



THE SECRETARY OF VETERANS AFFAIRS

WASHINGTON

May 31, 2013

TO ALL EMPLOYEES

SUBJECT: The Secretary's Equal Employment Opportunity, Diversity and Inclusion, and No FEAR Policy Statement

As Secretary of the Department of Veterans Affairs (VA), I am proud to convey my clear commitment to equal employment opportunity, diversity and inclusion, and constructive conflict resolution in VA's workplace. Our ability to provide the best services to our Nation's Veterans is directly linked to having a fair and inclusive organizational culture that leverages the diverse talent of all of our human resources.

Essential to creating such a culture is the demonstration of VA's Core Values: Integrity, **C**ommitment, **A**dvocacy, **R**espect, and **E**xcellence (I CARE). Each of us bears the responsibility to ensure that discrimination is not tolerated and that diversity is promoted so that every individual can contribute his or her fullest potential to VA's mission.

Supervisors and managers bear a special responsibility for promoting the complementary principles of equity and diversity and inclusion in the workplace. The attached Policy Statement provides a summary of VA's workplace policies and employee protections. Your active engagement is critical to cultivating a diverse workforce and inclusive workplace in VA.



Eric K. Shinseki

Attachment

**Department of Veterans Affairs (VA)
Secretary's Equal Employment Opportunity (EEO),
Diversity and Inclusion, and No FEAR Policy Statement**

VA is committed to ensuring EEO, promoting diversity and inclusion, and constructively resolving workplace disputes to maintain a high-performing workforce in service to our Nation's Veterans. To that end, the Department will vigorously enforce all applicable Federal EEO laws, executive orders, and management directives to ensure equal opportunity in the workplace for all VA employees (see "References" on pages 6-8). This document summarizes VA's EEO and diversity-related workplace policies.

EEO and Prohibited Discrimination

VA 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 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.

VA's Office of Resolution Management (ORM) is responsible for administering an impartial and effective complaints management process to receive, investigate, and resolve, if possible, complaints of employment discrimination at the earliest possible stage. Employees may report allegations of discrimination to ORM at (888) 737-3361. The regulations governing the Federal EEO complaint process are found in 29 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. Employees may also report allegations to their immediate local facility EEO program manager or a management official in their chain of command, or they may raise discrimination issues through the Negotiated or Administrative Grievance Process or the Merit Systems Protection Board (MSPB) as appropriate. While an allegation of discrimination may be raised through these additional avenues, it does not constitute initiation of an EEO complaint with an EEO counselor through the Federal sector EEO complaint process, and it does not extend the 45 calendar-day time limit to initiate an EEO complaint with ORM.

Complaints of discrimination filed on the basis of marital status or political affiliation may be investigated as prohibited personnel practices and are under the jurisdiction of the MSPB or the Office of Special Counsel (OSC). Complaints filed on the basis of parental status may be processed through VA's internal complaints process. 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.

Workplace Harassment

Workplace harassment is a form of discrimination, is against the law, and is not tolerated. Workplace harassment is defined as any unwelcome, hostile, or offensive conduct taken on the bases listed above, under prohibited discrimination, which interferes with an individual's performance or creates an intimidating, hostile, or offensive work environment. Harassment by or against VA employees, applicants, contract employees, clients, customers, and anyone doing business with VA is prohibited.

Sexual harassment is one type of workplace harassment. Sexual harassment is a form of sex discrimination that involves unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when: (1) submission to or rejection of such conduct is made either explicitly or implicitly a term or condition of one's employment; (2) submission to or rejection of such conduct by a person is used as a basis for career or employment decisions affecting that person; or (3) such conduct interferes with an individual's performance or creates an intimidating, hostile, or offensive work environment.

