



# EEO "Matters"

VOLUME 2 ISSUE 3

... dedicated to bringing you current items of interest on EEO, Diversity, and Alternative Dispute Resolution

May 2009

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## ADR: A change in EEO Policy affecting managers and supervisors

As of February 2009, Chapter 3 of the DON Discrimination Complaints Management Manual was amended with regard to managers declining to engage in ADR for EEO cases. The Navy Civilian Human Resources Manual (CHRM) has been amended to reflect this change. In most cases, the EEO counselor will be the individual introducing the ADR offer to both the EEO Complainant and to the manager or supervisor.

The new policy has two major changes:

- (1) A requirement that ADR be offered to all complainants in EEO cases; and,
- (2) If management declines to engage in ADR, a written justification for the declination must be provided and signed by the next-level supervisor who is not directly engaged in the conflict. The declination is forwarded to the DON ADR Program Office.

There are a limited number of reasons for ADR declination

- (1) A decision on the merits of the case is required. Mediation will not provide this;
- (2) Policy may be affected by the outcome and ADR will not provide a decision that could influence policy;
- (3) The outcome of an ADR event may not be consistent with policy;
- (4) The matter significantly affects people who would not be a part of the dispute resolution proceeding;
- (5) A full public record of the proceeding is important, and a dispute resolution proceeding cannot provide such a record; and
- (6) The agency must retain control and have the flexibility to adapt its decisions based on new information and a dispute resolution proceeding would take away that flexibility.

## *Food for thought.....*

Change will not come if we wait for some other person or some other time. We are the ones we've been waiting for. We are the change that we seek.

*Barack Obama*



*"Do  
What You Can,  
With  
What You Have,  
Where You Are"*

Theodore Roosevelt



## Annual Joyce Stewart Memorial Award presented

During women's history month each March, the Federal Women's Program at Naval Base Ventura County (NBVC) honors an individual or team by presenting the Joyce W. Stewart Memorial Award. The late Joyce Stewart was the first woman at the then Naval Construction Battalion Center, Port Hueneme to achieve the professional grade of GM-14. She was a dedicated professional who strove to assure that her organization, the Facilities Systems Office, truly reflected the Navy's affirmative action goals by pursuing positive approaches to the acceptance of diversity. Her personal commitment was to promote an atmosphere that encouraged an awareness of fairness and equal treatment by supervisors, subordinates and co-workers. She encouraged and gave ample opportunity to all of her employees to reach their highest potential. It is this type of genuine commitment that deserves recognition.

This year's awardee is Ms. Kim Foster, a manager with Naval Surface Warfare Center, who takes the time to mentor employees within her organization. She is a champion in serving as a conduit between employees and upper management on issues of importance to employees. Ms. Foster has been involved with the Federal Women's Program at NBVC for years and was recently instrumental in establishing the local chapter of Federally Employed Women.

## The CAP program-a great resource for managers!

The Computer/Electronics Accommodation Program, better known as CAP, is a "hidden" resource available to employees and applicants with disabilities and is a wonderful tool for management in meeting the needs of disabled workers. CAP technological offerings range from assistive devices for people with both cognitive and physical conditions to personal assistants for those with mobility impairments, and can be used to increase, maintain or improve the ability of a person with a disability to perform in a job or apply for employment.

CAP employees work with each individual to identify, assess, and elect the appropriate sorts of modification to the person's work environment. It all starts with a needs assessment, wherein the job, the individual and the solutions are separately assessed. Based on the information gleaned, appropriate devices, training, and/or programs are chosen for the employee or applicant-all free of charge to the employer! CAP does not sell any products or services, instead it procures assistive technologies, including custom, modified and commercial products.

"I don't know what I would have done" said Sharon, who was a temporarily disabled Management Analyst. "I developed tendonitis, and was increasingly unable to use my hands over a period of five years. If not for CAP and my Command's quick action in procuring voice recognition software, I would have been out of work-that would have devastated me both emotionally and financially."

Mark, an engineer with a permanent vision disability, indicated in a recent interview "I am so grateful for the products CAP offers. They trained me to use the portable note-taker, and provided me high magnification screens that enable me to perform my job

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*It is time for us all to  
stand and cheer for the  
doer, the achiever –  
the one who recognizes  
the challenge and does  
something about it.*

*Vincent Lombardi*

### **PROMOTING DIVERSITY (IT'S) AS SIMPLE AS RESPECT!**

Intervene before problems escalate.

