Equal Employment Opportunity

Diversity & Inclusion

New Employee Orientation

Revision 6/2014

Equal Employment Opportunity Program Manager

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ROOM 9102

Learning Objectives

- **Become Familiar with EEO Policy Statements:**
  - Secretary of the VA
  - Local Medical Center
- **Gain an understanding of the VA EEO complaint process:**
  - EEO ACTS
  - Basis of Discrimination
  - Disparate / Adverse Treatment
  - Comparably Situation
  - VA EEO Complaint Process & Filing Deadlines
  - Alternative Dispute Resolution
  - Harassment
  - Our VA EEO Complaint History
- **Gain an understanding of the benefits of Diversity & Inclusion in the workplace.**
- **Our EEO and Diversity & Inclusion Team.**

Become Familiar with Policy Statements

~Equal Employment Opportunity~
~Diversity & Inclusion~
~No FEAR~

Secretary of VA Policy Statement

[Local] VA Policy Statement

Equal Employment Opportunity ACTS

Title VII Civil Rights Act [1964]

- Race
- Sex
- Color
- Religion
- Reprisal
- National Origin

Equal Pay Act [1963]

Age Discrimination in Employment Act [1967]

Rehabilitation Act [1973]

- Disability

Genetic Information Nondisclosure Act [2008]

Prohibited EEO Activities: "Basis" Component of a Discrimination Complaint

- Race
- Sex
- Age
- Religion
- National Origin
- Color
- Disability (including genetic information)
- Reprisal

Prohibited EEO Activities: "Disparate Treatment" Component of a Discrimination Complaint

- Termination / Removal
- Failure to Hire/Select /Promote
- Harassment (non-sexual & sexual)
- Assignment of Duties
- Working Conditions
- Re-assignment
- Time & Attendance
- Punitive Action
- Performance Appraisal

Disparate Treatment / Comparably Situated - Defined

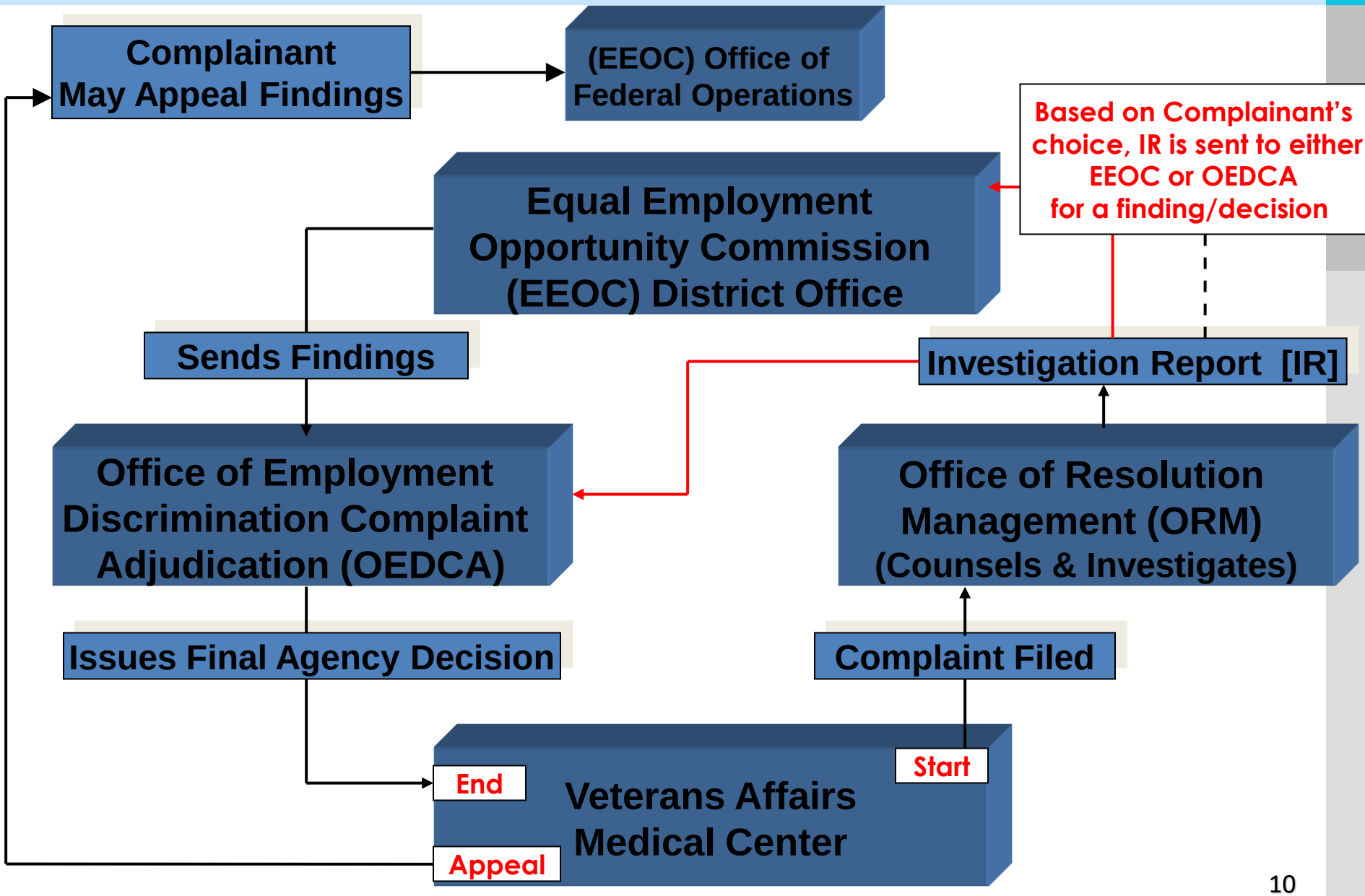
- **Disparate Treatment:**
  - An employment situation comparable to that of other employees[1] <u>not</u> of the same protected class, and
  - Treatment that is different than that experienced by those other employees with respect to the terms, conditions or benefits of employment.

