

Equal Employment Opportunity
Newsletter

EEO

Quarterly

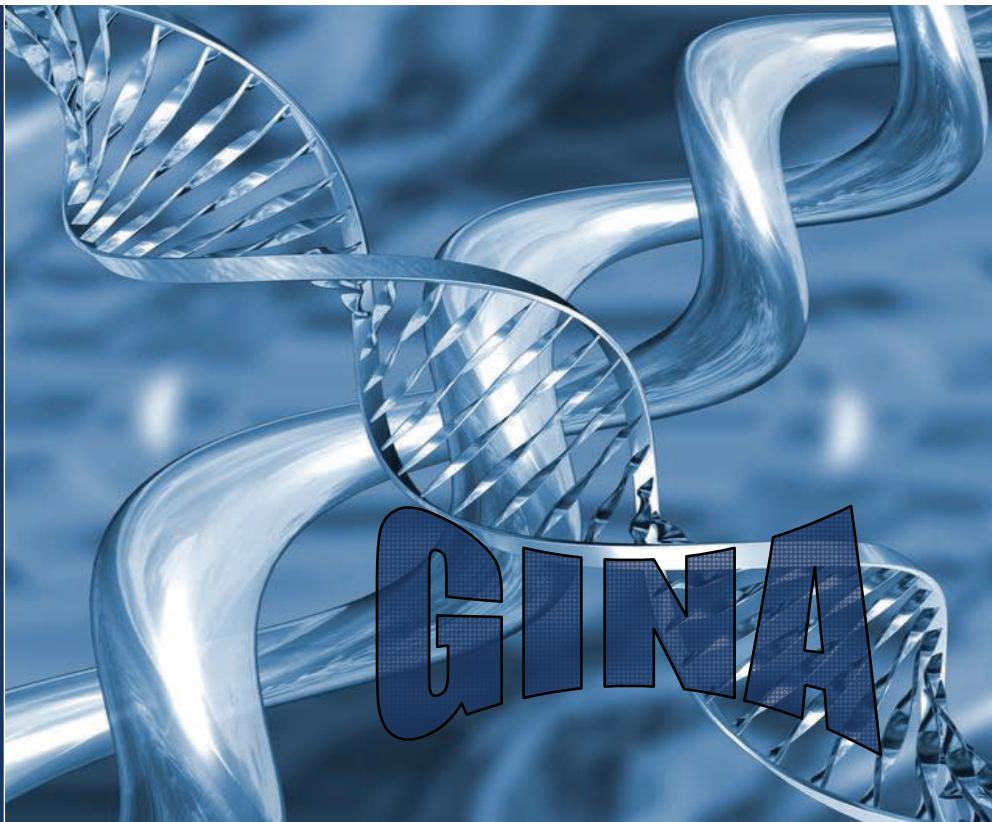
March—June 2011

Issue 2

NSA Bahrain
NSA Naples
NS Rota
NAS Sigonella
NSA Souda Bay
Camp Lemonnier

Cover Story

Genetic Information Nondiscrimination Act



Title II of the Genetic Information Nondiscrimination Act of 2008 (GINA), which prohibits genetic information discrimination in employment, took effect on November 21, 2009.

In light of the new regulations implementing the Genetic Information Non-discrimination Act agencies will have to change their handling of reasonable accommodations and Family and Medical Leave Act certifications.

As of January 10, 2011, agencies must make certain changes in their approach to employees' requests for leave and accommodation, as well as other applicable situations that involve requesting medical documentation from health care professionals.

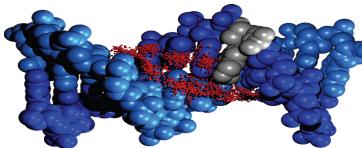
Prohibited Requests

The regulations prohibit agencies from making certain types of requests for genetic information. For example, employers are now prohibited from making requests that involve:

-Conducting an Internet search on an individual in a way that is likely to result in the employer obtaining genetic

GINA - Update on new EEO Basis — Genetics

"The use of genetic information in employment decisions is prohibited because it bears no relation to an individual's current ability to work".



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information.

- Actively listening to third-party conversations or searching an individual's personal effects for the purpose of obtaining genetic information.
- Making requests for information about an individual's current health status in a way that is likely to result in obtaining genetic information.

