



SOCIAL SECURITY


MEMORANDUM

Date: February 10, 2003

32288-77-832

Refer To: S7E

To: All SSA Employees

From: Reginald F. Wells 
Deputy Commissioner
for Human Resources

Subject: Social Security Administration's (SSA) Policy Prohibiting Discrimination Against Employees and Applicants for Employment--ACTION

SSA has always followed the principle of non-discrimination. Attached is the Agency's policy prohibiting discrimination. To assist you in obtaining technical advice and guidance in interpreting and applying the policy, lists of contact persons can be found on pages 7 and 8 of the policy statement.

SSA should select, promote and train employees solely on the basis of their experience, knowledge, skills and abilities; reward employees only for their performance; and discipline employees based on their behavior. Creating and maintaining an environment that is free from discrimination and harassment will help us to attract outstanding employees, motivate them and inspire their loyalty.

I know that I can count on you to join me in supporting the principles embodied in this policy.

Attachment

THE SOCIAL SECURITY ADMINISTRATION'S POLICY PROHIBITING DISCRIMINATION AGAINST EMPLOYEES AND APPLICANTS FOR EMPLOYMENT

It is the Social Security Administration's (SSA) policy to ensure that every employee enjoys a non-hostile work environment free of discrimination or harassment of any kind. All employment decisions; such as hiring, promoting, training and rewarding, will be made exclusively on the basis of job-related criteria; e.g., employees' knowledge, skills, abilities and performance. Disciplinary actions will be taken solely on the bases of employees' behavior and performance. Discrimination of any kind based on race, color, religion, sex, sexual harassment, national origin, age, handicap, sexual orientation, reprisal, marital status, political affiliation, parental status or non-job-related conduct is forbidden and subject to appropriate disciplinary action. SSA is proud of its record in providing equal employment opportunity to all and will pursue the elimination of any vestige of discrimination by every means at its disposal.

RACE

Discrimination based on race is prohibited by Title VII of the Civil Rights Act of 1964. Racial discrimination occurs when persons are treated differently than others who are similarly situated because they are members of a specific race; e.g., White, Black, Asian, etc. Examples of employees who are similarly situated may be those working in the same position and grade, the same component, or under the same line of supervision.

Racial discrimination also occurs when persons are treated differently because of unalterable characteristics; e.g., physical features indigenous to their race. Courts have held that racial discrimination in employment can also occur when employees are treated differently because of their interracial dating or marriage, or their membership in racially oriented groups.

COLOR

Title VII of the Civil Rights Act of 1964 prohibits discrimination based on color. This type of discrimination occurs when persons are treated differently than others who are similarly situated because of the color of their skin. Color discrimination can occur together with race discrimination, but may also occur between members of the same race.

RELIGION

Discrimination based on religion is prohibited by Title VII of the Civil Rights Act of 1964. In defining religious discrimination, the United States Supreme Court held that religion is not limited to Orthodox or well recognized denominations; e.g., Catholic, Baptist or Judaism. All that is required is a sincere and meaningful belief equivalent to the belief in God held by the more well recognized religions. Atheists are also protected.

Religious discrimination can occur in two ways. The first is by treating employees or applicants for employment differently because of their religion. The second occurs when an employment rule or policy violates a fundamental belief, principle or practice of one's religion and management fails to provide an accommodation. Religious practices are not limited to worship, but may include attendance at meetings and retreats, or the wearing of certain attire.

Management's obligation to accommodate begins when the employee notifies them of the need for an accommodation. Once notified, management should consider alternatives and offer one which would not create an undue hardship for the Agency or disadvantage other employees. Undue hardships are determined on a case-by-case basis.

SEX

Discrimination based on sex is prohibited by Title VII of the Civil Rights Act of 1964. Sex discrimination may occur in two ways. The first is a policy or practice which treats similarly situated men or women differently from the opposite gender. The second occurs when a gender-neutral policy or practice has a disproportionate adverse effect on one of the genders.