- **Comparably Situated Theory:**
  - With the exception of a disability discrimination complaint, it is important to understand that the complainant <u>must prove discrimination of the protected class [Basis], not just the complainant</u>.

Note 1: In most cases, in order to be comparably situated, the comparative employee(s) must have the same supervisor as the complainant and have been subject to the same disparate treatment.

VA EEO COMPLAINT PROCESS

Macro-Overview of the VA EEO Process

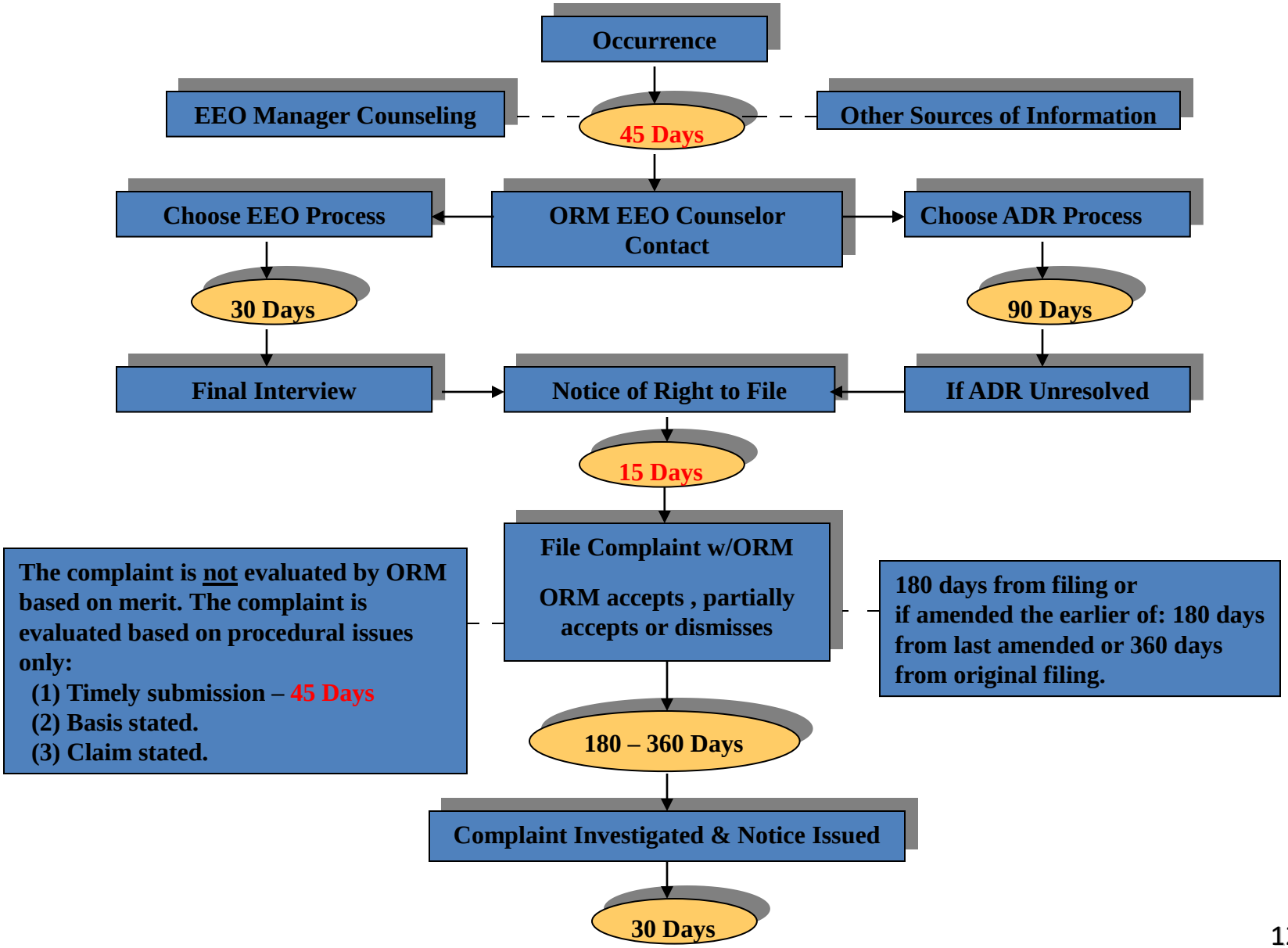


EEO Process Deadlines

