THE SECRETARY OF VETERANS AFFAIRS
WASHINGTON

April 20, 2015

TO ALL EMPLOYEES

SUBJECT: The Equal Employment Opportunity, Diversity and Inclusion, No FEAR, and Whistleblower Rights and Protection Policy Statement

As Secretary of the Department of Veterans Affairs (VA), I am committed to providing our Veterans the world-class benefits and services they have earned. Accordingly, it is critical that all of us at VA reaffirm our commitment to our Mission and our Core Values – **I**ntegrity, **C**ommitment, **A**dvocacy, **R**espect, and **E**xcellence. Our commitment to serving our Veterans must be steadfast and unwavering. Likewise, our commitment and obligation to proactively prevent unlawful discrimination, harassment, and reprisal must be clear, convincing, comprehensive, and consistent. As such, I am committed to a VA workforce that draws from all segments of American society and that ensures every VA employee has the opportunity and access to fully contribute to VA's important mission of serving our Nation's Veterans.

This Policy Statement reaffirms our commitment to a fair, equitable, and open work environment, and guides us in promoting healthy relationships with a diverse, cooperative, supportive, and engaged workforce. I believe each of us must adhere to the highest standards of accountability, commitment, compassion, professionalism, and stewardship. To that end, we must all champion the principles of MyVA as a means of orienting our workforce to being *employee-led and Veteran-centric*. We all have a responsibility to contribute to the well-being of our Nation's Veterans by promoting and sustaining the Department's mission and vision.

Executives, managers, and supervisors bear a unique responsibility to comply with and ensure the policies and processes outlined in the attached Policy Statement are given the widest dissemination and fullest measure of execution and implementation.

Thank you for your commitment, dedication and hard work to this noble cause.

Robert A. McDonald

Attachment

Department of Veterans Affairs
Equal Employment Opportunity, Diversity and Inclusion, No FEAR, and Whistleblower Rights and Protection Policy Statement

VA is committed to ensuring Equal Employment Opportunity (EEO), promoting workforce diversity, workplace inclusion, and constructively resolving conflict to maintain a high-performing organization in service to our Nation's Veterans. VA will vigorously enforce all applicable Federal EEO laws, executive orders, and management directives to ensure equal opportunity in the workplace for all VA employees. This document summarizes VA's EEO, Diversity and Inclusion, Notification and Federal Employee Antidiscrimination and Retaliation Act (No FEAR), and Whistleblower Rights and Protection policies.

EEO and Prohibited Discrimination

VA does not tolerate unlawful discrimination, including workplace harassment, based on race, color, religion, national origin, sex (including gender identity, transgender status, sexual orientation, and pregnancy), age (40 or older), disability, genetic information, marital status, 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.

Employees and applicants for employment seeking redress under the EEO complaint process must contact an EEO counselor in person, by phone, or in writing within 45 calendar days of the date of the alleged discrimination. 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. The Equal Employment Opportunity Commission (EEOC) regulations governing the Federal EEO complaint process are found in 29 Code of Federal Regulations (CFR) Part 1614. Employees may report allegations of discrimination to ORM at (888) 737-3361.

Employees may also raise allegations of discrimination to their supervisor or a management official in their chain of command, or they may raise discrimination issues through the VA Negotiated Process, Administrative Grievance Process or the U.S. Merit Systems Protection Board (MSPB) as appropriate. While an allegation of discrimination may be raised through these additional avenues, this action 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 processed under the jurisdiction of the MSPB or the U.S. Office of Special Counsel (OSC).

Complaints filed on the basis of parental status may be processed through ORM. While parental status is not covered under the EEOC regulations, it is also a form of prohibited discrimination involving Federal employees. If a complaint is filed on this basis, it will be processed by ORM and a final agency decision will be rendered by the Office of Employment Discrimination Complaint Adjudication (OEDCA).

Prohibited Workplace Harassment Covered by EEO Laws

Harassment by or against VA employees, applicants, contract employees, clients, customers, and anyone doing business with VA is strictly prohibited. Harassment becomes unlawful where 1) enduring the offensive conduct becomes a term or condition of continued employment, or 2) the conduct is severe or pervasive enough to create a work environment that a reasonable person would consider intimidating, hostile, or abusive. Harassment is considered unlawful conduct that is based on race, color, religion, national origin, sex (including gender identity, transgender status, sexual orientation, and pregnancy), age (40 or older), disability, genetic information, marital status, parental status, political affiliation, or retaliation for opposing discriminatory practices or participating in the discrimination-complaint process.