Supervisors and employees bear responsibility in maintaining a work environment free from discrimination and harassment. Employees must not engage in harassing conduct and should immediately report such conduct to their supervisor, another management official, collective bargaining unit, Employee Relations (ER), Labor Relations (LR) Specialists, or ORM, as appropriate. If an employee brings an issue of harassment to a supervisor's attention, the supervisor must promptly investigate the matter and take appropriate and effective corrective action. Allegations of discrimination and harassment will be taken seriously and appropriate corrective action – up to and including termination – will be taken, if allegations are substantiated. Supervisors are strongly encouraged to seek guidance from their local EEO manager, ORM, ER and LR staff, or the Office of General Counsel when addressing issues of discrimination or harassment.

Workplace Violence and Bullying

Workplace violence or the threat of violence against workers is strictly prohibited. This type of prohibited behavior can occur at or outside the workplace and can range from threats and verbal abuse to physical assaults. The act of "bullying" conduct constitutes fighting; threats; an intent to inflict harm; and abusive, offensive, unprofessional, distracting, slanderous, malicious, derogatory, or otherwise inappropriate or unacceptable language intended to degrade or humiliate a particular person or group of people. Bullying and workplace violence are violations of VA's policy and will not be tolerated. Any employee who is subject to bullying behavior or potential workplace violence should report the matter to his or her supervisor or another appropriate official immediately. VA's Office of Occupational Safety and Health under the Office of Administration is responsible for providing oversight of VA's Occupational Safety and Health and Workers' Compensation programs in support of VA's Designated

Agency Safety and Health Official. 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. Under Secretaries, Assistant Secretaries, and other Key Officials are required to implement a violence prevention program.

No FEAR Act/Whistleblower Protection

The Notification and Federal Employee Antidiscrimination and Retaliation Act (No FEAR Act) protects Federal employees from unlawful discrimination and reprisal for participation in protected EEO and whistleblowing activity. The Whistleblower Protection Act prohibits retaliation against public employees or applicants for employment for reporting a violation of law, rule, or regulation; gross mismanagement; gross waste of funds; an abuse of authority; or a substantial and special danger to public health or safety. Retaliation against individuals for whistleblowing, opposition to discrimination, or participation in the discrimination-complaint process is unlawful and will not be tolerated. This includes complainants, witnesses, and others who provide information concerning such claims.

In late November 2012, President Obama signed the Whistleblower Protection Enhancement Act. This statute amended the law regarding whistleblowers' rights by: (1) making a whistleblower's oral disclosures legally sufficient; no longer must a disclosure be in writing; (2) making disclosures that fall within the whistleblower's job duties an eligible basis of a whistleblower claim; (3) strengthened anti-retaliation restrictions; (4) allowing damages that could be obtained by a whistleblower to include consequential damages such as emotional distress; and (5) establishing a 2-year trial period for these provisions. Avenues of redress available to address claims of reprisal for whistleblowing include the local Congressional representatives, the MSPB, and the OSC.

Accommodations

VA is committed to providing reasonable accommodations to employees on the basis of disability in accordance with the applicable law. For people with disabilities, a reasonable accommodation is any change in the work environment or in the manner work is accomplished that enables them to perform the essential functions of their jobs and enjoy equal benefits and privileges of employment. Individuals who believe they need such accommodation should request accommodation from immediate supervisors. The procedures for requesting and processing requests for reasonable accommodation are contained in VA Handbook 5975.1. VA has also established a centralized reasonable accommodation fund to support requests for accommodation that may not be otherwise funded. Individuals interested in more information should contact the Office of Diversity and Inclusion.

In addition, VA is committed to ensuring that VA's Section 508 objectives are met with respect to accessibility of electronic and information technology. All Federal

employees and members of the public with disabilities must have access to and use of information and data, comparable to that of employees and members of the general public without disabilities, unless an undue burden would be imposed on the agency.

In accordance with Title VII of the Civil Rights Act of 1964, VA also provides religious accommodations to employees unless doing so imposes an undue hardship on the organization. Accommodations may include adjustments to work schedules to accommodate religious observances, allowances regarding religious attire, and other modifications. Individuals who believe they need a religious accommodation should request the accommodation from their immediate supervisors.

