in service to our nation's Veterans. VHA will enforce all applicable federal EEO laws, executive orders, and management directives to ensure equal opportunity in the workplace for all VHA employees, applicants, and former employees.

3. RELATED ISSUES: None.

4. RESPONSIBLE OFFICE: The Chief Workforce Management and Consulting Officer and EEO/Affirmative Employment Office (10A2A5) are responsible for the content of this Directive. Questions may be directed to 202-632-7615.

5. RESCISSIONS: VHA Directives 1017, dated May 24, 2013; 2008-013, dated March 12, 2008; 2008-045, dated August 7, 2008; 2008-046, dated August 15, 2008; 2008-050, dated August 22, 2008; 2009-057, dated November 2, 2009; and 2009-071, dated December 22, 2009, are rescinded.

6. RECERTIFICATION: This VHA Directive is due to be recertified on or before the last working day of February 2020.

Carolyn M. Clancy, MD
Interim Under Secretary for Health

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EQUAL EMPLOYMENT OPPORTUNITY POLICY

1. PURPOSE: This Veterans Health Administration (VHA) Directive provides the policy to not tolerate discrimination including workplace harassment, based on race, color, religion, national origin, sex (including gender identity, transgender status, sexual orientation, and pregnancy), age, disability, genetic information, marital/parental status, political affiliation, or retaliation for opposing discriminatory practices or for participating in the discrimination-complaint process. This policy applies to all terms and conditions of employment, including recruitment, hiring, promotions, transfers, reassignments, training, career development, benefits, and separation. **AUTHORITY:** 38 U.S.C. 308, 319, and 516.

2. BACKGROUND: VHA is committed to ensuring Equal Employment Opportunity (EEO), constructively resolving workplace disputes at the lowest possible level, and promoting diversity and inclusion to maintain a high performing workforce in service to our Nation's Veterans. VHA will enforce all applicable Federal EEO laws, executive orders, and management directives to ensure equal opportunity in the workplace for all VHA employees, applicants, and former employees.

a. In an effort to streamline VHA EEO policy, the following VHA EEO Directives are consolidated into this Directive: 1017, Prohibiting Discrimination Based on Status as a Parent, 2008-013, Prohibition of Discrimination Based on Sexual Orientation, 2008-045, Anti-Harassment Policy, 2008-050, Alternative Dispute Resolution Program, 2009-057, Prohibiting Retaliation or Reprisal Against Employees, 2009-071, Prevention of Workplace Harassment.

b. VHA does not tolerate discrimination, including workplace harassment, based on race, color, religion, national origin, sex (including gender identity, transgender status, sexual orientation, and pregnancy), age, disability, genetic information, marital/parental status, political affiliation, or retaliation for opposing discriminatory practices or for participating in the discrimination complaint process. This applies to all terms and conditions of employment, including recruitment, hiring, promotions, transfers, reassignments, training, career development, benefits, and separation.

c. The Department of Veterans Affairs (VA) Office of Resolution Management (ORM) is responsible for administering an impartial and effective complaints processing service to receive, investigate, and resolve, if possible, complaints of employment discrimination at the earliest possible stage. The regulations governing the Federal EEO complaint process are found in Title 29 Code of Federal Regulations (CFR) Part 1614. Employees seeking redress under this process must contact an EEO counselor in person, by phone, or in writing within 45 calendar days of the date of the alleged discrimination.

3. POLICY: It is VHA policy to provide EEO to all of its employees and applicants for employment without discrimination including workplace harassment, based on race, color, religion, national origin, sex (including gender identity, transgender status, sexual orientation, and pregnancy), age, disability, genetic information, marital/parental status, political affiliation, or retaliation for opposing discriminatory practices or for participating in the discrimination-complaint process.