Harassment is a form of employment discrimination that violates Title VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act of 1967 (ADA), and the Americans with Disabilities Act of 1990 (ADA). Anti-discrimination laws also prohibit harassment against individuals in retaliation for filing a discrimination charge, testifying, or participating in any way in an investigation, proceeding, or lawsuit under these laws; or opposing employment practices that they reasonably believe discriminate against individuals, in violation of these laws.

Sexual harassment is a form of workplace harassment that is prohibited and will not be tolerated in VA. Compared to other forms of workplace harassment, it 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.

Sexual harassment or workplace harassment extends to harassing comments posted on social media, such as Internet sites. It is the duty of an employer to protect its employees from unlawful harassment, if there is a nexus with the workplace. This duty is unaffected by the location where harassment occurs, on or off the worksite, including in cyberspace. The duty remains the same--supervisors must intervene and take prompt and effective corrective action to end the harassment.

Supervisors who receive or become aware of allegations of harassment must contact their designated Anti-harassment Officer or the Anti-harassment Office located within ORM for appropriate guidance. 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 who receive complaints or become aware of workplace harassment in the organization should contact ORM for further guidance, and also report the status to VA's Office of Accountability and Review.

Conflict Management and Alternative Dispute Resolution

Workplace conflict is often the result of miscommunication or creative tension in the organization. Properly managed, it can yield improvements in business processes and positive outcomes in the organizational climate. It is important we maintain an organizational culture in VA that does not suppress creative conflict or constructive dissent. To maintain a respectful, productive, and effective work environment, it is VA's policy to address and resolve workplace disputes and EEO complaints at the earliest possible stage. 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 develop collaborative solutions. Employees and supervisors are encouraged to consult their ADR program manager or with VA's Workplace ADR Program for guidance and assistance in resolving workplace disputes of any kind.

Prohibited Workplace Violence and Bullying

Workplace violence, the threat of violence, or bullying of workers are 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. "Bullying" conduct constitutes fighting, hate messages, threats, and intention to inflict harm, or abusive, offensive, unprofessional, intimidating, 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 immediately report the matter to his or her supervisor or another appropriate official. It is the duty of the supervisors to intervene and take prompt and effective corrective action to end the bullying conduct to prevent workplace violence, and to report the status to VA's Office of Accountability and Review.

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.

Prohibited Personnel Practices

The Civil Service Reform Act of 1978, as amended, protects Federal Government applicants and employees from "Prohibited Personnel Practices (PPP)" including discrimination, coercion, intimidation, preferential treatment, and other prohibited practices in violation of merit systems principles. Prohibited Personnel Practices are employment-related activities that are banned in the Federal workforce because they violate the merit system through some form of employment discrimination, retaliation, improper hiring practices, or failure to adhere to laws, rules, or regulations that directly concern the merit system principles. OSC is authorized to investigate and ensure that appropriate action is taken to correct prohibited conduct. Injured persons may bring actions before the MSPB, if OSC declines to act.

OSC has the authority to investigate and prosecute violations of the 13 PPPs. The 13 PPPs are: Discrimination, Considering Inappropriate Recommendations, Coercing Political Activity, Obstructing Competition, Influencing Withdrawal from Competition, Granting Unfair Advantage, Nepotism, Whistleblower Retaliation, Other Retaliation, Other Discrimination, Violating Veterans Preference, Violating Rules that Implement a Merit System Principle, and Imposing Nondisclosure Agreement that Doesn't Allow Whistleblowing. For more information visit: https://osc.gov/Pages/PPP.aspx.

No FEAR Act

It is imperative that all VA employees, supervisors, and officials understand the protections afforded by the Notification and Federal Employee Antidiscrimination and Retaliation (No FEAR) Act and the Whistleblower Protection Act. The No FEAR Act of 2002 protects Federal employees from unlawful discrimination and retaliation for opposition to or participation in protected EEO and whistleblowing activity. VA will not tolerate discrimination or retaliation for engaging in protected EEO activity.

Whistleblower Rights and Protection

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, opposing discrimination, or participating in the discrimination-complaint process is unlawful and will not be tolerated. This includes complainants, witnesses, and others who provide information concerning such claims.

The Whistleblower Protection Enhancement Act of 2012 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) strengthening 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 local Congressional representatives, the MSPB, and the OSC. VA will not tolerate violations of the spirit or letter of these Federal statutes.

