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**“Equal rights for all, special privileges for none.”**

**Thomas Jefferson**

# EEO FOCUS

## News You Can Use



### ***MANAGEMENT DIRECTIVE 715 — WHAT'S IN IT FOR YOU?***

Management Directive 715 (MD-715) sets forth Equal Employment Opportunity (EEO) general reporting requirements for federal agencies. The Equal Employment Opportunity Commission Directive provides a roadmap for creating a model EEO Program for all federal employees as required by Title VII and the Rehabilitation Act. This Management Directive requires each agency to report annually on the status of activities and to include a plan that sets forth the steps the agency will take in the future to correct deficiencies or further improve efforts to enhance diversity demographics. The MD-715 requires agencies to conduct periodic self-assessments of their EEO policies and practices to ensure free and open workplace competition. An important component of the MD-715 is the establishment of six Essential Elements for structuring model EEO programs.

The Elements are:

**Element 1 - Demonstrated commitment from agency leadership**

**Element 2 - Integration of EEO into the agency's strategic mission**

**Element 3 - Management and program accountability**

**Element 4 - Proactive prevention of unlawful discrimination**

**Element 5 - Efficiency**

**Element 6 - Responsiveness and legal compliance**

These six elements serve as the foundation upon which each agency builds its program. Agencies are directed to evaluate managers based on their efforts to prevent discrimination and to track disciplinary actions taken against managers found guilty of violating EEO policies. The success of an agency's EEO program ultimately depends on individual decisions made by individual agency managers. Therefore, agency managers constitute an integral part of the agency's EEO program. The EEO office serves as a resource to managers by providing direction, guidance, and monitoring of key activities to achieve a diverse workplace free of barriers to equal opportunity. The most recent Fort Carson MD-715 can be found at: [http://www.carson.army.mil/EEO/sub\\_pages/affirmative\\_emply.html](http://www.carson.army.mil/EEO/sub_pages/affirmative_emply.html)

Please review the recommendations on page 2. These are things you can do to inculcate EEO into daily business practices.

**“Great leaders are almost always great simplifiers who can cut through argument, debate, and doubt to offer a solution everybody can understand.” Colin Powell**

## Six Essential Elements of a Model EEO Program



### **Element 1 - Demonstrated Commitment from Agency Leadership:**

Post EEO Policy Statements in all offices and on bulletin boards. Current policy letters can be found at: [http://www.carson.army.mil/EEO/sub\\_pages/policies.html](http://www.carson.army.mil/EEO/sub_pages/policies.html)

Distribute reasonable accommodation (RA) procedures to your managers/supervisors. Make the procedures readily available to all employees and contact the EEO Office Disability Program Manager when accommodation questions arise. The RA policy can be found at: [http://www.carson.army.mil/EEO/sub\\_pages/accomodation.html](http://www.carson.army.mil/EEO/sub_pages/accomodation.html)

Provide reasonable accommodation and report all your accommodation activities to the EEO Office.

Ensure all employees have a current Individual Development Plan that will aid them in gaining knowledge and skills they need to progress in their career.

### **Element 2 - Integration of EEO into the Agency's Strategic Mission:**

Encourage regular visits from the EEO Office to your work environment. These visits focus on effectiveness, efficiency and legal compliance of Title VII and Rehabilitation Act Programs. Additionally, the EEO team can assist leaders with evaluating workforce demographics and trends.

Ensure senior management officials attend the semi-annual EEO Council Meetings. These meetings focus on current EEO initiatives and workforce demographics.

### **Element 3 - Ensuring Management and Program Accountability:**

Articulate to all your supervisors that workplace harassment will not be tolerated. Allegations of harassment will immediately be investigated and when allegations are substantiated, appropriate disciplinary action will be taken. Reprisal will not be tolerated.

### **Element 4 - Proactive Prevention:**

Ensure all your new employees attend the Installation Newcomers' Orientation. In this orientation, new employees will be briefed on their EEO rights and responsibilities, elements of the EEO program, an overview of reasonable accommodation procedures, as well as an overview of EEO training they will receive.

Ensure all your employees and supervisors attend EEO training. Annually, ensure all employees are aware of their rights and responsibilities to include the administrative complaint process, protections afforded to employees, related policy statements, and reasonable accommodation procedures.

### **Element 5 - Efficiency:**

Approach issues raised by employees in a neutral, fair and impartial manner. Listen to all individuals involved in a situation and promote mediation in an effort to resolve the work dispute at the lowest level or at the earliest EEO complaint stage. Managers should always be receptive to resolving issues at the lowest level.

### **Element 6 - Responsiveness and Legal Compliance:**

Ensure all final Negotiated Settlement Agreements (NSA) are monitored for compliance and timeliness.

When a formal complaint is filed in your work area, designate a point of contact to work with EEO to respond to all data requests.



### Medical Documentation: Think About What is Needed and Stop There

There seems to be *confusion about medical documentation* under the ADA. Employers aren't sure *what they can ask for, when they can ask for it*, or whether the ADA Amendments Act changed the rules for medical documentation. Employees aren't sure what medical information they *have to provide or how much to disclose*. And medical professionals aren't sure what documentation will be the *most helpful* in getting their patients the workplace accommodations they need. Most of these questions come up when an employee requests an accommodation.