Alternative Dispute Resolution

To maintain a respectful, productive, and harmonious work environment, it is VA's policy to resolve workplace disputes and EEO complaints at the earliest possible stage to prevent, minimize, and resolve disputes between or among the Department and its employees and other parties. VA offers Alternative Dispute Resolution (ADR) services such as mediation, facilitation, and conflict management coaching to assist parties in constructively resolving disputes. ADR involves a neutral third party working with the employee, supervisor, or group to engage in constructive communication, identify issues and concerns, and develop collaborative solutions. Employees are encouraged to consult their ADR program manager or VA's Workplace ADR program for assistance in quickly and informally resolving workplace disputes and EEO complaints.

Prohibited Personnel Practices

The Civil Service Reform Act of 1978, as amended, also protects Federal Government applicants and employees from "Prohibited Personnel Practices" including discrimination, coercion, intimidation, preferential treatment, and other prohibited practices in violation of merit systems principles. Under the law, OSC will investigate and take action to correct prohibited conduct. Injured persons may bring actions before the MSPB if OSC declines to act. Individuals interested in more information should visit <http://osc.gov/ppp.htm>.

Uniformed Services Employment and Reemployment Rights Act of 1994

Employees have the right to be reemployed in his or her civilian job if he or she leaves a civilian job to perform service in the Armed Forces, Reserves, National Guard, or other "uniformed services" as defined by the Uniformed Services Employment and Reemployment Rights Act (USERRA) of 1994, (38 U.S.C. §§ 4301 – 4335). USERRA ensures that persons who serve or have served in the uniformed services: (1) are not disadvantaged in their civilian careers because of their service; (2) are promptly reemployed in their civilian jobs upon their return from duty; and (3) are not discriminated against in employment based on past, present, or future military service. Individuals interested in more information should visit <http://www.osc.gov/outreach.htm>.

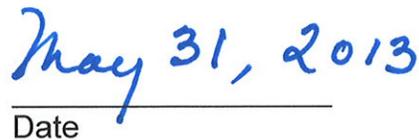
EEO, Diversity, and Conflict Management Training

VA is committed to educating its workforce on its EEO-related policies and protections on a regular basis to maintain a discrimination-free workplace. To that end, VA requires that all employees take mandatory Workplace Harassment Awareness/No FEAR Act training in the Talent Management System (TMS Item No. 8872) within 90 days of their initial hire and every 2 years thereafter. This training is available to all employees through VA's TMS. Managers and supervisors are also required to take mandatory EEO, Diversity, and Conflict Management Training (TMS Item No. 1328672) every 2 years. This training is mandatory for all senior executives, managers, and supervisors. Both courses are available online at the following link:
https://www.tms.va.gov/learning/user/deeplink_redirect.jsp.

Diversity and Inclusion

To be a high performing organization in the 21st century, VA must cultivate an inclusive work culture and create an environment that reflects the diversity of our increasingly global community. We must leverage the diversity of our workforce and empower all of our employees to contribute to VA's noble mission. Inclusion is the means by which we drive employee engagement. Diversity and inclusion are the cornerstones of high organizational performance. They are more than legal or social imperatives in this millennium; they are business imperatives essential to providing the best public service. We all share the responsibility to ensure we embed the complementary principles of equity and diversity and inclusion throughout VA. I encourage all VA employees to actively embrace these principles in all that we do to deliver the best care and services to America's Veterans.


Secretary of Veterans Affairs


Date

References

Federal EEO Laws

Age Discrimination in Employment Act of 1967:
<http://www.eeoc.gov/laws/statutes/adea.cfm>

Age Discrimination in Employment Act of 1975, as amended:
http://www.dol.gov/oasam/regs/statutes/age_act.htm

American with Disabilities Amendments Act of 2008:
<http://www.eeoc.gov/laws/statutes/adaaa.cfm>

Civil Service Reform Act of 1978 (CSRA) – Prohibited Personnel Practices:
<http://archive.opm.gov/ovrsight/proidx.asp>

Genetic Information Nondiscrimination Act:
<http://www.eeoc.gov/laws/statutes/gina.cfm>