4. RESPONSIBILITIES: Supervisors (e.g. VHA Chief Officers, Veterans Integrated Service Network (VISN) Directors, medical facility Directors, medical facility service chiefs) are responsible for ensuring the prohibition of discrimination based on race, color, religion, national origin, sex (including gender identity, transgender status, sexual orientation, and pregnancy), age, disability, genetic information, marital/parental status, political affiliation, or retaliation for opposing discriminatory practices or for participating in the discrimination-complaint process.

a. **Generally, supervisors are responsible for:**

- (1) Ensuring they do not interfere with employees' rights to use the EEO complaint process;
- (2) Completing required EEO supervisory training; and
- (3) Ensuring their employees complete required EEO employee training.

NOTE: Information concerning the EEO complaint process is available at <http://vaww.va.gov/ORM/EEOcomplaintresources.asp>. VA requires all employees, including supervisors, to take mandatory training concerning prohibition of discrimination in the workplace. This training is available at <https://www.tms.va.gov/learning/user/login.jsp>. These are both internal VA Web sites and are not available to the public.

b. **Further specific supervisor responsibilities by subject are as follows:**

(1) **Prohibition of Discrimination Based on Status as a Parent.** Supervisors must:

(a) Ensure the protection of parents in the workplace through the procedures provided for in Executive Order 11478 as amended by Executive Order 13152.

(b) Notify applicants or employees who believe they have been subjected to discrimination based on their status as a parent may seek assistance from ORM. (See Appendix B for ORM's Parental Status Notice.)

(c) Ensure a person's status as a parent is not the basis for the denial of a job, promotion, or any employment action.

(2) **Prohibition of Discrimination Based on Sexual Orientation.** Supervisors must notify employees and applicants that EEOC has held that discrimination against an individual because that person is transgender (also known as gender identity discrimination) is discrimination because of sex and therefore is covered under Title VII of the Civil Rights Act of 1964, Title 42 United States Code (U.S.C.) 2000e et seq. The EEOC has also found that claims by lesbian, gay, and bisexual individuals alleging sex-stereotyping state a claim of discrimination under Title VII. Employees seeking to file complaints based on sexual orientation may have multiple avenues to consider. If an employee believes that he or she has been discriminated based on sexual orientation, he or she should contact an ORM EEO counselor for more information.

(3) **Anti-Harassment Policy.** Supervisors must emphasize to employees the need to inform the alleged harasser directly that the conduct is unwelcome and that it must stop. **NOTE:** *Employees need to report harassment at an early stage to prevent its escalation.*

(a) Persons believing themselves to have been subjected to harassment need to discuss concerns with their immediate supervisor, service line director, the Equal Employment Opportunity (EEO) Program Manager, Human Resources Management Service, or their union representative.

(b) Complaints of harassment may also be brought to the attention of an Office of Resolution Management (ORM) EEO Counselor; this must be done within 45 calendar days of the date of the event or alleged act(s) occurred.

(c) Efforts will be made to resolve harassment claims as early as possible and where appropriate, alternative dispute resolution is encouraged.

(4) **Protection against Genetic Discrimination in Federal Employment.** Prohibiting discrimination for employment based on protected genetic information, or information about a request for, or the receipt of, genetic services and notifying employees and applicants, who believe that they have been subjected to discrimination based on genetics, may seek:

(a) Assistance under certain circumstances from the MSPB, the OSC, the Agency's Negotiated Grievance Procedure or Administrative Grievance Procedure;

(b) To initiate file an EEO complaint with ORM under Title II of the Genetic Information Nondiscrimination Act GINA of 2008, 42 U.S.C. 2000ff et seq.; and

(c) Maintaining protected genetic information or information about a request for, or the receipt of, genetic services in general personnel files; such information must be treated as confidential medical records and kept separate from personnel files.

(5) **Alternative Dispute Resolution Program.** Facility Directors must designate an Alternate Dispute Resolution Program (ADR) Manager on a full-time, part-time, or collateral duty basis who is provided the necessary resources.

(a) Ensuring all their employees have access to ADR as a method for resolving workplace disputes and EEO complaints.

(b) Ensuring that the ADR program is coordinated in a fair and neutral manner.

