

CenterPage

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Office of Equal Opportunity and Civil Rights

Centers for Medicare & Medicaid Services



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Spring 2004

The New Generation at Work



Lynn Strange, Office of OEOCR, leads the *New Generation at Work Walk*.

On April 22, CMS joined Federal agencies, schools and businesses across the country to help promote the dreams and goals of young citizens with a day's exposure to work life. The annual "Take Our Daughters And Sons To Work Day" brought together over 100 children to the Baltimore campus.

This year's theme was Today's Vision, Tomorrow's Reality and the planned activities were designed to help the children think now about their dreams for the future, understand how work fits into their daily lives and introduce a variety of potential job opportunities. Children, ages 8-16, assembled in the Multi-purpose room for most activities, including hands-on demonstrations with the Port Discovery Children's Museum and the Office of Equal Opportunity & Civil Rights. The "vendors" at the New Generation at Work Fair included the recruitment staff of the Office of

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Archived Issues of CenterPage

<http://cmsnet.cms.hhs.gov/hpages/oecr/CenterPage.htm>

Holocaust Memorial Program

This year's annual Holocaust Memorial Program, held on Wednesday, April 21, 2004, at 11:00 a.m. in the Auditorium, provided a musical tribute to the Sephardic heritage and culture of Yugoslavian Jews. Sephardic Jews trace their ancestry to the Jews expelled from Spain and Portugal in the 15th century, many of whom subsequently settled in other Mediterranean countries but preserved their native language, called Ladino.

David Greenberg, Center for Medicare Management and Chair of the Holocaust Memorial Program Committee, opened the program with remarks that included background information of the Agency's annual observances and the basis for memorial programs world-wide.

Guest speakers included Rabbi Elan Adler, of the Moses Montefiore Anshe Emunah Hebrew Congregation provided eye witness accounts of Holocaust experiences and concluded, "We mourn for six million of our people brutally destroyed by civilized people behaving like savages..." Rabbi Adler also led the Mourner's Kaddish (prayer).



Photograph by David Snowden, CMS, Public Affairs Office

Susan Feltman Geta and Flory Jagoda performing songs of the Sephardim

Jacqueline Gordon, Office of Financial Management and a Holocaust Memorial Committee member, introduced Flory Jagoda, the keynote presenter and her apprentice, Susan Feltman Gaeta.

Stating that she would take the CMS audience "back home" with her, Ms. Jagoda narrated photo slides of her family and the places they lived in Bosnia. This narrative provided powerful context to her family history and the Ladino culture.

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

Women's History Month



Judge Lynne A. Battaglia

On March 17, 2004, CMS celebrated Women's History Month with a program in the CMS Auditorium. The theme for the 2004 Women's History Month was "Women Inspiring Hope and Possibility."

Meredith Robertson, Chairperson of the Federal Women's Advisory Committee, welcomed the attendees and introduced

the video "Leading the Way," created by Diane Hall, a Visual Information Specialist in the Visual and Multimedia Communications Group. This short video featured Leslie Norwalk, Deputy Administrator, and other CMS employees discussing the women in their lives who inspired them. These inspirational models ranged from mothers, teachers, friends and relatives to renowned women, such as, Maya Angelou, Julia Child, Shirley Chisholm, Grace Jones, Barbara Jordan, Billie Jean King, Eleanor Roosevelt, and Gloria Steinem.

Brenda Sykes, Deputy Director, Office of Operations Management introduced the guest speaker, the Honorable Lynne A. Battaglia of the Maryland Court of Appeals, 3rd Appellate Circuit. Judge Battaglia received her Juris Doctor degree in 1974 from the University of Maryland Law School and she continued to teach there as an adjunct faculty member. She began her legal career in 1974 at the Baltimore law firm of Semmes, Bowen & Semmes. In 1991 she was recruited to become the Chief of Staff to United States Senator Barbara A. Mikulski. In 1993 she was appointed and confirmed by the United States Senate, to serve in the position of United States Attorney for the District of Maryland until 2001 when she was nominated by former Governor Parris Glendening, confirmed by the Maryland Senate, and sworn in on January 26, 2001 to become a Maryland Court of Appeals Judge.

In her remarks, Judge Battaglia told the audience that she has been in Federal service for most of her career and was one of 24 U. S. Attorneys. She stated that she is the third woman to serve on the Maryland Appellate Courts since 1638. "To succeed," she said, "women must believe in themselves and stand on the shoulders of the women who have come before them. In turn, women must mentor other women." Women professors encouraged her to go to law school and ultimately, she became one of the first women lawyers at Semmes, Bowen & Semmes. The firm gave her opportunities which allowed her to break through the "glass ceiling."

