Human Resources

Federal Equal Employment Opportunity (EEO) & Cultural Diversity

Reasonable Accommodation

Any change in the work environment or in the way things are customarily done that enables an individual with a disability to enjoy equal employment opportunities.

EXAMPLES INCLUDE:

- Modifying a work schedule
- Modifying a work station
- Providing readers and interpreters
- Accessible facilities
- Assistive devices
- Flexible leave schedule
- Reassignment

Office of Resolution Management (ORM)

The Office of Resolution Management (ORM) is responsible for providing complaint processing services within the Department of Veterans Affairs. The complaint process includes confidential counseling, mediation, and investigation. An employee, former employee, or applicant for employment, who believes discrimination occurred based on race, color, religion, sex (including sexual orientation and gender identity), national origin, age (over 40), mental or physical disability, genetic information and/or reprisal for prior EEO activities, may initiate a discrimination complaint.
COMPLAINT PROCESS

• Contact an EEO counselor within 45 calendar days from the date of the incident at 1-888-566-3982
• EEO Counseling is completed within 30 days or 90 days if ADR is elected
• File a formal complaint within 15 days of receipt of Notice of Right to File
• Accepted claim is investigated within 180 days of filing a formal complaint
• Election of EEOC hearing or Final Agency Decision within 30 days of receiving an Advisement of Rights Notice

EXTERNAL COMPLAINT PROCESS FOR NON-EMPLOYEES (STUDENTS AND CONTRACTORS)

If you believe that you have been discriminated against, you may file a complaint through the External Discrimination Complaints Program with the Office of Resolution Management. A signed, written complaint should be filed within 180 days of the date of the alleged discrimination at the following address via VA Form 10-0381 available on www.va.org/orm:
• Office of Resolution management Department of Veterans Affairs 10701 East Boulevard, 5th Floor Cleveland, OH 44106-1702

Alternative Dispute Resolution (ADR)

Gives employees the option to mediate their disputes in a safe environment. ADR/Mediation is available for all employees. Employee participation is voluntary; however, VA’s policy encourages employees to use mediation to help resolve workplace conflicts as early as feasible, to the maximum extent practicable in an appropriate and cost-effective manner, and at the lowest organizational level.
• Mediation is fast - it gives you a chance to meet face to face in a controlled environment with an individual soon after the dispute arises.
• Mediators do not make decisions or force decisions on you – mediators are trained to work with all parties to help them find solutions to their dispute. An agreement crafted by the people involved is almost always more satisfying and more lasting than one dictated by an outside third party.
• Mediators are impartial - they are trained, experienced, third party neutrals.
• Mediation is informal - no witnesses are called, nobody testifies under oath, and no complicated procedures and technicalities get in your way. Bring a representative if you wish, but the process is designed for people who are handling the problem themselves.
• Mediation is free - there is no cost to you for mediation.
• Mediation is confidential - what you tell the mediator(s) when you are alone is kept between the two of you unless you agree to let the mediator(s) share it with the disputing individual. After the mediation is over, the mediator(s) destroys all notes of discussions with you.
Cultural Competency

Cultural Competency is the ability of individuals and systems to respond respectfully and effectively to people of all cultures, classes, races, ethnic backgrounds, gender identities, sexual orientations, and religions in a manner that recognizes, affirms, and values the cultural differences, similarities and worth of individuals, families and communities, protecting and preserving the dignity of each.

WHY IS CULTURAL COMPETENCY IMPORTANT?

Cultural competency is vital to the reduction and elimination of health care disparities. Healthcare disparities are the differences in quality of health care among groups that cannot be accounted for by patient preferences or clinical characteristics. Groups vulnerable to health care disparities are racial and ethnic minorities, women, those with mental illness, those who identify as Lesbian, Gay, Bisexual, and/or Transgender (LGBT) and those with physical disabilities. Healthcare disparities are widespread throughout the United States. VA is one of the best health care systems in America, yet faces the same challenges as the private sector in fighting health care disparities. Providers can bring perceptions, traditions and patterns of communication based on their culture, race, ethnicity, religion, etc. to the clinician-patient interaction which may reinforce difficulties for minority Veterans and increase the risk for healthcare disparities which impacts whether a Veteran receives the care she/he deserves. Examples include: Generational differences, differences in Veteran/ staff culture, ethnicity, ancestral customs and practices, race, gender, education and socio-economic status, military affiliation and experiences, religious beliefs and practices.

WHO IS VULNERABLE TO HEALTH CARE DISPARITIES?