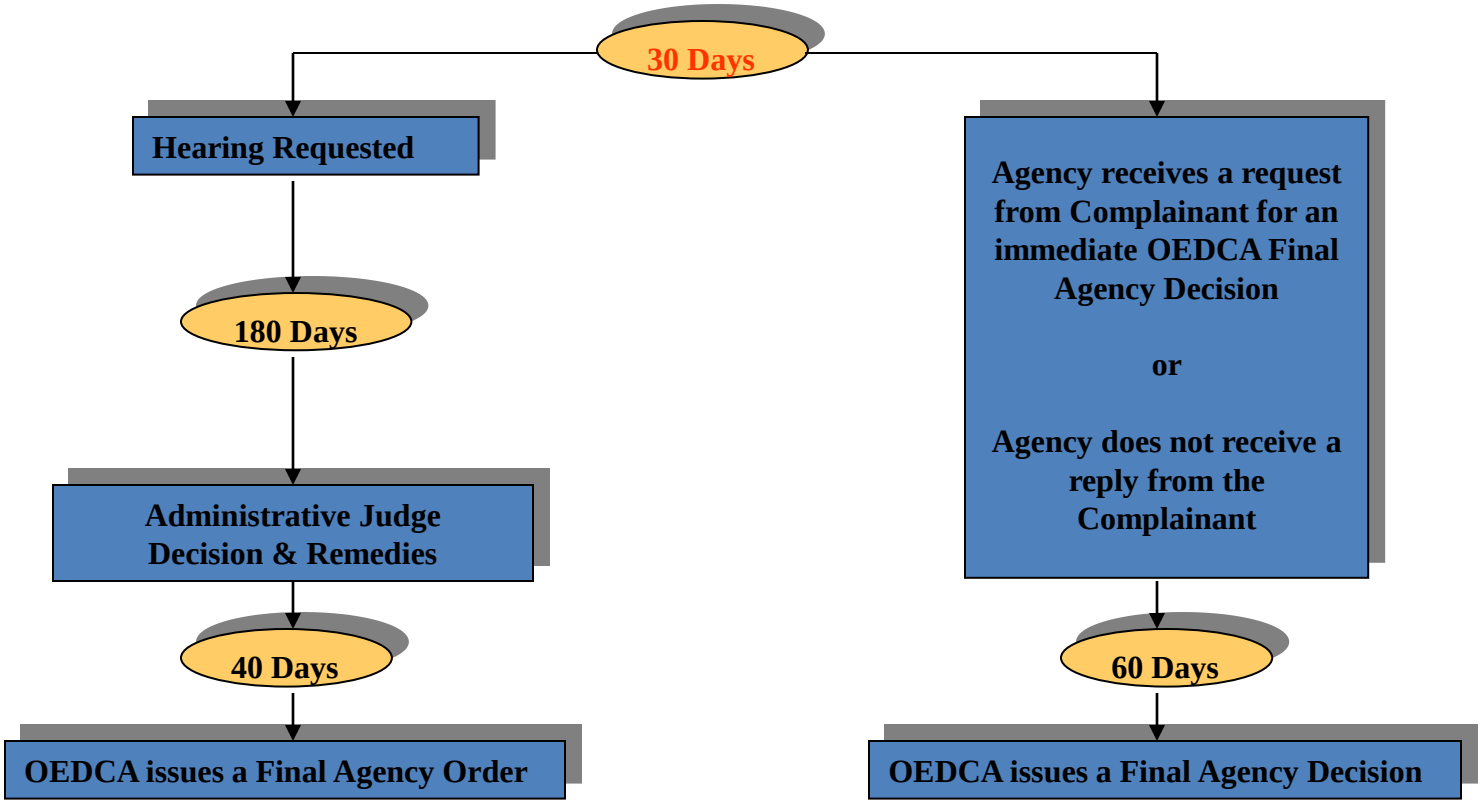
- It is important to keep in mind that abiding by the time frames in red is mandatory. Failing to comply with these time frames could result in a claim of discrimination being dismissed as untimely.

- **If a person believes they have been subject to discrimination, they must contact an Office of Resolution Management (ORM) counselor within 45-days from the date of the alleged discrimination in order for their complaint to be considered timely.**
  - Only exception to this deadline is a life emergency.