Every VA employee is responsible for safeguarding the privacy of Veterans and other individuals served by VA and for complying with laws that protect patient health information and other sensitive personal information. Be advised that a whistleblower disclosure of information is protected only if the release is specifically permitted by all applicable confidentiality provisions. Wrongful disclosure of sensitive personal information, such as medical or personnel records, may be subject to civil and criminal penalties as well as disciplinary or other adverse action. For additional information visit ODI web site at http://www.diversity.va.gov/whistleblower.aspx

Reasonable Accommodations

VA is committed to the employment and retention of individuals with disabilities. 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 hardship would be imposed on the agency. To that end, VA will vigorously enforce Sections 501, 504, 505, and 508 of the Rehabilitation Act of 1973 as amended, which mirror the Americans with Disabilities Act (ADA) of 1990 and the Americans with Disabilities Act Amendments Act of 2008. This includes maintaining accessibility of electronic and information technology to individuals with disabilities.

Title I (Employment) of the Americans with Disabilities Act is designed to help people with disabilities access the same employment opportunities and benefits available to people without disabilities. An important component in hiring and retaining individuals with disabilities is the provision of reasonable accommodations to employees and applicants on the basis of disability in accordance with law. For individuals 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.

Reasonable accommodations may also include the use of properly trained service animals. A doctor's note does not turn an animal into a service animal. A service animal means any dog that is individually trained to do work or perform tasks for the benefit of an individual with a disability, including a physical, sensory, psychiatric, intellectual, or other mental disability. The work or task performed by a service animal must be directly related to the individual's disability. Emotional support animals, comfort animals, and therapy animals are not service animals under Title III of the ADA.

Other species of animals, whether wild or domestic, trained or untrained, are not considered service animals either.

The procedures for requesting and processing requests for reasonable accommodation are contained in VA Handbook 5975.1. VA also has an established Centralized Fund used to reimburse VA Facilities and Staff Offices with costs associated with providing reasonable accommodations to employees and applicants with disabilities. Individuals interested in additional information should contact the VA's Office of Diversity and Inclusion or visit: http://www.diversity.va.gov/policy/dra.aspx.

Additionally, Title III (Public Accommodations) of the ADA makes it clear that service animals are allowed in public facilities and accommodations. A service animal must be allowed to accompany the handler to any place in the building or facility where members of the public, program participants, customers, or clients are allowed. Even if the business or public program has a "no pets" policy, it may not deny entry to a person with a service animal.

Religious Accommodation

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 to the organization. Accommodations may include adjustments to work schedules to accommodate religious observances, allowances regarding religious attire, allowances to be excused from compulsory activities that conflict with the employees sincerely held religious beliefs or practices, and other modifications. Individuals who believe they need a religious accommodation should request the accommodation from their immediate supervisors.

Religious expression and exercise are permitted in the VA workplace provided that such expression does not suggest government endorsement or preference for one faith over another, interfere with efficient working of government VA operations, nor intrude upon the legitimate rights of other employees. For additional information on Guidance on Religious Exercise and Expression in VA Facilities and Property Under the Charge and Control of VA visit: http://www.diversity.va.gov/policy/files/reli-exp-memo.pdf

Language Usage

VA recognizes and respects the right of employees who speak languages other than English in the workplace, outside of the performance of their work duties. Employees may speak another language when the conversation is not related to the performance of their duties; for example, when they are in the break room or making a personal telephone call. Circumstances in which an English-only rule may be justified include: Communications with customers or coworkers who speak English only; emergencies or other situations in which workers must speak a common language to promote safety; or cooperative work assignments in which the English-only rule is

needed to promote efficiency. Even if there is a need for an English-only rule, supervisors may not take disciplinary action against employees for violating the rule unless VA notified workers about the rule and the consequences of violating it.

The Equal Employment Opportunity Commission has stated that rules requiring employees to speak English only in the workplace violate the law unless they are reasonably necessary to the operation of the business. A rule requiring employees to speak English only in the workplace at all times, including breaks and lunch time, should be limited to the circumstances in which it is needed for the employer to operate safely or efficiently.

Uniformed Services Employment and Reemployment Rights Act of 1994

An employee has 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). USERRA ensures that persons who serve or have served in the uniformed services: (1) are not disadvantaged in their civilian careers because of their services in the uniformed 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.