Equal Pay Act of 1963 as amended: <http://www.eeoc.gov/laws/statutes/epa.cfm>

H.R. 2981: Employment Non-Discrimination Act of 2009:
<http://www.govtrack.us/congress/bill.xpd?bill=h111-2981>

Lilly Ledbetter Fair Pay Act of 2009: <http://www.govtrack.us/congress/bills/111/s181>

Notification and Federal Employee Antidiscrimination and Retaliation Act (No FEAR Act): <http://www.diversity.hr.va.gov/exec/hr169.htm>

The Pregnancy Discrimination Act of 1978:
<http://www.eeoc.gov/laws/statutes/pregnancy.cfm>

Rehabilitation Act of 1973, as amended: <http://www.eeoc.gov/laws/statutes/rehab.cfm>

Title VII of the Civil Rights Act of 1964: <http://www.eeoc.gov/laws/statutes/titlevii.cfm>

The Whistleblower Protection Enhancement Act of 2012:
<http://www.gpo.gov/fdsys/pkg/BILLS-112s743enr/pdf/BILLS-112s743enr.pdf>

Executive Orders

Executive Order 11478, as amended by Executive Order 13152:
http://clinton4.nara.gov/WH/EOP/First_Lady/html/teens/order1.html

Executive Order 11478, as amended by Executive Order 13087:
<http://www.eeoc.gov/laws/executiveorders/13087.cfm>

Executive Order 13152, Further Amendment to Executive Order 11478:
<http://www.archives.gov/federal-register/codification/executive-order/11478.html>

Directives

EEO Discrimination Complaints Process, VA Directive 5977, May 5, 2011:
http://www.va.gov/ORM/docs/VA_directive_5977_Discrimination_Complaints_Process.pdf

Diversity and Inclusion, Management Directive VA Directive 5975, March 29, 2013:
http://www.va.gov/vapubs/search_action.cfm?dType=1

VA Handbook 5975.1, Processing Requests for Reasonable Accommodation by Employees and Applicants with Disabilities:
http://www.diversity.va.gov/programs/files/pwd/Handbook_5975-1.pdf

Guidances

Guidelines on Religious Exercise and Religious Expression in the Federal Workplace:
<http://clinton2.nara.gov/WH/New/html/19970819-3275.html>

Office of Special Counsel Whistleblower Disclosures:
<http://www.osc.gov/wbdisc.htm>

Filing Whistleblower Disclosures: <http://www.va.gov/oig/hotline/default.asp>

VA Whistleblower Protection Ombudsman Program:
<http://www.va.gov/oig/hotline/whistleblower-protection.asp>

OSC Pamphlet (Whistleblower Rights and Protections):
<http://www.osc.gov/documents/outreach/Know%20Your%20Rights%20When%20Reporting%20Wrongs.pdf>

OSC Prohibited Personnel Practices, USERRA and the Hatch Act:
<http://www.osc.gov/outreach.htm>

Secretary's EEO, Diversity, and No FEAR Policy Statement:
<http://www.diversity.va.gov/policy/statement.aspx>

VA Workplace Alternative Dispute Resolution:
<http://www1.va.gov/adr/workplaceADR.asp>

VA Policy on Employee and Management Relations, Directive 5021:
http://www.va.gov/vapubs/search_action.cfm?dType=1

Violence in the Workplace:
<http://vaww.va.gov/VASAFETY/DashoLetters/AllVAEmployeesAndVolunteersLett.pdf>

Contacts

EEOC: <http://www.eeoc.gov/>

MSPB: <http://www.mspb.gov/>

VA's Office of Diversity and Inclusion: www.diversity.va.gov

VA's Office of Resolution Management: www.va.gov/orm

VA's Employee Relations: www.va.gov/ohrm/

VA's Office of Labor-Management Relations: <http://www1.va.gov/lmr>

VA's Section 508 Office: <http://www.section508.va.gov/index.asp>

U.S. Office of Special Counsel: <http://www.osc.gov>