Micro-Overview of the VA EEO Process



Micro-Overview of the VA EEO Process continued



Complainant may file an appeal to EEOC within:
30 days of receipt of the Agency's Dismissal, Final Action or Decision.
40 days of receipt of the Agency's Final Order and hearing file. (1614.401-5)

Complainant may file a civil action within:
30 days of receipt of Final Decision by the Agency, MSPB or Commission.
After 120 days from date of filing a formal complaint or appeal w/o any action taken.
After 180 days of filing a petition for reconsideration if no decision is made. (1614.310)
Title VII – 90 days to 3yrs as appl. (1614.407-9)

Three Step EEO Complaint Process – STEP 1

- **Burden is on the Complainant to establishes a "prima facie" case.**
  - **Show a basis / membership in a protected class(es):**
    - Race
    - Color
    - Religion
    - Sex
    - Age
    - National Origin
    - Reprisal
    - Disability
  - **Provide a claim(s) of disparate/adverse action:**

    (Remember Comparably Situated Theory: Prove protected class has been discriminated against – not individual [except disability claim])

    - Punitive Action
    - Time & Attendance
    - Reassignment
    - Harassment
    - Performance Appraisal
    - Assignment of Duties
    - Duty Hours
    - Termination/Removal
    - Failure to Hire, Select or Promote

Three Step EEO Complaint Process – STEP 2

- **If the Complainant meets the burden of presenting a prima facie case, then the burden shifts to management:**
  - **To articulate some legitimate, nondiscriminatory reason for its [management's] actions.**

Texas Department of Community Affairs v. Burdine, 450 U.S. 248, 25 FEP Cases 113 (1981)

The evidence presented by management need not establish management's actual motivation, but must be sufficient to raise a genuine issue of material fact as to whether management discriminated against the complainant.

Three Step EEO Complaint Process – STEP 3

- In order to prevail, the Complainant must show by a preponderance of the evidence that management's stated reason is a pretext to discrimination.
- The Complainant may show pretext by evidence that:
  - A discriminatory reason more likely than not motivated management.
  - Management's articulated reasons are unworthy of belief.
  - Management has a policy or practice disfavoring the complainant's protected class.
  - Management has discriminated against the complainant in the past.
  - Management has traditionally reacted improperly to legitimate civil rights activities.

The EEO Complaint Test

- **In describing/defending your claim:**
  - **If you use the words "I", "me" and "my", you likely do not have an issue of unlawful discrimination.**
    - **You may have a legitimate issue, just not one in which the EEOC has authority to act upon and provide you with appropriate relief.**
  - **<u>Exception</u> is disability & sexual harassment discrimination which are about the individual verse protected class.**
- **In describing/defending your claim:**
  - **If you use the words "us", "we" and "our" you <u>may</u> have an issue of unlawful discrimination:**
    - **IF the "us", "we" and "our" refers to your basis of discrimination, i.e., race, color, religion, national origin, age, or gender, otherwise known as the 'protected class'**
    - **AND all those of the same protected class as you who report to the same supervisor as you, are also being subjected to the adverse treatment you claim you are experiencing.**

ALTERNATIVE DISPUTE RESOLUTION

Alternative Dispute Resolution - Defined

- A variety of techniques for resolving disputes without using litigation or traditional administrative processes.
  - "Any alternative to full-scale litigation".
  - Characterized by a creative frame of mind that says "there ought to be a better way to dispose of this dispute."
- The Department of Veterans Affairs utilizes "Mediation"; a form of Alternative Dispute Resolution, to resolve workplace disputes.

Principles of Mediation

- Utilizes joint problem-solving techniques that present options to resolving conflict.
- Utilizes a neutral third party [mediators] to assist the parties in resolving their dispute.
- Offers the opportunity to develop creative solutions unavailable in traditional dispute processes.
- Offers the opportunity to develop a resolution tailored to meet the needs of the parties.
- Ensures use of a non-coercive, flexible, and voluntary structure that is confidential in nature.

Mediation is Recommended when/to:

- Quick resolution is desired.
- Preserve party working relationships.
- Confidentiality is desired.
- Both parties want to terminate their relationship in the least adversarial way.
- Multiple issues are involved.
- Saves money.
- Both parties are interested in retaining control of the outcome.

EEOC CASE LAW

Elrod v. Sears, Roebuck & Co., 939 F. 2d 1466, 1470 (11th Cir. 1991); Furnco Construction Corp. v. Waters, 438 U.S. 567 (1978).

The anti-discrimination in employment statutes are not designed to provide employees with a forum for voicing objections with how a federal agency conducts its business, nor were said laws intended to burden the federal courts (as well as the EEOC) with the task of acting as super personnel departments to define whether an employer's decision was just or proper, and the role of the Administrative Judge, as the tier of fact, is not to substitute his or her judgment, for that of the Agency, nor to decide that discrimination occurred, just because there are personal, personnel, and/or union related problems between a complainant and management, or because a complainant perceives this to be the case.

EEOC CASE LAW

White v. Vathally, 732 F. 2d 1037 (1st Cir.), cert. Denied, 105 S. Ct. 331 (1984); Nix v. WLCY/Radio Rahall Communications, 738 F. 2d 1181, 1187 (11th Cir. 1984).