Relationship to ADA and FMLA

The final rules clarify how GINA interacts with the ADA and FMLA.

For ADA accommodations, employers may ask employee for "reasonable documentation" only when the need for an accommodation is not "obvious." 29 CFR Part 1635, Preamble.

Reasonable documentation refers to what is needed to establish that the employee's disability necessitates a reasonable accommodation.

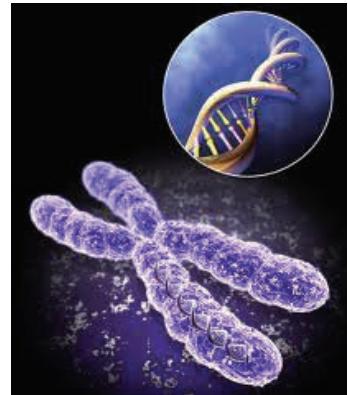
This means that employers have to tailor their medical requests to infor-

mation relevant only to the specific disability being accommodated. So if an employee has more than one disability, the agency can request information only about the disability that requires an accommodation.

The preamble to the new rules also clarifies that GINA permits agencies to acquire non-genetic medical information about a manifested disease or disorder. But this could lead to an ADA violation if agencies do not safeguard against the discriminatory use of non-genetic medical information.

For FMLA leave certifications, two different exceptions in the regulations address employee leave requests for self-care versus the care of family members.

Self-care falls under the exception for inadvertently acquired genetic information. This means that agencies can protect themselves by using the safe-harbor language that directs doctors not to include genetic information in response to requests for medical information needed to comply with FMLA certification requirements. 29 CFR 635.8(b)(1).



Under another exception, employers may request or obtain family medical history for FMLA certification when that information is required to substantiate the employee's need for FMLA leave to care for a family member. 29 CFR 1635.8(b)(3).

The main difference in family care situations is the employer's request for FMLA certification will require an employee to produce family medical history.

EEOC Releases Federal Work Force Report

WASHINGTON — The U.S. Equal Employment Opportunity Commission (EEOC) today released its Annual Report on the Federal Work Force for Fiscal Year (FY) 2009. The full text of the report is available on the agency's web site at www.eeoc.gov. The report assesses the state of equal employment opportunity throughout the federal work force – including trends in the composition of the workforce, and data concerning complaints of employment discrimination in the federal sector – and includes practical tips for agencies to improve their performance.

Over the last ten years, the EEOC has found that there have been subtle changes in the composition of the federal work force. Overall, the participation rates of women, Hispanic or Latinos, and Asians have increased slightly. The number of women in the federal work force rose from 42.3 percent to 44.06 percent; Hispanics / Latinos from 6.81 percent to 7.90 percent; and Asian-Americans from 5.22 percent to 5.84 percent. The total

work force increased by 15.09 percent.

Additionally, in FY 2009, for the first time since FY 1995, the percentage of people with targeted disabilities in federal jobs held steady, halting a 13-year decline. However, despite a modest net gain of 236 employees in FY 2009 over FY 2008, people with targeted disabilities still remain below one percent (0.88 percent) of the total work force. Targeted disabilities include deafness, blindness, missing extremities, partial or complete paralysis, convulsive disorders, mental retardation, mental illness, and distortion of the limb and/or spine.

In FY 2009, federal employees and applicants filed 16,947 complaints alleging employment discrimination on the basis of race, color, sex, national origin, religion, age, disability and reprisal. Unlike the private sector, federal agencies themselves are responsible for processing and investigating charges of discrimination filed against them. The average processing time for conducting investigations rose from 180 days in FY 2008 to 185 days in FY 2009. In addition, the average

processing time for closing complaints was 344 days, an increase from the 336 days in FY 2008. Of the 6,905 cases closed on the merits, 2.98 percent resulted in findings of unlawful discrimination. In addition, the parties entered into settlements in 3,394 complaints, or 21 percent of the total complaint closures.

"As the largest employer in the nation, the federal government should lead the way in creating a diverse and just workplace," said EEOC Chair Jacqueline A. Berrien. "Government employers need to continue to recruit and promote employees who represent the tapestry of America. They must also improve the efficiency of the complaint process so that justice delayed is not justice denied. We look forward to assisting the federal government to become an exemplary employer."

