

CenterPage

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Office of Equal Opportunity and Civil Rights

Centers for Medicare & Medicaid Services



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Working Together to Serve Millions



On Wednesday, June 5, 2002, CMS held its 4th Annual Diversity Day 2002 Celebration at the Baltimore headquarters. Under the theme, "Working Together to Serve Millions," over 500 CMS employees and guests withstood heat and humidity to participate in the day's activities that included several speakers and entertainers.

Ramón Surís Fernández, Director of the Office of Equal Opportunity and Civil Rights, welcomed the CMS staff and guests and introduced the guest speakers.

After a classical musical selection by the string quartet, *Musical Expressions*, Rubén José King-Shaw, Jr., Deputy Administrator and Chief Operating Officer, provided remarks for the occasion. "Our very mission is to serve a diverse population," he said. He also spoke of preparing for our future beneficiaries. "As they age into Medicare and qualify for Medicaid in record numbers, the diversity of the future is far more advanced than the diversity

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MEMORANDUM FOR HEADS OF DEPARTMENTS AND AGENCIES

DATE: July 12, 2002
FROM: KAY COLES JAMES
Director, Office of Personnel Management
SUBJECT: Disability Employment Website

In President Bush's New Freedom Initiative, he has called upon us to increase opportunities for people with disabilities in all areas. The President expects the Federal Government to be a model employer of people with disabilities. If we are to recruit and retain a diverse, well-qualified workforce focused on results for the American people, we must increase employment opportunities for people with disabilities.

To help in this effort, the Office of Personnel Management worked closely with key agencies with disability employment responsibilities to develop a new website, www.opm.gov/disability. People with disabilities collaborated in the development of this website and, as a result, it is comprehensive and user-friendly. This site is a tremendous resource—a one stop source of information for applicants, managers, and human resources professionals. It embodies the spirit of the President's New Freedom Initiative and provides an excellent resource to help Federal agencies achieve the President's objectives.

The site contains many valuable features. Highlights include:

- A training module for managers on reasonable accommodation;
- New guidance to make it easier for people with disabilities to apply for Federal jobs by obtaining an initial certification of disability;
- Information about telework;
- A recruitment brochure for people with disabilities, which can be reproduced locally;
- Frequently asked questions;
- An annotated list of federal agencies with leadership responsibility on disability employment; and,
- An updated version of People with Disabilities in the Federal Government: An Employment Guide.

To maximize the value of the site, I ask that you take an active role in disseminating information about it among your managers, supervisors, human resources professionals, and more importantly, among your constituent groups. I count on your support.

OPM oversees the federal workforce and provides the American public with up-to-date employment information. OPM also supports U.S. Agencies with personnel services and policy leadership including staffing tools, guidance on labor-management relations and programs to improve work force performance.

To provide information and updates on events and activities that promote diversity and equal employment opportunities.

Accent Discrimination



In a recent decision¹, the Equal Employment Opportunity Commission (EEOC) held that an agency subjected an employee to an ongoing pattern of national origin discrimination when it failed to promote her and denied her promotional opportunities.

According to EEOC regulations, 29 C.F.R. § 1606.1, it is unlawful to deny an individual equal opportunity due to the "linguistic characteristics of a national origin group." The EEOC has held that an adverse employment decision may be predicated upon an employee's foreign accent only where it interferes materially with job performance.²

In this case, the agency record cited the testimony of two witnesses who stated that they were told by the selecting official for one of the positions that the complainant would never be promoted because her "accent" made her too difficult to understand. Another witness corroborated that the complainant was often told that she had a "communication problem." However, the agency held that nothing in the record supported a finding that the complainant's accent would have interfered with her ability to perform the job.

The agency also noted that because the complainant established that discrimination was a motivating factor in her non-selections, management was required to establish that it would have taken the same action absent the discrimination. The selecting official for the position testified that another woman was selected for the job because she was better qualified. Also, the reviewing official for the non-selection testified that an individual had been detailed into the position because the union had "asked to review the package." Since the complainant was in a GS-7 position, she was not eligible for the detail. Based on the testimony of these witnesses, the agency found that management established that it had legitimate non-discriminatory reasons for not selecting complainant. The agency concluded that because management established that it would have taken the same action even absent a discriminatory motivation, the complainant was not entitled to placement in the position, back pay, or other damages.

On appeal, the EEOC found that the agency failed to meet its burden of showing, by "clear and convincing" evidence, that it would not have promoted complainant during the period at issue even absent discrimination. In addition, the Commission found direct evidence of employment discrimination when the selecting official did not want to promote the complainant to a position because of her accent.