(c) Resolving workplace disputes at the earliest possible stages. This may include ADR or other informal dispute resolution techniques.

(d) Ensuring VHA supervisors are evaluated in terms of their efforts to implement and utilize ADR to resolve workplace disputes and EEO complaints. VHA supervisors are to support, participate in, and encourage early dispute resolution through ADR; and are to have open and honest communication with employees to demonstrate effective conflict management skills.

(e) Approving, as appropriate, facility settlement agreements negotiated through ADR and ensuring compliance with the terms of settlement.

(f) Providing ADR awareness training and program information to all their employees.

(g) Ensuring full cooperation with ORM Investigators during an EEO Investigation.

(6) **Prohibiting Retaliation or Reprisal against Employees.** Pursuing necessary follow-up action when the Director, Office of Employment Discrimination Complaint Adjudication (OEDCA), issues a final agency decision finding retaliation for EEO activity.

(a) Providing timely compliance documentation to ORM when OEDCA renders a finding of discrimination.

(b) Taking corrective action and appropriate disciplinary action immediately in all cases where there has been a finding of discrimination, retaliation or reprisal.

(c) Ensuring follow-up action is taken when the Director, OEDCA, receives an appellate decision by the EEOC.

(d) Ensuring any employment action taken by the individuals under their supervision is in full compliance with EEO laws and regulations as well as VHA and Departmental EEO policies.

(7) **Prevention of Workplace Harassment.** Ensuring Federal employees are provided with a workplace free of discriminatory harassment as referenced in the Equal Employment Opportunity Management Directive 715, Section II (A) and (C), see <http://www.eeoc.gov/federal/directives/md715.cfm>.

(a) Ensuring this policy is included in new employee and supervisory orientations, manuals, newsletters, and regular personnel communications and that each new employee receives training on the Prevention of Workplace Harassment/No FEAR Act within 90 days of employment, and thereafter, refresher training every 2 years. This mandatory training is offered on-line by the VA's Talent Management System: <https://www.tms.va.gov/>.

(b) Notifying employees and applicants that if they believe they have been subjected to discrimination based on workplace harassment, they may seek:

1. Assistance under certain circumstances from the Merit Systems Protection Board (MSPB), the Office of Special Counsel (OSC), the Agency's Negotiated Grievance Procedure, or the Agency's Administrative Grievance Procedure.

2. Assistance from ORM to file an EEO complaint. The individual must contact an EEO counselor within 45 calendar days of the date of the incident or alleged act(s).

(c) Designating the EEO Manager, or other appropriate individual, to conduct a prompt, thorough, and impartial inquiry of all workplace harassment allegations. Any person who believes he/she has been the subject of an incident of workplace harassment in violation of this Directive must report the matter to anyone in the supervisory chain, immediate supervisor, the Equal Employment Opportunity (EEO) Program Manager, Human Resources Management Service, or union representative (see Appendix A).

(d) Ensuring all allegations of workplace harassment against a member of the senior leadership, General Schedule (GS)-14 and above, are reported to the Chief Officer, Workforce

Management and Consulting Office, Director, EEO and Affirmative Employment Office, within 24 hours of notification of the allegation.

(8) **Ensuring the Implementation of a Violence Prevention Program.** Violence in the workplace is an occupational safety hazard citable under Department of Labor's Occupational Safety and Health Administration standards and under VA Directive 7700, Occupational Safety and Health.

(9) **Providing Reasonable Accommodations.** Providing reasonable accommodations to employees on the basis of disability in accordance with VA Directive 5975, Diversity and Inclusion, and VA Handbook 5975.1, Processing Requests for Reasonable Accommodation for Employees and Applicants with Disabilities.

(10) Encouraging employees to embrace the complementary principles of equity and diversity and inclusion throughout VHA to deliver the best care and services to America's Veterans.