SEXUAL HARASSMENT

Sexual harassment is a form of sex discrimination and is prohibited by Title VII of the Civil Rights Act of 1964. In 1980, the Equal Employment Opportunity Commission issued guidelines defining sexual harassment as unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when any of three criteria are met:

- o Submission to the conduct is made either explicitly or implicitly a term or condition of employment;
- o Submission to or rejection of the conduct is used as a basis for employment decisions; or
- o The conduct has the purpose or effect of unreasonably interfering with work performance or creating an intimidating, hostile or offensive working environment.

Sexual harassment may be verbal or physical, exhibited by a man to a woman, by a woman to a man, or within the same gender. Examples of behaviors which could constitute sexual harassment are touching, sexual innuendo, suggestive comments, threats, and nude or sexual pictures, cartoons or calendars, etc.

NATIONAL ORIGIN

Discrimination based on national origin is prohibited by Title VII of the Civil Rights Act of 1964. National origin discrimination includes that based on an individual's or his or her ancestors' place of origin, or physical, cultural or linguistic characteristics. Other examples include discrimination based on marriage to, or association with, persons of a national origin group; attendance or participation in schools or religious organizations used by a national origin group; and an individual's or spouse's name which is associated with a national origin group. Requiring employees to speak English at all times, including breaks and lunch periods, is an example of an employment practice that discriminates against persons whose primary language is not English.

AGE

Discrimination based on age is prohibited by the Age Discrimination in Employment Act of 1967. For Federal employees, the protected age group is age 40 and above, with no upper age limit. Age discrimination also occurs among age groups who are over age 40; e.g., the selection of a 45-year old candidate may appear to be discriminatory to 55-year old candidates if it can be shown that management has never selected a candidate at or above age 55.

Excluding older employees from training opportunities, denying them special work assignments which would give them experience for promotions or awards, and attempting to persuade or influence them to retire are other examples of age discrimination.

DISABILITY

Discrimination based on disability is prohibited by the Rehabilitation Act of 1973 and the Americans with Disabilities Act of 1990. Disability discrimination can occur in two ways. The first occurs when employees or applicants are treated differently on the basis of their physical or mental disabilities. The second occurs when management fails to make reasonable accommodation for the disabling condition(s).

A person with a disability is defined as one who has a physical or mental impairment which substantially limits one or more major life functions; e.g., walking, speaking, breathing, learning, etc.; one who has a record of such, or one who is regarded as having a disability.

Management must make reasonable accommodation to the known physical or mental limitations of qualified applicants or employees with disabilities unless the accommodation would impose an undue hardship upon the Agency. Qualified persons with disabilities are those who, with or without accommodation, can perform the essential elements of the job. Otherwise qualified applicants with disabilities may not be rejected for employment on the grounds that reasonable accommodation would have to be made.

Reasonable accommodation can include modifying job-related procedures, tasks or requirements (other than critical generic job tasks), adjusting the employee's work schedule, altering the physical work space, providing special equipment, providing readers for the visually impaired, interpreters for the hearing impaired, etc. Medical proof of disability is usually required when an employee requests an accommodation. The reasonableness of the accommodation and the creation of undue hardships are determined on a case-by-case basis.

The complete policy statement on reasonable accommodation, the criteria for evaluating requests and the procedures for obtaining equipment, readers, interpreters and personal assistants may be found in the *SSA Procedures for Providing Reasonable Accommodation for Persons with Disabilities* that is posted on the Office of Civil Rights and Equal Opportunity website at <http://cofp.ba.ssa.gov/ocreo> and in the SSA Administrative Instructions Manual System, Chapter 19, Instruction 01.

SEXUAL ORIENTATION

Discrimination based on sexual orientation is directed at persons who are gay, lesbian, bisexual or transgender, who are perceived to be gay, lesbian, bisexual or transgender or who associate with persons who are gay, lesbian, bisexual or transgender. This may take the form of harassment or treatment that is different than that afforded similarly situated employees or applicants.