- Individuals of Minority Racial and Ethnic Groups
- Women Veterans
- Veterans with mental illness
- Veterans with physical disabilities
- Veterans who identify as LGBT
- Veterans who cannot effectively communicate with health care providers

Examples of Accommodating the Needs of Specific Populations:

- Ensure Effective Communication in the Provision of Care:
  - Limited English Proficiency: suggest types of language service appropriate for certain situations (e.g., on-site, telephone, video); request a professional healthcare
interpreter for preferred language to receive healthcare information (untrained individuals including family members are discouraged),

- Vision/Hearing Impaired: ensure patient has correct lenses, hearing aids, or other devices

- Ensure Cultural Sensitivity
  - Conflicts: Resolve or mediate any cross-cultural conflicts that may arise.
  - Religion: request a chaplain that can provide consultation services to patients and offer guidance regarding spiritual and religious preferences.

Limited English Proficiency
- It is important that you know the agency provides interpreters for languages other than English and sign language to Veterans and their caregivers at no cost.
- This ensures Veterans and their caregivers can fully participate in healthcare services.
- NWI Guidance: DIR-006 “Foreign Language Interpreters”

WHAT IS THE ROLE OF EACH VA EMPLOYEE, CONTRACTOR AND STUDENT IN REGARD TO CULTURAL COMPETENCY?
You must make an effort to become aware of your own culture, values, beliefs, assumptions and biases. All human beings exhibit cultural differences from birth and these are neither ‘good’ nor ‘bad’. Becoming aware of one’s own biases can help overcome that unconscious bias. You must take time to listen respectfully to each Veteran, ask questions and look for ways to partner with the Veteran to meet their needs and to make their VA experience a positive one.

Identification and Reporting of Impaired Licensed Independent Practitioners
The Joint Commission on the Accreditation of Health Care Organizations (JCAHO) states in Standard MS.4.80 that the “medical staff implements a process to identify and manage matters of individual health for licensed independent practitioners (LIPs).” The purpose of the process is to facilitate rehabilitation, rather than discipline, by assisting a practitioner to retain and to regain optimal professional functioning. The Elements of Performance for this standard require the “education of LIPs and other organization staff about illness and impairment recognition issues specific to LIPs.”

Health professionals, like anyone else, are susceptible to substance abuse and psychiatric illness. Left untreated, these problems can put them and their patients at risk. The American Medical Association uses the term “impaired physician” to identify those members of the
medical profession whose performance may be adversely affected by reason of mental or physical illness, including alcoholism and drug dependence. In these conditions, impaired judgment prevents an accurate self-assessment.

In the general working adult population, it is estimated that 6.2% of adults working full time are heavy alcohol users and that an estimated 6.5% of full time and 8.6% of part time workers are current illicit drug users. Amongst practicing physicians, the current estimated rate of illicit drug use is 8-14% and the rate of abuse of prescription medicines, including opioids and benzodiazepines, is up to five times higher than the general population.

In the past, it was hypothesized that long working hours, stressful work conditions, and easy access to drugs were the main factors that pre-disposed healthcare workers to substance abuse. However, data does not support this. Many healthcare employees work under these conditions and do not develop substance abuse or dependence. A healthcare worker’s reaction to the work environment (i.e., coping skills) and personality characteristics including underlying psychopathology such as depression and anxiety are much stronger risk factors for substance abuse. Family history of substance abuse is also a risk factor.

Identifying Substance Abuse – the following signs raise suspicion but do not necessarily mean that a substance abuse problem exists:

- Social or professional isolation
- Friction with colleagues (labile mood, unexplained anger)
- Disorganized schedule
- Inaccessibility to patients and staff
- Frequent absences
- Rounding on patients at odd hours
- Decreased work and chart performance
- Large quantities of drugs ordered for “stock”
- Inappropriate orders
- Forgotten verbal orders (given during a black out)
- Slurred speech during off-hour phone call for orders
- Heavy drinking at hospital functions
- Pre-employment indicators (vague letters of reference, numerous job changes, unexplained gaps in employment, acceptance of jobs for which clearly overqualified)
- Pharmacist notices prescription being written for family member
• Changing personal appearance
• Overdose
• Suicide attempts

Reporting Impairment in LIPs and Other Employees:

Healthcare workers have an ethical responsibility to report a peer who may be endangering the lives of others through impairment. Legal requirements for reporting vary by state and by profession (example: MD versus RN). Professionals should familiarize themselves with these legal requirements and follow them.