Relating to the theme, she said that the greatest role model in her life is Senator Barbara Anne Mikulski (D-MD). Senator Mikulski, a Maryland Democrat, became the first Democratic woman elected to the Senate without previously filling an un-expired Congressional term, and the first woman to hold the position of Secretary to the Senate Democratic Conference in the 104th Congress.

Judge Battaglia emphasized that women in the Federal service have the opportunity to make the lives of other people better and they should give back to the community. She said women have a long way to go; but, if they work together and stand on the shoulders of other women, they can make the way much shorter.

The New Generation at Work

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Glenn Smith, OEOCR, introduces Wendy Blackwell, Education Director of Port Discovery

Maryland State Police, Baltimore County Police and a Computer Lab arranged by the Office of Information Systems. Additional activities included the New Generation at Work Walk, led by Lynn Strange, OEOCR and Lydia Smith, OOM; tours to the Administrator's Office, TV Studio, and the Auditorium control center. The day's events concluded with an informal, Meet, Greet and Learn video-conference with the Boston, New York and Chicago regional offices.



Debbie Mason of Port Discovery helps children make their personal "Shrink-A-Dinks"

Speaking from his Washington, D.C. office, via video-conference, Dr. Mark McClellan, CMS Administrator welcomed the "new generation at work" to the Baltimore headquarters. Dr. McClellan shared with the children that he was new to his job at CMS and described his duties. He also shared stories of his family, specifically his relationship with his 5-year old twin daughters. Concluding, the Administrator gave the children their charge, "Today is a day that we set aside to spend with you, the *New Generation at Work*. So, have fun and learn as much as you can about CMS as you build on your dreams for the future."

Wendy Blackwell, Education Director at Port Discovery, immediately followed the remarks of the Administrator. She further emphasized how the day's activities would help them to "discover" more things about themselves. With the style of a

seasoned schoolteacher, Ms. Blackwell challenged the students to learn and make good decisions in their lives.



CMS Recruiter Leslie Knight introduces qualification for employment



Ed Harris, Office of Operations Management, demonstrates equipment of the auditorium

Holocaust Memorial Program

During the photo narrative, she may have indicated the origins of her musical talents when she introduced her mother, Rosa, who as she stated, "...was way ahead of her time because she played a guitar." She shared the story of her first musical instrument—the harmonica (accordion)—that she received at the age of 8 or 9. Her family prepared to flee Bosnia in 1941 after the occupation by the German army. Traveling alone, her father instructed her, "not to speak one word" to the other travelers, "just play your harmonica." She said that she sat in the compartment of the train and played all the songs she had learned. Hearing her play, the conductor came to sit beside her and began to sing along with her, never even asking for her ticket. At the end of her story she paused to say, "...the harmonica really saved my life."

Ms. Jagoda and Ms. Gaeta played and sang several selections, as Ms. Jagoda explained the significance of each. "Wherever Sephardim settled, they used the rhythm of that region. All the songs are in Ladino, but the rhythms are from the Balkans." Before her last song, she stressed the importance of continuing tradition. "These are songs, these are stories that we cannot forget. The next generation will carry on these stories, and for us in the music world, we should add these stories to our repertoire."



Mrs. Jagoda narrates family history and the Ladino culture

She cited the CMS Holocaust program as an example of remembering the stories.

In keeping with CMS tradition, the children's choir from the Krieger Schechter Day School concluded the program with "songs of hope."

This event was broadcast live to all Regional Offices via video-conference and a video tape is available at the CMS Library or the Office of Equal Opportunity & Civil Rights.



Rabbi Adler lights candle during Mourner's Kaddish



Sally Grobani leads Krieger Schechter Day School students during the program

¹EEOC Finds Improper Requests for Medical Documentation is Discrimination

In *Vindiola v. USPS*, EEOC Appeal No. 07A20046 (September 16, 2003), the EEOC found that the US Postal Service discriminated against the employee in violation of the Rehabilitation Act when it improperly requested medical documentation regarding the employee's mental health.

In December 1998, the employee suffered a grand mal seizure while at work. Thereafter, on numerous occasions, the employee and his health care practitioners provided medical documentation concerning his seizures to the agency's medical consultant. The medical documentation provided to the agency concerning the employee's seizures stated that the employee could return to work with a few restrictions. Nevertheless, the agency repeatedly asked for medical documentation concerning the employee's mental health. Because the employee refused to provide unlimited documentation concerning his mental health, the agency stated that he was not permitted to return to work.

At the EEOC hearing, the Administrative Judge found that the agency discriminated against the employee by seeking medical information regarding his mental health and not permitting him to return to work until he did so. The agency did not accept the EEOC judge's decision and appealed to the EEOC's Office of Federal Operations. On appeal, the agency argued that the judge's decision, if allowed to stand, would serve to preclude employers from asking if an employee is medically capable of doing his job without facing liability for perceiving their employee's as being disabled. On appeal, the EEOC reversed the agency's decision and upheld the judge's decision finding disability discrimination.