In proving discrimination only relevant and probative evidence can be considered, as opposed to a complainant's asserting, refuting, or questioning, an agency's actions, and the EEO forum is NOT a vehicle for a complainant, or the EEOC, to second guess the wisdom of an agency's actions, in the absence of proof of a discriminatory animus, as federal agencies are free to determine the standards in the work place, whether fair, unfair, correct, incorrect, in the absence of said proof.

Regulations Governing Dual Filing

5 U.S.C. 7121(g) – Employees covered by a collective bargaining agreement must choose one of four venues when addressing a dispute: an EEO complaint, an OSC complaint, an MSPB appeal, or a grievance under the collective bargaining agreement.

It is the employee's responsibility to choose the appropriate agency with which to address an issue of dispute. Once an issue is initiated through an agency (EEO, OSC, MSPB or Union), whether the appropriate agency or not, the employee may not raise the issue through another agency regardless of the outcome.

Other Forums Available to Address Disputes

- **Collective Bargaining Unit – Union**
  - Protects employees from prohibited personnel practices and other negotiated issues.
- **U.S. Merit System Protection Board**
  - Protects Federal employees from employer abuse and prohibited personnel practices.
- **U.S. Office of Special Counsel**
  - Protects Federal employees and applicants from prohibited personnel practices; whistleblower protection.
- **U.S. Office of Personnel Management**
  - Federal Office of Personnel Management ensures that Federal employees are selected and treated fairly based on merit.
- **Federal Labor Relations Authority**
  - Adjudicates disputes arising from collective bargaining agreements and appeals concerning unfair labor practices affecting large groups.

Our Medical Center EEO Complaint Statistics

Year	Complaints Filed	Discrimination Found	Discrimination NOT Found	ORM Dismissed	Complaint Settled
1998	22 [1]	0	26	3	1
1999	46 [1]	1	30	4	3
2000	12 [1]	2	50	8	5
2001	32	1	49	9	1
2002	21	0	23	4	1
2003	20	0	18	5	1
2004	19	0	12	2	2
2005	14	0	13	4	2
2005	27	0	3	1	0
2007	14	0	6	5	0
2008	11	0	0	0	0
2009	10	0	9	8	3
2010	4	0	4	0	5
2011	4	0	4	1	3
2012	12	0	6	2	3
2013	5	0	6	0	2
2014	12	0	9	1	0
2015	30	0	7	7	2
2016	16	0	15	5	0
2017	15	1 (*per se*)	11	2	0
2018	14	1 (*per se*)	15	3	3
2019	12	0	15	1	1
2020	10	1 (*per se*)	13	2	1
2021	6	0	12	0	2
2022					
Total	388	7	356	77	38

Note 1: Data best available.

Harassment including Sexual Harassment

Who pictured here may be a workplace harasser?

EEO Discriminatory Harassment - Defined

- **To establish a prima facie case of harassment, a Complainant must show:**
  - ✓ **Membership in a protected class, <u>and</u>**
  - ✓ **Unwelcome personal slurs or other denigrating or insulting verbal or physical conduct, <u>and</u>**
  - ✓ **That the harassment complained of was based on the Complainant's membership in the protected class, <u>and</u>**
  - ✓ **That the harassment was sufficiently severe or pervasive to affect a term of condition of employment, and/or that the harassment had the purpose or effect of unreasonably interfering with Complainant's work performance and/or that the harassment has the purpose or effect of creating an intimidating, hostile, or offensive work environment.**
  - ✓ **In cases involving a co-worker, the Complainant must also show as part of prima facie case that management failed to take prompt and appropriate action although it was aware of the harassment.**

Workplace EEO Sexual Harassment Types Defined

- **Tangible Employment Action Sexual Harassment – formerly known as "quid pro quo".**
  - **Requires a supervisory – subordinate relationship in which the supervisor has authority to effect one or more terms or condition of the subordinate employee's employment.**
  - **Unwelcome sexual advances, requests for sexual favors, and/or other verbal or physical conduct of a sexual nature made by a supervisor in return for favorable job considerations or to avoid unfavorable job repercussions when:**
    1. **Submission to such conduct is an explicit or implicit term or condition of employment; or**
    2. **Submission to or rejection of such conduct becomes a basis for an employment decision.**

Workplace EEO Sexual Harassment Types Defined

- **Hostile Work Environment Sexual Harassment:**
  - Unwelcome verbal, nonverbal and/or physical behavior focused on the sexuality of another person, and
  - The behavior is severe or repeated enough to unreasonably interfering with and/or negatively effect an individual's work performance or of creating a hostile or offensive work environment.
  - Behavior characteristic of hostile work environment sexual harassment include:
    1. Remarks, teasing, jokes inferring sexual overtures.
    2. Comments about body parts or one's sex life.
    3. Pictures, posters or calendars with sexual overtures.
    4. Repeated requests for dates.
    5. Inappropriate touching or repeatedly rubbing up against someone.
- **Generally, behavior that does not rise to the level of hostile work environment sexual harassment is acted upon through progressive discipline.**