To report impairment in LIPs at VA Nebraska – Western Iowa Health Care System, reference HCS Policy COS-001 Medical Staff Health Policy. The key points in this reporting process are:

• Any employee can file a report. Medical staff with personal issues may also enter the process by self-referral.
• To report concern about an impaired provider, contact the Chief of Staff or the Chair, Physical Standards Board.
• The Physical Standards Board will arrange assessment, treatment, support, and monitoring to facilitate recovery and appropriate return to work.

To report impairment in other employees at VA Nebraska – Western Iowa Health Care System, report the situation to an appropriate Supervisor.
VA Nebraska-Western Iowa Health Care System has three AFGE Locals that represent employees of certain position types.

- AFGE Local 2270 Omaha (extension 4554/Omaha)
- AFGE Local 2219 Lincoln (extension 6649/Lincoln)
- AFGE Local 2601 Grand Island (extension 2460/Grand Island)

Providers at Lincoln and Grand Island and their associated CBOCs are represented.

Omaha Providers are not covered by a local.

If you have questions, contact your AFGE Local at phone extension listed above.

**No Fear**

The Notification & Federal Employee Antidiscrimination and Retaliation (NO FEAR) Act was enacted by Congress on May 15, 2002 to require Federal agencies to be accountable. The Act requires that Federal agencies be accountable for violations of anti–discrimination and whistleblower protection laws and requires VA to provide training to employees and applicants for VA employment on federal antidiscrimination, whistleblower protection, and retaliation laws. Federal employees are prohibited from engaging in discrimination. If, as a VA employee, you are personally impacted or observe such conduct, it should be reported to appropriate officials.

**Anti–discrimination – 5 U.S.C § 2302(b)(1) and (b)(10)**

It is a prohibited personnel practice to discriminate against an employee:

- Based on race, color, national origin, religion, gender, mental or physical disability, age, marital status, or political affiliation
- Based on "conduct which does not adversely affect the performance of the employee or applicant, or the performance of others."
Whistleblower Protection

Federal employees must also follow the guidelines of Whistleblower Protection – 5 U.S.C § 2302(b)(8). Whistleblower reprisal refers to the actual or threatened taking or withholding of a personnel decision in retaliation for a protected disclosure against employees and applicants. Employees or applicants may disclose information that they reasonably believe shows evidence of the violation of law, rule, or regulation; gross mismanagement; gross waste of funds; abuse of authority; or substantial and specific danger to public health or safety. An employee or applicant is also protected if an employer mistakenly believes he or she is a whistleblower.

The Notification & Federal Employee Antidiscrimination and Retaliation (NO FEAR) Act

A protected disclosure falls into one of two categories:

1. disclosures made as part of normal duties outside of normal channels; or

2. disclosures made outside of assigned duties. Disclosures made as part of normal duties through normal channels (e.g., to the alleged wrongdoer) are not protected by the Whistleblower Protection Act. Disclosures must be specific and detailed and may be made to the U.S. Office of Special Counsel (OSC), Office of Inspector General (OIG) or comparable official, the media, or other person in position to take or facilitate corrective action provided that the disclosure is not prohibited by law and the information does not have to be kept secret in the interest of national defense or the conduct of foreign affairs.

If an employee or applicant believes he or she has been the victim of whistleblower retaliation, he or she may report it to the VA OIG Hotline at 1–800–488–8244 or file a written complaint with the OSC or online through the OSC [http://www.osc.gov/] web site.

Additional information regarding whistleblower protection can be found at the Equal Employment Opportunity Commission (EEOC) [http://www.eeoc.gov/] web site.
Prevention of Sexual Harassment

Characteristics of Harassment

Harassment is a form of discrimination and is a violation of law and policy. Harassment is defined as:

- unwelcome verbal or physical conduct based on race, color, religion, sex (regardless of whether it is of a sexual nature), sexual orientation, national origin, age, disability, or retaliation that is sufficient to alter the conditions of the victim’s employment
- conduct when the submission or rejection of such conduct is used as the basis for employment related decisions or actions; and
- conduct that has the intent or effect of unreasonably interfering with one’s work performance or creating an intimidating, hostile, or offensive working environment (also known as a hostile work environment).
- petty slights, annoyances, and isolated incidents (unless extremely serious) do not rise to the level of prohibited harassment. To constitute harassment, the conduct must create a work environment that would be hostile or offensive to a reasonable person. Examples of behavior that may constitute harassment include:
  - racial or ethnic jokes or slurs;
  - pictures, objects, or graphic material containing offensive content;
  - threatening words or gestures directed at a person because of his or her membership in a protected class;
  - obscene, vulgar, or abusive language;
  - notes or e-mails containing slurs, jokes, or abusive language;
  - stalking (waiting for the employee in the parking lot; hanging out near an employee’s home)
  - physical assault, such as twisting a co-worker’s arm, brushing a hand across their buttocks