5. REFERENCES:

- a. Executive Order 11478, Equal Employment Opportunity in the Federal Government.
- b. Executive Order 13152, Further Amendment to Executive Order 11478, Equal Employment Opportunity in Federal Employment.
- c. Executive Order 13087, Further Amendment to Executive Order 11478, Equal Employment Opportunity in the Federal Government, May 28, 1998.
- d. Executive Order 13145, To Prohibit Discrimination in Federal Employment Based on Genetic Information.
- e. Executive Order 12106, Equal Employment Opportunity Enforcement (Title 44 Code of Federal Regulations 1053, January 3, 1979).
- f. 42 U.S.C. 2000e et seq., Title VII of the Civil Rights Act of 1964.
- g. 29 U.S.C. 621 et seq., Age Discrimination in Employment Act of 1967.
- h. 29 U.S.C. 791 et seq., The Rehabilitation Act of 1973, as amended.
- i. 5 U.S.C. 552a, The Privacy Act of 1974.
- j. 42 U.S.C. 2000ff et seq., Title II of the Genetic Information Nondiscrimination Act of 2008 (GINA).
- k. 5 U.S.C. 571-584, Administrative Dispute Resolution Act of 1996.
- l. 42 U.S.C. 1981 et seq., The Civil Rights Act of 1991.
- m. 5 U.S.C. 7101 et seq., The Civil Service Reform Act of 1978, as amended.

- n. 29 U.S.C. 206, The Equal Pay Act of 1973.
- o. 5 U.S.C. 2301 et seq., The Notification and Federal Employee Antidiscrimination and Retaliation Act (NoFEAR Act) of 2002 and the Whistleblower Protection Enhancement Act of 2012.
- p. Equal Employment Opportunity Management Directive-110, see <http://www.eeoc.gov/federal/directives/md110.cfm>.
- q. Equal Employment Opportunity Management Directive-715, see <http://www.eeoc.gov/federal/directives/md715.cfm>.
- r. Title 29 CFR Part 1604, U.S. Equal Employment Opportunity Commission Regulations and Guidelines on Discrimination Because of Sex available at: http://www.eeoc.gov/laws/types/sexual_harassment.cfm.
- s. U.S. Equal Employment Opportunity Commission, Facts about Discrimination in Federal Government Employment Based on Marital, Parental, Political Affiliation, Sexual Orientation, or Transgender (Gender Identity) Status available at: <http://www.eeoc.gov/federal/otherprotections.cfm>.
- t. U.S. Equal Employment Opportunity Commission, Guidance, Discrimination by Type, Harassment available at: <http://www.eeoc.gov/laws/types/harassment.cfm>.
- u. 29 CFR 1614 (requiring that each Federal agency make available an ADR program for employees who believe they have been the victims of a prohibited discrimination).
- v. VA Secretary's EEO, Diversity, and No FEAR Policy Statement, June 11, 2014, see <http://www.diversity.va.gov/policy/statement.aspx>.
- w. VA Directive 5975, Diversity and Inclusion.
- x. VA Handbook 5975.1, Processing Requests for Reasonable Accommodation from Employees and Applicants with Disabilities.
- y. VA Directive 5977, Equal Employment Opportunity Discrimination Complaints Process.
- z. VA Directive 5978, Alternative Dispute Resolution.
- aa. VA Directive 7700, Occupational Safety and Health.

6. DEFINITIONS:

a. **Harassment.** Harassment is unwelcome conduct that is based on race, color, sex (including sexual orientation), religion, national origin, disability, and/or age when:

- (1) The conduct is a condition of the individual's employment;

(2) Employment decisions are based on whether the employee accepts or rejects such conduct; or

(3) The conduct can unreasonably interfere with an individual's work performance or create an intimidating, hostile, or offensive work environment.

b. **Hostile Work Environment.** A hostile work environment is created when sexual comments or conduct unreasonably interfere with an individual's work performance or create an intimidating, hostile, or offensive work environment. A supervisor or co-worker may be responsible for this type of conduct or a non-employee in certain circumstances. Jokes, remarks, teasing, rude or obnoxious behavior, pranks, non-sexual conduct or questions that contain sexual overtures can be a form of sexual harassment, and are not acceptable in the VA professional work environment, and are not appropriate action, or who retaliate against an employee who reports incidents or sexual harassment, are subject to disciplinary action.