The EEOC said that an agency might limit its liability for these actions by establishing by "clear and convincing" evidence that it would not have promoted a complainant throughout a particular period even absent discrimination. The Commission noted that the agency had ample opportunity to produce such evidence, but failed to do so. The EEOC stated that a mere assertion of a legitimate motive without additional evidence is insufficient in direct evidence cases such as this one. To view the full decision, go to <http://www.eeoc.gov/>.

Women's Equality Day

To honor the ratification of the 19th Amendment to the U.S. Constitution, which guaranteed women the right to vote, CMS will observe Women's Equality Day on August 22, 2002, at 1:30 pm. This year's program will feature Marilyn Hughes Gaston, M.D., former Assistant Surgeon General of the U.S. Public Health Service, and Gayle K. Porter, Psy.D, clinical psychologist and Senior Mental Health Advisor for the American Institutes for Research. Drs. Gaston



Dr. Marilyn Gaston



Dr. Gayle Porter

and Porter have collaborated on a guide to the "total" health needs for African American women entitled, *Prime Time: The African American Woman's Complete Guide to Midlife Health and Wellness*. The book will be on sale on the Lower Level Lobby from 11:00 am to 1:00 pm or can be ordered before the August 22 book sale. A book signing and reception will immediately follow the program. Contact Clara Carter on ext. 65123 for more information about the book sale.

CMS will also recognize individuals who have actively worked on issues of importance to women in the workplace and/or have made significant contributions to women's health issues related to the mission of the Agency with *Women's Equality Day Awards*. Pictures and biographies of the award recipients will be on display in the Lower Level Lobby during the month of August.

Boston Regional Office Honored

The CMS Boston Regional Office was selected as one of the recipients of the "Exemplary Record in Employing and Retaining People with Disabilities, and in exceeding the reasonable accommodation requirements under the State & Federal Laws" sponsored by the Massachusetts Governor's Commission on Employment of People with Disabilities.

The event will take place in October during the recognition of National Disability Employment Awareness Month.

Congratulations Boston Regional Office!

Diversity Day (continued)

of today and even yesterday. So we need to get ready."

Claude A. Allen, Deputy Secretary of the Department of Health and Human Services brought greetings from Secretary Thompson and read the Secretary's letter thanking CMS officials for their leadership in diversity. "Understanding and valuing diversity is key to the Department," said Deputy Secretary Allen. "We've made strides, but there is more we can do."

Speaking before the Deputy Secretary, Dr. Jacob Lozada, the Assistant Secretary for Human Resources and Administration at the Department of Veterans Affairs spoke of the tremendous benefits of a diverse society. In sharing his personal vision for an ideal government agency, Dr. Lozada said such agency would be a "unique and unifying force where employees are respected, valued and given an equal opportunity for success."

The final speaker for the day was Ms. Lobna "Luby" Ismail, Executive Director of Connecting Cultures, Inc. Ms. Ismail shared her experiences during an interactive presentation on cultural awareness. She challenged the audience to confront stereotypes and assumptions about each other. In a brief exercise, she reinforced how easy it is to allow, what she called "micro inequities" and the mental "tape recording" that tend to devalue and discriminate.

At the closing of the program, the Office of Equal Opportunity and Civil Rights awarded its second Diversity Award to Sharon Appleby of the Office of Internal Customer Support.

The CMS Choir and Larry Pratt of the Office of Information Services provided opening and closing musical selections. Local entertainers were: Marsha Meekins Project, Soaring Eagles, Flamenco Dancers and Musical Expressions. Sodexo Marriott Crossroads Café was the event caterer and the staff of OEOCR served the food samples.

The Office of Research, Development and Information, Office of Internal Customer Support and several HHS Agencies provided related resource publications for the Diversity Day attendees.

¹ *Stone v. Department of the Treasury (Bureau of Public Debt)*, EEOC Appeal No. 01A02572 (July 6, 2001), request to reconsider denied, EEOC Request No. 05A11013 (January 10, 2002).

² *Daly v. United States Postal Service*, EEOC Appeal No. 01933547 (September 14, 1993).

National Hispanic Heritage

CMS is celebrating National Hispanic Heritage Awareness Month on Tuesday, September 24, 2002, from 1:30 p.m. to 2:30 p.m., in the CMS Auditorium. The theme for this year's program is "Hispanic Americans: Strength in Unity, Faith and Diversity."

The CMS Hispanic Committee is planning an exciting program that will include a variety of activities during the period of observance (September 15 through October 15). The CMS Deputy Administrator and Chief Operating Office, Rubén José King-Shaw, Jr. will provide remarks.