Hostile Work Environment

A hostile work environment exists when unwelcome comments or conduct based on sex, race, or other legally protected characteristics unreasonably interferes with an employee’s work performance or creates an intimidating, hostile, or offensive work environment. Anyone in the workplace might commit this type of harassment — a management official, co-worker, non-employee such as a contractor, vendor, or guest. The victim can be anyone affected by the conduct, not just the individual at whom the offensive conduct is directed.
**Characteristics of Sexual Harassment**

Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute *sexual harassment* when one of the three following circumstances is true:

- Submission to such conduct is made either explicitly or implicitly a condition of successful and/or continued participation in a training program or employment
- Submission to or rejection of such conduct by an employee is used as the basis for advancement decisions affecting the employee
- Such conduct has the purpose or effect of unreasonably interfering with the trainee’s work performance or creating an intimidating, hostile, or offensive working environment. Behavior constituting sexual harassment falls into three categories.
  - Verbal
  - Non–verbal
  - Physical

**Sexual Harassment**

Sexual harassment is a form of harassment that constitutes sex discrimination. It can occur in a variety of circumstances, including the following situations:

- The harasser can be a man or a woman. The victim does not have to be of the opposite sex.
- The harasser can be the victim’s supervisor, an agent of the employer, a supervisor in another area, a co–worker, or a non–employee.
- The victim does not have to be the person harassed but could be anyone offended by the offensive conduct.
- Unlawful sexual harassment may occur without economic injury to or discharge of the victim.
- The harasser’s conduct must be unwelcome and/or unwanted.
- The harassment does not necessarily result in economic injury to or discharge of the victim.

**Verbal Sexual Harassment**

- Sexual innuendoes
• Suggestive remarks or whistling
• Pressure for dates
• Sexist remarks
• Sexual propositions

**Non–verbal Sexual Harassment**
• Suggestive or insulting sounds
• Leering, staring, or ogling
• Obscene gestures
• Obscene/graphic materials
• Written sexual jokes

**Physical Sexual Harassment**
• Touching
• Pinching
• Brushing up against someone intentionally
• Cornering
• Hugging
• Assault/rape

**Addressing Harassment in the Workplace**

You are not required to have a witness to the offensive conduct before you can report it to a supervisor or management official. However, mere observance of behavior alone may not state an independent claim of harassment. If you are a victim of sexual or workplace harassment, follow these procedures:

• Tell the harasser that the behavior is unwelcome and must stop.
• Keep a record of any instances of harassment and follow–up actions.
• Ask co–workers if they observed the behavior.
• Tell your supervisor, someone else in your chain of command, or another manager about the incident.
• If the harasser is your supervisor, inform a higher–level supervisor.
If you are a VA employee, you have the right to contact an EEO counselor at the Agency’s Office of Resolution Management (ORM) to file a complaint. You must initiate contact with an ORM EEO Counselor within 45 days of the date of the incident.

All VA facilities have an EEO Manager who is available to answer questions about the complaint process or address grievances. Disclosures of workplace harassment may also constitute disclosure of abuse of authority under whistleblowing.

Torts Claims Protection Overview

It is likely that over the course of your health professions career, you will encounter a patient that feels he or she has been injured in the course of your care. The patient, or the patient’s attorney, may decide to file a claim based on their alleged injuries. The Federal Tort Claims Act (FTCA), August 2, 1946, chapter 753, title IV, 60 Stat. 842, 28 U.S.C. § 1346(b) and 28 U.S.C. § 2671–2680), is a statute enacted by the United States Congress in 1946 permitting private parties to sue the United States in a federal court for most torts committed by persons acting on behalf of the United States. Liability under the FTCA is limited to "circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred." 28 U.S.C. § 1346(b). However, as long as you were doing your job conscientiously, any claim against you will become a claim against the United States government. This "substitution" protects you from personal liability.