The EEOC is responsible for enforcing federal laws against employment discrimination. Further information is available at www.eeoc.gov.

Women's History Month

March 2011

“Our History is Our Strength”



February 2011



BLACK HISTORY MONTH

African Americans and the Civil War

REGION**Equal Opportunity
Advisor****OSC(SW) Gary Pryer****DSN: 314-626-4608**gary.pryer@eu.navy.mil**LOCATION****ADMIN II****1st Floor, Room 182****Capodichino, Italy**

“Education is the key to overcoming fears and dispelling negative perceptions.”

Repeal of Don't Ask, Don't Tell

On 22 December 2010, The President signed into law legislation that set conditions for the repeal of Title 10, United States Code, Section 654, otherwise known as the Don't Ask, Don't Tell (DADT) policy. The CNO has designated Commander, U.S. Fleet Forces Command (USFF) the Executive Agent for DADT Repeal training delivery and tracking of Navy personnel. USFF has established the DADT Repeal Implementation Task Force, commanded by RDML Patrick Driscoll, to plan and execute training delivery. Training will be delivered to all active duty, selected reserve and civilians who supervise military personnel using a tiered approach.

It is important to remember that the current DADT policy remains in effect. No policies, regulations or benefits will change until final repeal becomes effective 60 days after the President, Secretary of Defense and Chairman of the Joint Chiefs certify to Congress that repeal can be made in a manner consistent with the standards of military readiness, military effectiveness, unit cohesion and recruiting and retention of the Armed Forces.

Keys to Implementation:

- **Leadership:** This is a major policy change and focused leadership can help ensure a positive impact on unit cohesion, readiness and the effectiveness of a given unit. Front line leaders are tasked with building unit cohesion and maintaining readiness in a diverse force to meet mission requirements. By providing leaders at all levels with accurate information, we enhance

our ability to ensure a smooth policy transition.

- **Professionalism:** As members of the Naval Service, we have taken an oath as military professionals to support and defend the Constitution of the United States and have made a commitment to our Navy Core Values. Emphasizing these professional obligations is a post-repeal environment will reinforce expectations of personal behavior.

- **Discipline:** The UCMJ remains our legal foundation of good order and discipline; and provides for enforcement of standards of conduct and laws, and prohibits harassment, sexual assault or other violence. Accountability is a cornerstone of good order and discipline and will continue to guide standards of acceptable behavior.

- **Respect:** As leaders, we must focus on our values and Navy traditions as the foundation for maintaining the strength of our force. An important aspect of that strength is treating all people with respect and dignity, regardless of sexual orientation.

Definitions:**Training Types:**

Tier 1: Provided to experts who may deal frequently with repeal policy issues (Chaplains, Judge Advocates, Senior Human Resource Officers, Law Enforcement personnel, Public Affairs Officers, Fleet

and Family Support Center personnel, Personnel Support professionals, Equal Opportunity Advisors, and Recruiters). Community leaders of these disciplines will develop and deliver the required training.

Tier 2: Provided to command leadership (All Flag and SES, CO / XO / CMC, OIC / AOIC / SEA) and will prepare them to deliver policy instruction and expectations of conduct to their command.

Tier 3: Provided to all hands and will emphasize policies and expectations of personal behavior.

Delivery Methods:

Primary: Face-to-Face (F2F) delivery. Master mobile training teams (MMTT) comprised of fleet representatives will deliver Tier 2 training to command leadership teams, who in turn will provide Tier 3 training to their commands.

Secondary: Defense Connect Online (DCO). This option will be used to reach geographically isolated sailors and those personnel attached to non-Navy commands.

Tertiary: Navy E-learning. This option will be used to reach those personnel that could not attend F2F or DCO training.