Mandatory EEO and Diversity & Inclusion Training

In order to sustain the fair, safe, and high performing culture these policies seek to create, VA employees must engage in continuous learning in these areas. VA is committed to educating its workforce on its EEO-related policies and workforce protections on a regular basis to maintain a discrimination-free workplace. Accordingly, VA requires that all employees take mandatory Prevention of Workplace Harassment Awareness and No FEAR Act training in the Talent Management System (TMS Item No. 8872) within 90 days of their initial hire and every two years thereafter.

Additionally, all executives, managers and supervisors are required to take biennial training on EEO, Diversity & Inclusion, and Conflict Management Training (TMS Item No. 1328672), and training on Whistleblower Rights and Protection and Prohibited Personnel Practices (TMS Item No. 3883649). All 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, VA must cultivate an inclusive work culture and create an environment that reflects the rich diversity of our increasingly global community. Organizational inclusion involves leveraging the diversity of our workforce and empowering all of our employees to be fully engaged and to contribute to VA's noble mission. Studies have shown that workplace inclusion drives employee engagement which yields higher organizational performance. To achieve full inclusion, we must also protect all voices and nurture a climate of psychological safety for all our human resources. Together, the principles of diversity and inclusion provide the cornerstones on which to build a high performing organization. They are more than legal or social imperatives in the 21st century; they are business imperatives essential to providing the effective and responsive public services.

We all share the responsibility to promote and embed the complementary principles of equity, diversity, and inclusion throughout VA, and embody VA's core values of Integrity, Commitment, Advocacy, Respect, and Excellence. I ask every VA employee to embrace these principles and values so that we can provide the best possible care and services to our Nation's Veterans and their families.

Secretary of Veterans Affairs

4/20/16
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:
Prohibited discrimination on the basis of age in programs or activities receiving Federal financial assistance
http://www.dol.gov/oasam/regs/statutes/age_act.htm

Americans 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/oversight/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

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

Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002 (No FEAR):
http://www.opm.gov/information-management/no-fear-act/

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

Uniform Services Employment and Reemployment Rights Act of 1994:
http://www.dol.gov/compliance/laws/comp-userra.htm

EXECUTIVE ORDERS

Executive Order 13583, Establishing a Coordinated Government-wide Initiative to Promote Diversity and Inclusion in the Federal Workforce:
http://www.whitehouse.gov/the-press-office/2011/08/18/executive-order-establishing-coordinated-government-wide-initiative-prom

Executive Order 11478, as amended by Executive Order 13152:
Extending protection based on parental status
http://clinton4.nara.gov/WH/EOP/First_Lady/html/teens/order1.html

Executive Order 13548, Increasing Federal Employment of Individuals With Disabilities:
http://www.gpo.gov/fdsys/pkg/FR-2010-07-30/pdf/2010-18988.pdf

DIRECTIVES

Alternative Dispute Resolution, VA Directive 5978, February 7, 2013:
http://www.va.gov/vapubs/viewPublication.asp?Pub_ID=643&FType=2

EEO Discrimination Complaints Process, VA Directive 5977, May 5, 2011:
http://www.va.gov/vapubs/search_action.cfm?dType=1

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.va.gov/vapubs/search_action.cfm?dType=1

Occupational Safety and Health, VA Directive 7700, February 11, 2009:
http://www1.va.gov/vapubs/viewPublication.asp?Pub_ID=428&FType=2

GUIDANCE

Guidance on Religious Exercise and Expression in VA Facilities and Property Under the Charge and Control of VA: http://www.diversity.va.gov/policy/files/reli-exp-memo.pdf

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

Guidance for Language Use by Employees in the Department of Veterans Affairs;
http://www.diversity.va.gov/policy/files/language_use.pdf

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

Whistleblower Rights and Protection: http://www.diversity.va.gov/whistleblower.aspx

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/outreach.htm

OSC Prohibited Personnel Practices: https://osc.gov/ppp

Secretary's EEO, Diversity, No FEAR and Whistleblower Rights & Protection 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://www.va.gov/VASAFETY/DashoLetters/AllVAEmployeesAndVolunteersLett.pdf

CONTACTS

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

EEOC: http://www.eeoc.gov/eeoc/publications

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

U.S. Office of Special Counsel: https://osc.gov/

VA's Office of Occupational Safety and Health:
http://www.va.gov/vasafety

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

VA's Office of Inspector General: http://www.va.gov/oig/hotline/default.asp