EEO Discriminatory Harassment - LAW

- Harris v. Forklift Systems, Inc., 510 U.S. 17 (1993) **For harassment to be considered discriminatory, it must be severe or pervasive.**

- Scott v. Sears Roebuck and Co., 798 F.2d 210 (7th Cir. 1986); Hansen V. Rice, EEOC Appeal No. 01920621 (September 10, 1992) **However, unless the conduct is very severe or persistent, a single incident or group of isolated incidents will not be regarded as discriminatory harassment.**

- Lin v. U.S. Postal Service, EEOC Appeal No. 01932880 (December 23, 1993)
  - **Harassment, as the term is used in Title VII cases, refers to more than being subjected to stress.**
  - **A showing of discriminatory harassment [of the protected class] "must include discrete comments directed against the Complainant or disparate treatment which supports an inference of discriminatory harassment."**

- Harris, supra. **Conduct that is not severe or pervasive enough to create an objectively hostile or abusive environment – an environment that a reasonable person would find hostile or abusive – is beyond Title VII's purview.**

Actions to Take if You're Being Harassed

- **Advise the person(s) that your consider their behavior unwelcome and/or offensive and ask them to stop.**
  - **If the behavior continues.**
  - **Or if you are uncomfortable with direct confrontation.**
- **Report the behavior to your supervisor or if being harassed by your supervisor to the next level supervisor, so they can take action.**
- **You can always report the behavior directly to the medical center's Equal Employment Opportunity Program Manager so s/he can act upon it.**