For more information please visit:
<http://www.dadtrepeal.navy.mil/>

Region Multi-Cultural Heritage Committee***MCHC upcoming events and celebrations:*****March**

Women's History Month celebration with potluck

May

Asian Pacific American Heritage celebration in the theatre

September

Hispanic Heritage Month Celebration

October

Guest Speaker for National Disability Employment Awareness

November

National American Indian Heritage Month Celebration

Committee Members

Timothy Hawkins
Giuseppina Buglione
Filomena D'Alessio
Reinaldo Morillo
John Tanedo
Pierre Samanni
Marilyn Sandifer
Seth Thomas
Gary Pryer
Lavelle Glover



EEO Observer ~ Retaliation Findings

A number of recent retaliation findings by the Equal Employment Opportunity Commission strikingly illustrate that some agencies still are not adequately impressing upon supervisors that retaliation for EEO activity can include actions that fall short of disparate treatment, or even harassment. The facts of the cases are often similar. Essentially, a supervisor takes offense at an employee's EEO activity. The supervisor is aware that it's a bad idea to fire the employee or create a hostile work environment. Nevertheless, irritation, defensiveness, or perhaps even simple curiosity, leads the supervisor to make a comment or take an action that can create unnecessary complications. Although the incidents may seem petty to some, agencies need to keep in mind that the EEOC vigorously protects the EEO rights of federal employees. A finding of retaliation is a risk any time a supervisor's conduct could intimidate an EEO complainant or interfere with an employee's EEO activity in any manner.

A supervisor incurred liability for his agency when he asked the complainant about her recent EEO complaint and made some comments after he received a call from an EEO counselor. The EEOC found that the comments and inquiry unlawfully interfered with the complainant's right to pursue a remedy for EEO violations. *Walker v. Department of Agriculture*, 108 LRP 56721 , EEOC No. 0120080253 (EEOC OFO 2008).

A supervisor retaliated against the complainant when he discussed her EEO complaint with other employees and solicited their testimony. *Medrano v. Department of Homeland Security*, 108 LRP 58023 , EEOC No. 0120071480 (EEOC OFO 2008).

The complainant was subjected to retaliation when his supervisor sent an e-mail referencing his EEO activity to four agency employees. One of the employees, an agency official who was working with the complainant on an advisory council, also retaliated against the complainant by questioning the impact of the complainant's EEO activity on their mutual work. *Chavez v. Department of Agriculture*, 108 LRP 57605 , EEOC No. 0120062643 (EEOC OFO 2008).



Myths and Stereotypes About Mental Disabilities Greatest Barrier to Employment

WASHINGTON - The greatest barrier to employment for people with intellectual and psychiatric disabilities are employers' myths and fears about their condition, not the disabilities themselves, the U.S. Equal Employment Opportunity Commission (EEOC) learned at a hearing. The hearing focused on a group whose rate of unemployment and underemployment far exceeds the national average.

"We want job seekers, workers, and employers to understand the requirements of the Americans with Disabilities Act and be well equipped to comply with them," said EEOC Chair Jacqueline A. Berrien. "Today's Commission meeting provided an important opportunity to dispel myths and learn about effective ways to dismantle barriers to employment for people with disabilities."

Sharon Lewis, Commissioner of the Administration on Developmental Disabilities, U.S. Department of Health And Human Services, underscored the need to dismantle barriers for people with intellectual disabilities, noting that "the proportion of the population of people with disabilities who are employed is estimated to be 17 percent, compared to 63

percent for people without disabilities."

As Ruby Moore, Executive Director of the Georgia Advocacy Office, the designated Protection and Advocacy System for People with Disabilities in Georgia, told the Commission, "one of the biggest obstacles to employment is consciously and unconsciously-held beliefs about people with psychiatric, cognitive or intellectual disabilities." She further testified that most of the accommodations individuals with mental disabilities require can be provided in a well-managed, flexible workplace often without any out-of-pocket costs to the employer. She stated that these flexibilities have the effect of aiding all employees, not just those with disabilities.

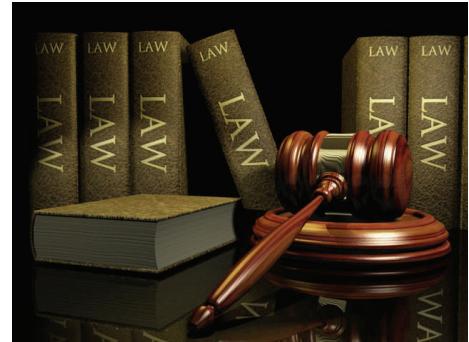
Chief among the misapprehensions surrounding the employment of people with psychiatric disabilities is that they are violent. In fact, psychologist Dr. Gary R. Bond of the Dartmouth Psychiatric Research Center of Dartmouth Medical School, told the Commission, "violence is exceedingly rare among people with mental illness . . . [and] being employed significantly reduces the possibility of violence even further."