An important provision of the Federal Employees Liability Reform and Tort Compensation Act (FTCA) provides that "upon certification by the Attorney General that the defendant employee was acting within the scope of their office or employment at the time of the incident out of which the claim arose ... the United States shall be substituted as the party defendant." 28 U.S.C. § 2679(d)(1). The purpose of this amendment to the Federal Tort Claims Act was to ‘remove the potential personal liability of Federal employees for common law torts committed within the scope of their employment, and ... instead provide that the exclusive remedy for such torts is through an action against the United States under the FTCA.’ H.R. Rep. No. 700, 100th Cong., 2d Sess. 4 (1988)

If you are named in a claim, be aware of the following facts:

• Malpractice claims filed in state court will be thrown out because the state court does not have jurisdiction in these matters. The claim may be moved to Federal District Court. Again, the
case may be dismissed if the claimant has not first filed under the administrative processes required under the FTCA.

- If the claim is denied through the VA’s administrative process, the case may then be brought to Federal District Court (FDC). The plaintiff has six months to file suit in FDC. At this point, the US Attorneys in the Department of Justice become the defense attorneys. The Justice Department has experience defending malpractice claims filed against the Department of Defense, Veterans Administration, National Health Service Corps, and other federal departments and agencies. They will substitute the federal government as the defendant. Then, working with VA’s attorneys, and all the witnesses (you, your supervisors, and other parties to the case such as involved nursing staff), they will develop the defense case.

- If a payment is made to the claimant either administratively or through the federal court system, this is similar to a malpractice settlement on your behalf. While it is possible that your name would be forwarded to the National Practitioner Data Bank, this is extremely unlikely. Your supervisor, being legally responsible for the care provided to the patient, is normally the person whose name is forwarded to the NPDB.

If an administrative claim is pursued, the VA will collect specific information regarding the case. It is best to cooperate with the information collection process. This information will be reviewed by practitioners (peers) to determine if the standard of care was met. The Office of General Counsel in VA, through a network of Regional Counsel, will determine if the claim has validity and if the claim should be paid or denied. If you are contacted by Regional or General Counsel in VA regarding a tort claim, provide accurate information to the best of your recollection. Because some claims take a long time to file and process, you can ask for a copy of the medical record to refresh your memory.

As a healthcare professional in the VA system, you should understand your legal protections in the case of a patient claim against you.
Violence in the Workplace/Disruptive Behavior

"All employers have a general duty to provide their employees with a workplace free from recognized hazards likely to cause death or serious physical harm." — OSHA Act of 1970

Healthcare workers experience the highest rate of injuries from workplace assault in the United States according to the Occupational Safety and Health Administration (OSHA). Employers, such as VA, must promote hazardous-free work environments for all employees and trainees.

The National Institute for Occupational Safety and Health (NIOSH) defines workplace violence as "violent acts (including physical assaults and threats of assaults) directed toward persons at work or on duty." Most of the violent situations at the VA involve mentally ill or confused patients directing violence toward a healthcare worker. Delays in registration, admission, discharge, treatments, and appointments, or mistakes or delays in receiving benefits, appointments, and prescriptions may cause anger. To find out if a patient has had a history of violent behavior, look for a "patient record flag" in the patient’s medical record. The flag is a notice (progress note) generally placed on the cover sheet of the patient’s electronic record and will alert you to a history of violent behavior.

Note: Disruptive behavior by a patient, family member, employee, or trainee is generally considered a vocalization or action out of the norm of usual conversations and actions that may impede patient care and may lead to or involve workplace violence. Disruptive behavior is not necessarily physically violent. For example, a patient refusing to take his or her medicine can be considered disruptive behavior. Family members arguing in a raised voice with hospital providers or being verbally abusive to the patient or staff also constitute disruptive behavior.

There can also be cases of staff–on–staff violence. When confronted with a VA employee or patient who brags about past violence, who handles a weapon (or simulates handling a weapon), or who has outbursts in the facility, excuse yourself from the situation and notify your supervisor as soon as possible. An active workplace violence prevention program, such as the one in VA, includes three key activities:

- documenting incidents when they occur;
- knowing the procedures to take in the event of violence; and
- maintaining open communications between employers and workers, supervisors and trainees.
All workers and trainees should assess the risks for disruptive behavior and violence in their workplaces and take appropriate action to reduce those risks. A good start is to discuss these issues with your immediate supervisor.

**Websites for further information:**

**U.S. Department of Labor / Occupational Safety & Health Administration**


**National Institute for Occupational Safety and Health**

- [http://www.cdc.gov/niosh/violcont.html](http://www.cdc.gov/niosh/violcont.html)
- [http://www.cdc.gov/niosh/homepage.html](http://www.cdc.gov/niosh/homepage.html)