Diversity

Lifestyle

Geographic Origin

Education

Sexual Orientation

Ethnicity/ Cultural

Gender

Military Experience

Religion/ Spiritual

Physical Abilities/ Qualities

Personality

Management/ Non-Management

Skills/ Talents

Race

Language/ speech

Tenure

Age

Marital status

Socioeconomic

Mental Status

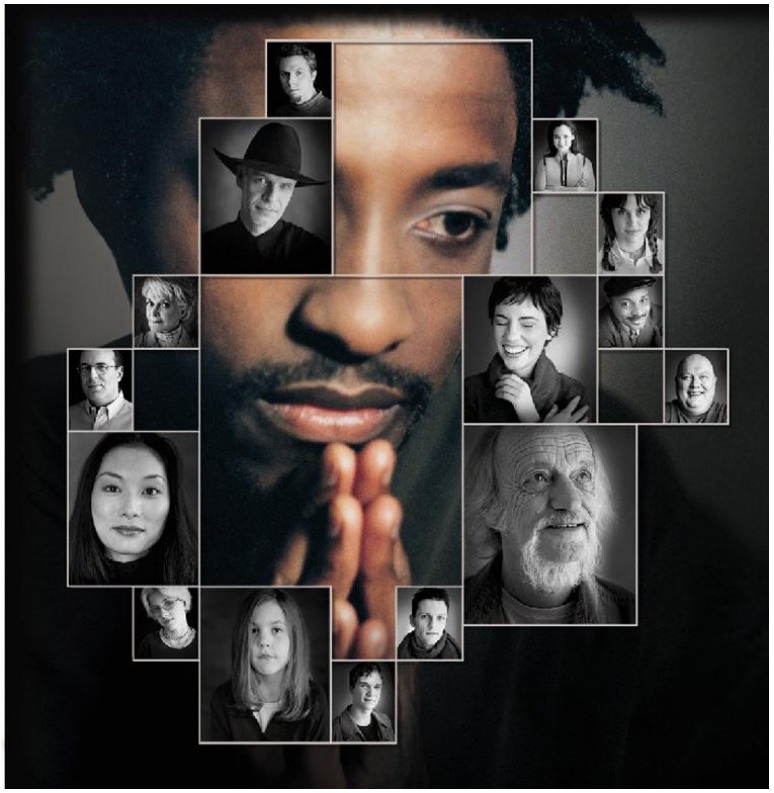
Night/Day Shift Employees

Diversity & Inclusion Objectives

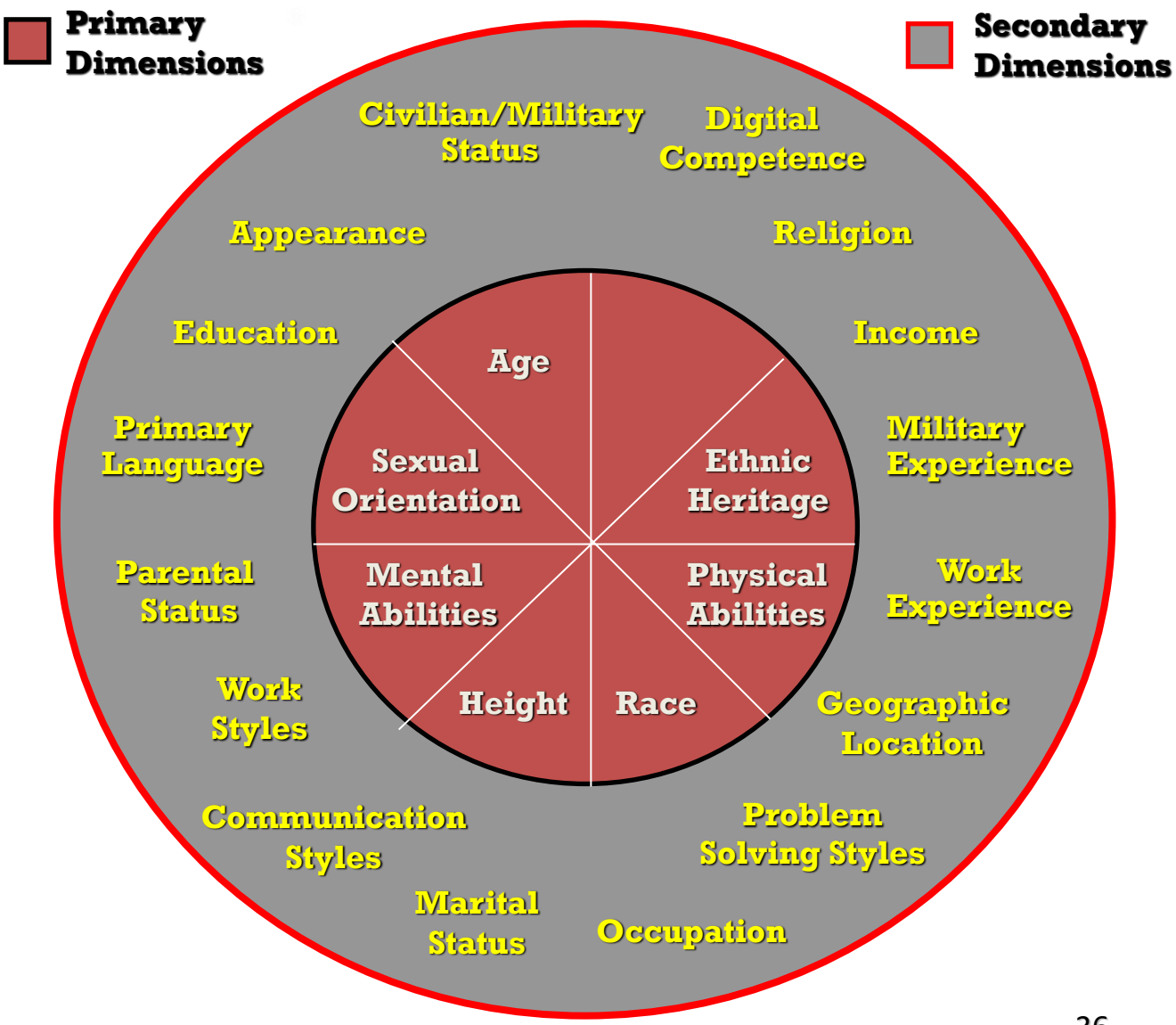
- Defining Diversity and Inclusion.
- Identify the key components of diversity and Inclusion.
- Examine the individual v. organizational perspective of diversity.
- Foster an appreciation and open mindedness for diversity, cultural competency, and continuous learning.
- Examine the differences between Equal Employment / Affirmative Action and Diversity.

Diversity Defined

Diversity is the mosaic of people who bring a variety of backgrounds, styles, perspectives, values and beliefs as assets to the groups and organizations with which they interact.



Diversity Dimensions



Diversity & Inclusion Defined

Diversity – "Those human qualities that are different from our own and outside the groups to which we belong, yet present in other individuals and groups."

Inclusion – "The act of including, or the state of being included.

Individual Perspective

From an individual perspective, people as a general rule, tend to gravitate toward others similar to them – resisting diversity and inclusion. Why ?

- ❑ **Prefer familiarity and consistency.**
- ❑ **Provides a sense of comfort and safety.**
- ❑ **Fear / lack of an understanding of different behavior(s).**
- ❑ **Preconceived group bias and prejudices.**
- ❑ **Resistance to change.**
- ❑ **Fear of competition.**
- ❑ **Insecurities.**

Organizational Perspective
The Power of Diversity & Inclusion

Why do successful organizations strive to continuously expand upon including diverse perspectives in organizational planning?

In the 21st century, an organization's rate of success in recruiting, retaining and applying the knowledge and skills of a diverse and inclusive work force will be directly related to its ability to thrive and in many cases survive in this century's highly competitive and dynamic worldwide marketplace.

Organizational Perspective
The Power of Diversity & Inclusion

Why do successful organizations strive to continuously improve upon their diversity & inclusion initiatives?