c. **Sexual Harassment.** Sexual Harassment is unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature not only when the submission to advances is an expressed or implied condition for receiving job benefits and the refusal of advances in tangible employment action, but also when the conduct creates an intimidating, hostile or offensive working environment. Sexual harassment is not limited to explicit demands for sexual favors. It also may include such actions as:

- (1) Sexually-oriented verbal kidding, teasing, or jokes;
- (2) Repeated sexual flirtations, advances or propositions;
- (3) Continued or repeated verbal abuse of a sexual nature;
- (4) Graphic or degrading comments about an individual or the individual's appearance;
- (5) The display of sexually suggestive objects or pictures;
- (6) Subtle pressure for sexual activity; and

(7) Physical contact such as hugging, pinching, brushing against another's body or unwelcome patting.

d. **Status as a Parent.** Status as a Parent refers to the status of an individuals who, with respect to an individual who is under the age of 18 or who is 18 or older but is incapable of self-care because of a physical or mental disability is: a biological parent, an adoptive parent, a foster parent, a stepparent, a custodian of a legal ward, in loco parentis over such individual, or actively seeking legal custody or adoption of such an individual.

APPENDIX A

GUIDELINES ON REPORTING WORKPLACE HARASSMENT AND MAKING INQUIRIES INTO ALLEGATIONS OF WORKPLACE HARASSMENT

1. REPORTING WORKPLACE HARASSMENT:

a. Any person who believes he/she has been the subject of an incident of workplace harassment in violation of this Directive must report the matter to anyone in the supervisory chain, immediate supervisor, the Equal Employment Opportunity (EEO) Program Manager, Human Resources Management Service, or union representative.

b. All information must be maintained on a confidential basis to the greatest extent possible. The maintenance of records and any disclosure of information from these records must be in complete compliance with the Privacy Act, Title 5 United States Code (U.S.C.) 552a. Such information, however, may have to be disclosed on a “need to know” basis in order to carry out the purpose and intent of this policy.

2. INQUIRIES INTO ALLEGATIONS OF WORKPLACE HARASSMENT:

a. A supervisor or manager who receives an allegation or witnesses workplace harassment must immediately:

(1) Inform the EEO Manager and seek guidance as to further actions;

(2) In consultation with the EEO Manager, take preliminary action to alleviate alleged workplace harassment and prevent further harassment while an inquiry into the allegation is being made, including granting of appropriate interim relief to the victim of the alleged workplace harassment;

(3) In consultation with the EEO Manager, document the allegation received and the efforts to address the allegation; and

(4) Meet with the person reporting the harassment to update on the outcome of the inquiry.

b. If a Senior Executive (i.e., VHA Chief Officer, Veterans Integrated Services Network (VISN) Director, Medical Center or Health Care System Director, etc.) receives an allegation of workplace harassment, the EEO Manager at the facility, VISN, or program office is to be promptly notified of the person accused of the misconduct and the Senior Executive needs to provide further assistance as requested by the EEO Manager.

c. When the EEO Manager receives an allegation of workplace harassment, either directly from the employee or through a supervisor, manager, or other sources, the EEO Manager must:

(1) Ensure that the appropriate management official is notified and a prompt, thorough, impartial, and appropriate inquiry is conducted.

(2) Follow-up with the appropriate management official to ensure that action is taken to stop any alleged workplace harassment and to prevent further harassment.

(3) Advise employees of their right to contact the Office of Resolution Management; should the individual desire to file an EEO complaint, the individual must contact an EEO counselor within 45 calendar days of the date of the incident or alleged act(s).

February 6, 2015

VHA DIRECTIVE 1124

APPENDIX B

PARENTAL STATUS NOTICE

The embedded document below is Department of Veteran's Affairs (VA) Office of Resolution Management (ORM) Parental Status Notice.



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