Look for future e-mail broadcasts about planned activities.



Workplace Harassment

Often employees will use the term harassment to describe what they are experiencing in the workplace. They may feel like they are being picked-on, overly scrutinized, or disrespected. In a general sense, the label may fit, but in the EEO arena, the term carries a lot more meaning. The information below is intended to help employees understand harassment from a legal perspective and to know how to respond.

Harassment can come from a supervisor, a co-worker, a subordinate employee, a contractor, or a non-employee. Typically, there are four elements of a harassment claim:

1. the challenged comments/conduct must be unwelcome (the employee did not solicit or invite the conduct and regarded it as undesirable),
2. the employee must have been subjected to the conduct because of his or her sex, race, religion, national origin, age, disability, or because he or she opposed discrimination or participated in complaint proceedings,
3. the challenged conduct must have resulted in a tangible employment action (firing, denial of promotion, demotion) or a hostile work environment (conduct that is severe and pervasive enough to create an environment that a reasonable person would find hostile or abusive and that the employee perceived it as such), and
4. there must be a legal basis for holding the employer liable for the harassment.

For instance, the employer is always liable for unlawful harassment by a supervisor that results in a tangible employment action. However, the standards are different for employer liability in hostile work environment harassment. An employer is liable for hostile work environment harassment by a supervisor even absent knowledge by higher management unless the employer can prove that it exercised reasonable care to prevent and correct promptly any harassing behavior, and the employee failed to take advantage of any preventative or corrective opportunities provided by the employer, such as an anti-harassment policy.¹ An employer is liable for hostile work environment harassment by a co-worker, contractor, and non-employee only if management knew or should have known of the harassment and failed to take immediate and appropriate corrective action.²

It is critical that the employee put the agency on notice of the harassment by complaining through his or her chain of command and/or to other managers in positions of authority over the harasser. An employee should report harassing comments and conduct and take the steps outlined in [CMS's Anti-Harassment Policies](#). If the employee does not avail him/herself to this mechanism to quickly address and stop harassing comments and conduct, there may be no legal basis for holding the agency liable for the harassment.

Finally, although certain actions of co-workers and managers may be objectionable, if the conduct does not satisfy the criteria above, it may not be illegal. The law does not guarantee an employee a good or supportive supervisor. Some managers and employees may engage in intimidating and threatening conduct, but it may not be a violation of the law. Always consider whether and how the comments and conduct are related to your race, sex, age, disability, etc., and bring the unwelcome activity or activities to management's attention. Following these steps and understanding the law, can be the fastest and easiest way to stop such conduct.

¹ See *Horkan v. United States Postal Service*, EEOC Appeal No. 01976837 (April 6, 2000), (demeaning and mean-spirited comments which expressed resentment toward accommodations the employee was receiving and were negative towards women created an abusive working environment, the supervisor participated in and encouraged the harassment, the agency's attempted corrective action was ineffective, slow, and incomplete, and there was no evidence of a strong anti-harassment policy).

² See *Morgan v. Navy*, EEOC Appeal No. 01972175 (February 3, 2000) (management is not obligated to take prompt remedial action until it becomes aware of the harassment).

Disability Hiring Hindered by Negative Attitudes¹

Today, there are more than 54 million Americans living with a disability, representing a full 20 percent of the U.S. population. The Office of Personnel Management reports that the Federal Government has been trying to increase the representation of individuals with disabilities for at least a decade. But in that time, representation for this group has increased one-tenth of a percent, from 6.7 percent to 6.8 percent of the federal workforce.

The biggest obstacles for individuals with disabilities entering the civil service, according to an article in the *FEDERAL EEO Advisor*, is getting hired, not their ability to do the job or the agencies' ability to accommodate their needs. "It's not the disability that's the barrier, it's the culture and environment," said a disability expert and former senior policy analyst for the previous administration's Presidential Task Force on Employment of Adults with Disabilities.

In an effort to remove barriers to community living for people with disabilities, President Bush announced the *New Freedom Initiative* (Executive Order 13217) on February 1, 2001. The *New Freedom Initiative* is a comprehensive plan that represents an important step in working to ensure that all Americans have the opportunity to learn and develop skills, engage in productive work, make choices about their daily lives and participate fully in community life. The *Initiative's* goals are to: i) increase access to assistive and universally designed technologies; ii) expand educational opportunities; iii) promote homeownership; iv) integrate Americans with disabilities into the workforce; v) expand transportation options; and, vi) promote full access to community life.