The EEOC stated that an employer is permitted to make disability-related inquiries or require medical documentation only if the inquiry is job-related and consistent with business necessity. (See 29, C.F.R. § 1630.14(c)). This requirement can be met when the employer has a reasonable belief (based upon objective evidence) that an employee's ability to perform essential job functions is impaired by the medical condition or the employee poses a direct threat due to the medical condition. In this case, the EEOC held that the US Postal Service's requests for medical documentation regarding the seizures were job-related and consistent with business necessity. Specifically, the EEOC held that the agency's initial inquiries about his seizures were reasonable given that the employee had a seizure at work and lost consciousness. As a result, the agency had a reasonable belief that the employee might pose a direct threat to himself or others. The EEOC noted that the employee's neurologist had provided enough information concerning the seizure condition for the agency to reasonably conclude that the employee did not pose a direct threat to himself or others. However, the EEOC went on to rule that the agency's requests for medical documentation concerning the employee's mental health were not allowed under the Rehabilitation Act, because the employee had already provided sufficient information for the agency to conclude the employee was not a direct threat to himself or others.

For relief, the EEOC awarded the employee reinstatement with back pay, and retroactive seniority and benefits, compensatory damages and reimbursement of attorney fees and costs.

¹ Federal Legal Corner, Wednesday, April 28, 2004, provided by the attorneys at Passman & Kaplan, P.C.

Safeguarding Medical Information

Recent EEOC decisions related to confidentiality of medical information:

Shaw v. Department of Transportation, EEOC Appeal No. 01A30273 (March 11, 2004) The Director's disclosure to complainant's co-worker that complainant was using sick leave and working-at-home did not constitute disclosure of confidential medical information. However, the Director's disclosure to complainant's co-worker that complainant has been diagnosed with diabetes did violate the Rehabilitation Act's prohibition against the release of confidential medical information (disclosing complainant medical condition).

Patterson v. Department of the Air Force, EEOC Appeal No. 07A20128 (December 22, 2003) The agency's EEO Counselor disclosed complainant's disability to management while counseling another employee's informal complaint. This disclosure violated the Rehabilitation Act's prohibition against the release of confidential medical information.

Andrews v. United States Postal Service, EEOC Appeal No. 01A24085 (December 22, 2003) By allowing the administrative assistant to the Postmaster access to the complainant's medical records the agency violated the Rehabilitation Act. Only the Postmaster, the shop steward, and complainant's supervisor should have had access to her medical records.

Gianikos v. United States Postal Service, EEOC Appeal No. 01A21992 (October 16, 2003) Complainant's supervisor wrote an evaluation of the complainant in which he stated that he "would not recommend [complainant] for hire unless his medical condition was resolved." The EEOC found the contents of the evaluation in violation of the Rehabilitation Act by disclosing complainant's medical diagnosis.

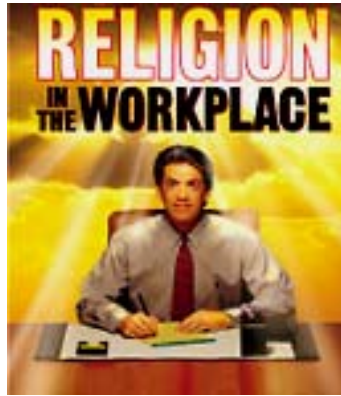
Forde v. United States Postal Service, EEOC Appeal No. 01A12670 (October 9, 2003) A letter from the agency's doctor to complainant's immediate supervisor inappropriately disclosed confidential medical information. The agency doctor stated in the letter that "Complainant has a history of rheumatic heart disease with valvular involvement for which she receives prophylactic medication." By providing the supervisor with complainant's medical diagnosis, the doctor violated the Rehabilitation Act.

Higgins v. Department of the Air Force, EEOC Appeal No. 01A13571 (May 27, 2003) Complainant's supervisor placed a letter from complainant's doctor in his work folder. The letter stated that "I had asked that [complainant] take a temporary leave of absence due to work-related stress. He is now doing well enough that I am asking that he be allowed to return to work as of June 1, 1998...with no restrictions." Later, complainant was transferred to another supervisor, and the new supervisor requested his work folder, which contained the doctor's letter. EEOC found the presence of the doctor's letter in the work folder a violation of the Rehabilitation Act in that it documented complainant's diagnosis, work-related stress, which is confidential medical information and such information is not permitted in a non-medical file. Also, there was no need for the new supervisor to be made aware of the diagnosis for a prior medically-related leave of absence.