- ❑ **63% say to generate ideas.**
- ❑ **60% say to get the best talent for the job.**
- ❑ **50% say to accommodate a diverse customer base.**
- ❑ **48% say to maintain a competitive edge.**
- ❑ **41% say to enhance community relations.**

Source: Society for Human Resource Management

Diversity & Inclusion Management - Defined

Diversity Management: **"A comprehensive managerial process for developing an environment that works for all employees."**

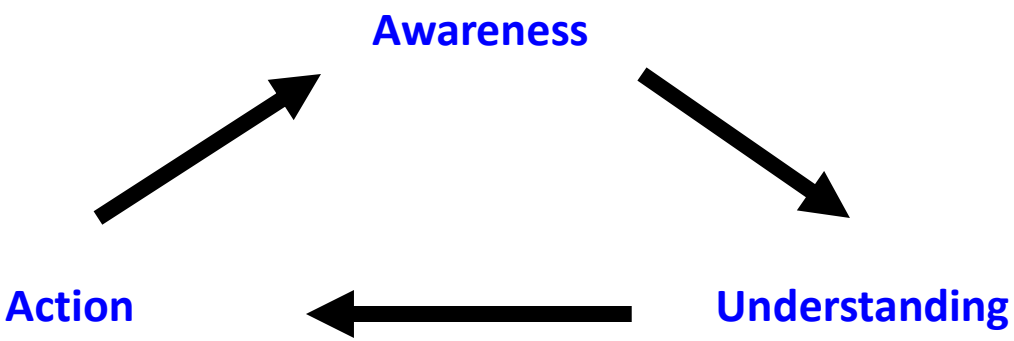
Inclusion Management: **is the process of "piecing together the Diversity puzzle" to reveal the scope and depth of an organization's human resource asset, utilize it to its fullest potential and continuously expanding upon it .**

Diversity & Inclusion Management - Defined

- It is not a goal or objective. It is a process that is an integrated, ongoing, and measurable strategy for high-performance organizations.
- Evaluates the mindset of an organization.
- Evaluates the climate of an organization.
- Harnesses the various perspectives people bring to an organization as a result of their differences to continuously improve processes and the quality of goods and services.

Diversity & Inclusion – A Continuous Learning Process

Knowledge of self and others is acquired through a continuous learning process:



The extent to which you are comfortable with yourself, your race, values, norms, gender, beliefs, body composition, sexual preference, etc…, is directly related to your comfort with others'.

Traditional verse Diversity & Inclusion Paradigm

Traditional Paradigm

- Expectations, standards and explicit and implicit rules shaped by the needs of those at the top.
- Success linked to assimilation.
- Limited range of appropriate communication, work and leadership styles.
- No strategic business link.
- Diversity equals a potential liability.
- No HR system alignment.
- No link to compensation and reward.
- Token gender and/or racial diversity at middle management levels.
- Uncommitted and uninformed leadership.
- Underlying assumption: Change the people and preserve the culture.

Valuing Diversity Paradigm

- Expectations, standards and explicit and implicit rules shaped by diverse customers and employees.
- Success linked to unique contribution.
- Expanded range of communication, work and leadership styles.
- Diversity is a competitive business strategy.
- Diversity equals a unique asset.
- HR system is aligned with diversity.
- Strong link to compensation and rewards.
- Visible diversity at all organizational levels.
- Aware and fully engaged leadership.
- Underlying assumption: Modify the culture to support the people.

Inclusive Diversity Ripple Effects Improve…

- ❑ Outcomes
- ❑ Service Delivery
- ❑ Teamwork
- ❑ Decision-Making
- ❑ Recruitment and Retention
- ❑ Succession Planning
- ❑ Efficiencies / Reduced Cost
- ❑ Continuous Improvement
- ❑ Public Relations

- ❑ Competitiveness in the Healthcare Marketplace

Special Emphasis Programs

Special Emphasis Programs are implemented pursuant to Presidential Executive Orders and Federal personnel programs established by the Office of Personnel Management (OPM)

- **To assist in the elimination of medical center demographic group imbalances / underrepresentation in targeted occupations.**
- **To enhance the attainment of total workforce diversity & inclusion.**
- **To champion their specific Special Emphasis Program initiatives.**

Medical Center
Special Emphasis Program Managers

- Federal Women's Program
  - Rebecca Huie, DNP, RN, ACNP
- Hispanic Employment Program
  - Jessica Dosal-Wood
- Persons with Disabilities
  - Mary Erwin
- American Indians/Alaska Natives
  - Cathy Perry
- Asian Americans/Pacific Islanders
  - Loui Harkins
- Black/African American Employment Program
  - Enrika Washington
- Gay, Lesbian, Bisexual, and Transgender
  - Michelle McHugh
- Minority Veterans Program Coordinator
  - Willy Fields
- HR Selective Placement Coordinator
  - Anita Barnes

Special Emphasis Program Managers

Who We Are?

- Employees
- Appointed
- Open access
- Collateral duty assignment

What We Do?

- Barrier Analysis
- Change Agent
- Recommend Training
- Champion our SEP

Medical Center SEPM Team

Questions