The *Initiative's* specific proposals that directly involve HHS include: promoting full access to community life through swift implementation of the *Olmstead* Supreme Court decision; integrating Americans with disabilities into the workforce through swift implementation of the Ticket to Work and Work Incentives Improvement Act of 1999; and the creation of the New Freedom Commission on Mental Health.

¹ For more information on the President's New Freedom Initiative visit the Disability link on the OEOCR Web Page (<http://cmsnet.cms.hhs.gov/hpages/oecr/Disability.htm>).

CMS to Host DHHS Managerial Forum

As a lead event for Department of Health and Human Services' (DHHS) 2002 Hispanic Heritage Month observances, the Centers for Medicare & Medicaid Services will host the 2nd Annual Forum on Hispanic Employment Issues. The Forum will be held on Tuesday, September 17, 2002, from 8:30 a.m. to 12:00 p.m. at the CMS headquarters in Baltimore, Maryland. Supervisors and managers will have the opportunity to share lessons learned and successful initiatives in addressing the low representation of Hispanics in HHS.

As reported in the Office of Personnel Management's annual Federal Equal Opportunity Recruitment Program report as of September 30, 2000, Hispanic employees represented 6.6 percent of the permanent federal workforce, compared to 11.8 percent in the civilian labor force. Hispanic representation is 3.1% at DHHS and 4.1% at CMS.

Job Fairs & Conferences

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|--|---|
| Federal Dispute Resolution Conference http://www.fdr-conference.org | Palm Springs, CA August 18-22 |
| Abilities Expo www.abilitiesexpo.com | Rosemont, IL August 16-18 |
| Annual Blacks In Government National Training Conference http://www.bignet.org/ | Atlanta, GA August 25-30 |
| EXCEL Multi Day Seminar for Federal Employees http://www.eeoc.gov/outreach/taps-35.html | Atlantic City, NJ August 26-30 |
| 19th Annual U.S. Hispanic Leadership Conference http://www.uskli.com/abouttheconf.asp | Chicago, IL September 18-22 |
| International Latino Women's Congress, Inc., Annual Conference and Exhibition www.ilwcinc.com | San Juan, PR September 25-27 |
| U.S. Hispanic Chamber of Commerce Annual Convention and Business Expo http://www.ushec.com/ | Los Angeles, CA October 16-19 |

OEOCR Staff Updates



Annia S. Feliciano Flores is a new staff member to OEOCR where she serves as an Equal Employment Opportunity Specialist. Ms. Feliciano received her Juris Doctor from Interamerican University of Puerto Rico School of Law, BBA degrees in Human Resources

Management and Finance and is an Attorney at Law and Notary Public in Puerto Rico.

Prior to CMS, Ms. Feliciano worked for a small private law firm in Puerto Rico specializing in labor law and torts. She also served as Director of Action for the National Women Law Students' Association.

Disability Awareness Training Conference

CMS will host the 16th Annual Baltimore Federal Executive Board (FEB) Disability Awareness Training Conference at the Baltimore Headquarters. The conference will be held in the Main Auditorium on Wednesday, October 30, 2002 from 8:30 a.m. to 3:15 p.m.

This marks the first time that CMS has hosted this conference. The FEB Disability Committee has planned this one day, cost effective training experience to offer timely information and provide strategies for disability related issues in the workplace. Sessions will include recent EEO decisions, Americans with Disabilities Act case law, recent progress in building and workplace accessibility, and best practices in Alternative Dispute Resolution.

Also, the FEB will award Training and Education Assistance Grants to two Baltimore graduating high school students with disabilities.

Those who should attend include; managers, supervisors, health care specialists and analysts, special emphasis committee members and all CMS employees. The cost for the conference attendees is \$25.

For further information, contact FEB at (410) 962-4047 or email <http://www.baltfeb@aol.com/>.

CALENDAR OF EVENTS

2002 WOMEN'S EQUALITY DAY

CMS AUDITORIUM
THURSDAY, AUGUST 22, 1:30 PM

2ND ANNUAL FORUM ON HISPANIC EMPLOYMENT ISSUES

CMS AUDITORIUM
TUESDAY, SEPTEMBER 17, 8:30 AM

2002 HISPANIC HERITAGE MONTH

CMS AUDITORIUM
TUESDAY, SEPTEMBER 24, 1:30 PM

2002 DISABILITY AWARENESS MONTH

CMS AUDITORIUM
WEDNESDAY, OCTOBER 16, 1:30 PM

FEB ANNUAL DISABILITY AWARENESS TRAINING CONFERENCE

CMS AUDITORIUM
WEDNESDAY, OCTOBER 30, 8:00 AM

CenterPage

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