Courts Address Religious Accommodations¹

In two recent cases, Federal courts have addressed competing tensions between an employer's duty to embrace workplace diversity and an employee's right to exercise religious freedom. In both cases, employees were fired; the courts allowed one termination, but not the other.



In *Peterson v. Hewlett Packard Co.*, 358 F.3d 599, 92 FEP Cases 1761 (9th Cir. 2004), Hewlett Packard ("HP") posted diversity posters embracing workplace diversity, specifically mentioning "gays." Peterson asked to have the posters removed because they offended his religious beliefs, but HP refused to do so. Peterson felt that his religious tenants required him to oppose HP's "condoning" of sexuality and thus he posted biblical passages in public areas. HP ordered him to remove the scriptures and he refused, knowing that he would be fired.

The court found that Peterson's termination was legal and reasoned that HP's diversity campaign sought to increase tolerance of diversity, a goal consistent with federal civil rights statues which prohibit sexual and same-sex discrimination. HP managers "acknowledged the sincerity of Peterson's beliefs and insisted that he need not change them. They did not object to Peterson's expression of his anti-gay views..." HP "simply requested that he remove the posters and not violate the company's harassment policy--a policy that was uniformly applied to all employees."

In contrast, the Colorado District Court found AT&T Broadband violated civil rights laws when it terminated an employee who refused to sign the corporate handbook. *Buonanno v. AT&T Broadband*, Case No. 02-MK-778 (April 2, 2004) (J. Krieger). Like Peterson, Buonanno maintained religious beliefs that forbade him from condoning behavior or values that are repudiated by scripture. AT&T required Buonanno to sign a certificate stating that he would abide by its employment policies, which included an affirmative requirement to "value" the differences among the diverse workforce.

Buonanno did not object to treating all employees with respect and professionalism, but he could not agree to "value" beliefs that were inconsistent with his religious tenets, as doing so would require him to deny his own faith. AT&T fired Buonanno, and the trial court found the termination to be religious discrimination.

AT&T failed to inquire as to why Buonanno would not sign the handbook, did not try to accommodate Buonannos' religious beliefs, and did not try to evaluate whether the policy and Buonanno's beliefs could be reconciled. Buonanno was presented with only two choices - sign the statement without clarification or modification, or be fired.

An employer can terminate an employee for his religious beliefs only when religious accommodations would be unduly burdensome for the employer. Such was the case with Peterson, as his positings were harassing to other HP employees. However, AT&T could have accommodated Buonanno simply by making a minor change to the diversity language. Buonanno objected to a literal interpretation of the requirement that he "value" particular behavior and beliefs of co-workers, yet he was willing to "value that there are differences among all of us" which was consistent with AT&T's diversity goals and would not impose any hardship on AT&T.

¹ This information is provided by the attorneys at Passman & Kaplan, P.C., a law firm dedicated to the representation of federal employees worldwide.

EEO Training for May through July

The Centers for Medicare & Medicaid Services (CMS) is committed to maintaining a high standard of conduct in the work place and to providing a work environment free from employment discrimination based on race, color, national origin, religion, sex, age, disability and retaliation. In carrying out this commitment, CMS must assure that all employees, managers and supervisors understand EEO laws, policies and programs.

Accordingly, the Office of Equal Opportunity and Civil Rights (OEOCR) contracted with Martin-Miser & Associates and Woodard & Associates to provide training for all CMS employees. These training courses inform CMS employees and managers of their statutory rights and responsibilities under several laws, including Title VII of the Civil Rights Act, the Age Discrimination in Employment Act, and the Rehabilitation Act. Managers are also responsible for assuring that employees under their supervision attend.

EEO IN THE WORKPLACE

Tuesday, May 25	9:00 am - 12:00 noon	Room 107A
Tuesday, June 15	9:00 am - 12:00 noon	Room 107A
Tuesday, June 15	1:00 pm - 4:00 pm	Room 107A

SEXUAL HARASSMENT PREVENTION

Thursday, June 3	1:00 pm - 4:00 pm	Room 107A
Tuesday, July 27	1:00 pm - 4:00 pm	Room 106

Office of Equal Opportunity & Civil Rights Staff



Top: Michael Katz, Annia Feliciano-Flores, Gloria Potocek, Rod Locklear, Brian Sutherland, Clara Carter **Middle:** Ramón Surís Fernández (Director), Llaurny Iglehart-Howard, Michele Lenkiewicz, Betty Spencer, Cynthia Parker, Richard Torres-Estrada, Glenn Smith **Seated:** Glenn Locklear, LaTrina Scott, Patricia Lamond (Deputy Director), Angela Davis-Putty, Tana Hicks, Tony Oh. *Not available for photo:* Lynn Strange and Tracey Therit

CenterPage

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