The good news is that the medical inquiry rules that apply when an employee requests an accommodation are not as complicated as they may seem. The *general rule* is that when the disability or *need for accommodation is not obvious*, an employer may require an employee to provide documentation that is *sufficient to substantiate* that s/he has an ADA disability and needs the reasonable accommodation requested, but *cannot ask for unrelated documentation*. So when thinking about what medical information to request or to provide, think about what is needed and stop there!

Let's start with the documentation needed to substantiate that the employee has a disability. The definition of disability for accommodation purposes is "a physical or mental impairment that *substantially limits* a major life activity or a record of such an impairment." So to determine whether an employee has a disability, the employer *can ask* whether the employee *has (or had) an impairment*. And if yes, can ask whether the impairment *affects (or affected) a major life activity*. And if yes, can ask whether the impairment *substantially limits (or limited) the major life activity*.

This is where the ADA Amendments Act changed some things. Although the definition of disability did not change, the *threshold for showing substantial limitation is much lower* than it used to be. Therefore, the documentation needed to show that an employee has a disability should be much *less extensive*.

What about the documentation needed to substantiate the need for an accommodation? The ADA Amendments Act did not change the reasonable accommodation provisions of the ADA so the rules for medical documentation likewise did not change. An employer is allowed to *verify that the accommodation is needed*, to ask questions about the *employee's limitations that are causing the problem*, and to get other *relevant information* about the request to help determine effective accommodations.

Extract from: Linda Carter Batiste, J.D., Principal Consultant, JAN E-News, Volume 9, Issue 4, 4th Qtr, 2011

### Leave as a Reasonable Accommodation

One of the issues faced by both employers and employees involves *leave time related to a medical condition*, particularly when the period of leave exceeds an employer's permitted leave allowance or violates an established attendance policy. While such situations may be challenging and confusing, they must be confronted directly because one thing is clear relative to the ADA: the *use of leave does constitute a reasonable accommodation* when necessitated by the employee's disability.

These are examples of some of the reasons an employee with a disability may require leave:

- avoiding temporary adverse conditions in the work environment (for example, an air-conditioning break down causing unusually warm temperatures that could seriously harm an employee with multiple sclerosis);
- obtaining medical treatment or rehabilitation services related to the disability;

### Leave as a Reasonable Accommodation (cont.)

- recuperating from an illness/episodic manifestation of the disability;
- repairing prosthetic device/other equipment such as a wheelchair;
- training with or in a service animal/assistive device/sign language

**“Lack of communication is usually the biggest obstacle to executing an effective accommodation solution” Bill McCollam**

### How Much Leave is Reasonable

Under the ADA, there is *no specific amount of time established relative to the use of leave as a reasonable accommodation (RA)*. As with any accommodation situation, considering a period of leave for an employee with a disability should be a *case by case analysis*. If an employee needs a leave of absence that exceeds his or her accrued paid leave, the employer should permit the employee to *exhaust the paid leave and then allow the use of unpaid leave absent undue hardship*.

The EEOC has said that employers *do not have to grant indefinite leave* as a RA. However, the employee *does not have to provide a specific, fixed date of return*. A request for leave is acceptable with an approximate date of return or a *range of dates for a return to work*.

### Erratic or Unreliable Attendance

Employers are required to *modify attendance policies* as a RA absent undue hardship. This *does not mean that employers must completely exempt* an employee from time and attendance requirements and unquestionably accept irregular and unreliable attendance. Frequent tardiness or absenteeism, particularly those over an extended period and without adequate notice, could certainly impose an undue hardship in many situations.

Extract from: Bill McCollam, MPA, Consultant, JAN E-News: Volume 9, Issue 4, 4th Qtr, 2011

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### EEO Training Update

Many of you know that the Prevention of Sexual Harassment (POSH) training has been replaced with **Sexual Harassment and Assault Response Prevention SHARP program**. All civilian employees and soldiers are required to complete this two-phased training. First, employees and Soldiers attend a theater style block of instruction. Then, employees complete the online Team Bound course and report their completion to their training coordinator. Dates for this training are available through your organization's SHARP facilitators.

In addition to SHARP, all civilian employees and managers of civilian employees must complete the online **No FEAR Act Training**. This course clarifies employee rights and responsibilities under EEO laws as well as explains whistleblower protections. Online instructions will be forwarded to training coordinators for distribution to the workforce.

All managers of civilian employees are required to attend a seminar style **EEO for Supervisors course**. This hour-long session focuses on your responsibilities as they relate to EEO. The interactive class covers topics such as reasonable accommodation, conflict resolution, and effective communication. This seminar will be offered twice monthly through the fiscal year. Dates/times/locations will be forwarded to training coordinators for distribution.

It is likely that Headquarters Department of Army may issue a requirement for civilian employees to complete an **Anti-harassment course**. At this time, we are still awaiting guidance. If received, the EEO Office will ensure everyone is notified of the requirement for either an online or classroom course.

For information on any of these courses, please contact the EEO Office at 526-5818.

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