Always use respectful language, no matter who's around to hear it.

Keep your cool. Don't let emotionally charged situations cause you to cross boundaries.

Never be afraid to apologize.

Listen to and be understanding of the concerns of others.

Be sensitive to religious, ethnic, or cultural backgrounds different from your own.

Help co-workers understand why something is offensive.

Relate disrespectful behavior to personal experiences.

Diffuse tensions by listening and understanding.

Explore similarities rather than focusing on differences.

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as well as (or better) than any sighted person could, and at a time in the fiscal year when there were no funds available from the Command."

CAP offers products and services for communication disorders, the hearing impaired, those who are blind or have low vision, people with dexterity issues, those with 'hidden disabilities' such as memory or concentration issues, and many, many, more.

The Federal manager's role is to ensure that all employees, including people with disabilities, are able to perform to the best of their ability in a given position. CAP works every day to help make that happen!

### **Contractors and EEO**

When is a contractor covered under EEO regulations?  
Answer: when they are considered 'dual employees'. But that's not necessarily easy to determine. According to EEOC Notice #915.002 dated 12/03/97 the following factors come into play:

1. Who controls when, where, and how the worker performs the job?
2. Does the work require a high level of skill?
3. Who furnishes the tools, materials and equipment?
4. Where is the work performed?
5. Is there a continuing relationship between the client and the worker?
6. Who assigns additional projects to the worker?
7. Who sets the hours of work and the duration of the job?
8. Is the worker paid by the hour, week or month rather than on an agreed cost for the job?
9. Does the worker have a role in hiring/paying assistants?
10. Is the work performed part of the client's regular business?
11. Is the client itself in business?
12. Is the worker engaged in a distinct occupation or business?
13. Who provides benefits such as insurance, Leave, and workers compensation?
14. Is the worker considered the client's employee when withholding federal, state, and Social Security taxes?
15. Who can discharge the worker?
16. Do the worker/client believe they have an employer-employee relationship?

This is not an exhaustive list, but depending on the answers to these, and questions like them, the worker MAY be considered a dual employee and therefore covered under EEO regulations when filing an EEO complaint. If you have a situation that arises in your workplace involving a contractor wishing to utilize the Federal EEO complaint process, contact local Legal Counsel, Human Resources, or the EEO office.

## EEO COMPLAINT PROCESS



## Available EEO Training

-The No Fear Act

-The ADA as amended

-Diversity Training for Supervisors

### Points of contact

#### Servicing PMA/HRO

EEO Staff:

#### Deputy EEO Officer

Mahealani Tolbert 532-1271

General Inquiries: (619) 532-2757  
DSN: 522-

#### Complaints Management

Warren Robinson 532-1246  
Cheryl McGuire 532-2328  
Marissa Marmolejo 532-1024

#### Reasonable Accommodation

Cheryl McGuire 532-2328

#### Alternative Dispute Resolution

Connie Ferris 532-3530

#### Investigations

Kendra Leatherwood 532-2757

#### EEO Counselors

Annette Nava 532-1248

Mona Gonzales 805-982-1406

Connie Cutner 532-1207

## ANNOUNCEMENT

A recent development in the processing of EEO complaints: Until 1 June 2009, all EEO complaint intakes were to be processed by Human Resources site offices and forwarded to the EEO office. In order to more efficiently provide service to our Region customers, the EEO office has changed the process. Beginning on 1 June 2009 all intakes will be filed directly with the EEO office. The region point of contact (POC) is Annette Nava. All intake activity should be directed to Ms. Nava who can be reached at 619-532-1248. Managers, supervisors and employees should contact Ms. Nava to initiate the EEO process.



Editor: Cheryl McGuire

## Significant case decision

Hillig v. Rumsfeld (USPS) US Court of Appeals, 10<sup>th</sup> circuit, 02-1102. Summary: Giving a negative reference to a future employer can be an illegal act if in retaliation for having filed a discrimination claim, even though a specific position was not lost due to the negative reference. The initial ruling was in favor of the defendant, but in an appeal the Circuit judges found for plaintiff Hillig, stating in part that a "...plaintiff need only show a likely effect on future job opportunities."