The employment rate for individuals with psychiatric disabilities is not only low compared to the general population, it is also half the employment rate for people with other sorts of disabilities. The lack of employment has a particular impact on individuals with psychiatric disabilities for whom work is "a crucial element in the recovery process," according to Dr. Bond. Samuel R. Bagentos, Principal Deputy Assistant Attorney General for Civil Rights at the U. S. Department of Justice echoed this point: "Work commands respect, and it represents agency, responsibility, and independence. Work is the place where people with and without disabilities can come together, share common projects, and break down barriers of stereotype and prejudice."

The EEOC enforces the nation's laws prohibiting employment discrimination. More information about the EEOC and the Americans with Disabilities Act can be found the EEOC's website at www.eeoc.gov. Information about this meeting, including witness statements and a video of the event, can be found at www.eeoc.gov/eeoc/meetings/3-15-11/index.cfm.

Equal Pay Act Violation

Equal Pay Act Violation Complainant, a GS-13 attorney in agency's Denver Regional Office, alleged that the agency violated the Equal Pay Act (EPA) and Title VII when it paid male attorneys at the GS-14 level more for the same work than it did female attorneys. After a hearing, an AJ found that the agency violated the EPA and Title VII. Furthermore, the AJ found that the violation was willful, which meant, under the EPA, that complainant would be awarded liquidated damages, i.e., double the back pay award. The AJ found that the work performed by complainant and the GS-14 male comparative employee constituted equal work. The agency, on appeal, did not contest the AJ's finding that complainant and the male comparative GS-14 attorney performed substantially equal work. The agency argued that it had set forth an affirmative defense to the EPA, that the difference in pay was based on a factor other than sex. The Commission, however, found that the job classification system relied upon by the agency was not a bona fide merit system. The Commission, as relief, ordered the agency to retroactively promote complainant to the GS-14 level, with back pay, liquidated damages in the amount of the back pay, and attorney's fees and costs. *Hazel E. Hanley v. Federal Labor Relations Authority*, EEOC Appeal No. 0720060033 (June 6, 2008), request for reconsideration denied, EEOC Request No. 0520080677 (September 11, 2008).



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Equal Employment Opportunity Programs Office

It is our mission to provide EEO realization to every aspect of human resources management practices in treatment of employees; to promote a discrimination free work environment focused on the total workforce, and to provide a comprehensive and proactive equal employment opportunity program for installations and tenants serviced by Commander Navy Region Europe, Africa and Southwest Asia (CNREURAFSWA). Installations covered are: NSA Bahrain, NSA Naples, NS Rota, NAS Sigonella, NSA Souda Bay and Camp Lemonnier.

If you have any concerns, questions, or would like EEO information or materials, please contact us.

EEO Staff**Prohibited Personnel Practices**

Don't discriminate on the basis of race, color, religion, sex, national origin, age, disability, marital status, or political affiliation.

Don't solicit or consider any personnel recommendation or statement not based on personal knowledge or records of performance suitability.

Don't coerce an employee's political activity.

Don't deceive or obstruct any person's right to compete for employment.

Don't influence a person to withdraw from competition for the purpose of improving or injuring the prospects of another person for employment.

Don't grant any preference or advantage not authorized by law, regulation, or rule to any employee or applicant for the purpose of improving or injuring the prospects of another person for employment.

Don't employ or advocate a relative.

Don't retaliate against a Whistleblower, whether an employee or an applicant.

Don't retaliate against employees or applicants who exercise their appeal rights, testify, or cooperate with an Inspector General or the Special Counsel, or refuse to break the law.

Don't discriminate based on actions not adversely affecting performance.

Don't violate any law, rule, or regulation implementing or directly concerning the merit principles.

Don't violate Veteran's Preference by taking or failure to take a personnel action. (National Defense Authorization Act for FY97)

**NEXT ISSUE!!**

Need a topic discussed for the next Issue of EEO Quarterly?

Send us an email.