To address sexual orientation discrimination, employees may contact an equal employment opportunity (EEO) counselor. Employees' right to address sexual orientation discrimination derives from Agency policy, not from Equal Employment Opportunity Commission (EEOC) regulations which govern other types of discrimination complaints processing. If counseling does not lead to a resolution, complainants will be told in writing of their right to file a formal complaint and given the procedure for doing so. Following an EEO investigation, the

Associate Commissioner for Civil Rights and Equal Opportunity makes the final Agency decision on the complaint. Unlike complaints based on other forms of discrimination, sexual orientation complainants do not have appeal rights to EEOC.

REPRISAL

Discrimination based on reprisal is prohibited by Title VII of the Civil Rights Act of 1964. Reprisal occurs when employees are treated differently because they are, or were, involved in a protected EEO activity; e.g., seeking or participating in EEO counseling, providing testimony in an EEO investigation or at an EEO hearing, filing a discrimination complaint, or speaking out against discriminatory activities.

PARENTAL STATUS

Executive Order 13152 states explicitly that discrimination based upon an individual's status as a parent is prohibited within the Executive Branch of the Federal Government. The Executive Order adds parental status to the list of categories for which discrimination is prohibited. The other categories are race, color, religion, sex, national origin, handicap, age, sexual orientation, marital status, political affiliation and conduct not adversely affecting employee performance.

The Executive Order is designed to prevent intentional discrimination against employees solely because they are parents. It is not designed to place other employees at a disadvantage or to give parents preference.

The Executive Order refers to "status as a parent" as the status of an individual who, with respect to an individual who is under the age of 18, or who is 18 or older but is incapable of self-care because of a physical or mental disability, is: a biological parent; an adoptive parent; a foster parent; a stepparent; a custodian of a legal ward; *in loco parentis* to such an individual; or actively seeking legal custody or adoption of such an individual.

A person stands "in loco parentis" when he or she has day-to-day responsibility to care for and financially support a child. A biological or legal relationship is not necessary. The Executive Order does not cover a person who simply provides daily childcare to a family.

If you believe you have been discriminated against on the basis of parental status, under certain circumstances, you may seek assistance from the Merit Systems Protection Board, Office of Special Counsel; negotiated grievance procedure; equal employment opportunity (EEO) discrimination complaints process; or your first-line supervisor or someone higher in your chain of management. For more information on this topic, see the January 29, 2002 memorandum entitled "Social Security Administration's Policy Prohibiting Discrimination Based on Parental Status" posted on the Office of Civil Rights and Equal Opportunity website at <http://cofp.ba.ssa.gov/ocreo>

MARITAL STATUS

Discrimination based on marital status is prohibited by the Code of Federal Regulations, 5 CFR 720.901. This type of discrimination occurs when management demonstrates a preference for employees or applicants who are married or single. An example would be

assuming that married employees have family responsibilities which limit their ability to travel, and hiring only those applicants who are known to be single for a job requiring much travel.

POLITICAL AFFILIATION

The United States Code, 5 USC 2302, prohibits discrimination based on political affiliation. Discrimination based on political affiliation occurs when management demonstrates a preference for, or aversion to, employees or applicants belonging to a particular political party or having associates with connections to a particular political party. An example might be hiring only those applicants, and promoting only those employees, known to be members of a given party during a period when that party heads the administration.

NON-JOB-RELATED CONDUCT WHICH DOES NOT ADVERSELY AFFECT THE PERFORMANCE OF EMPLOYEES AND APPLICANTS FOR EMPLOYMENT

The Civil Service Reform Act of 1978 prohibits discrimination on the basis of non-job-related conduct which does not adversely affect the performance of employees or applicants for employment. SSA's policy prohibits employees who are authorized to take, direct others to take, recommend, or approve any personnel action from discriminating on the basis of non-job-related conduct. Authorized employees are held responsible for the prevention of prohibited personnel practices, as well as for compliance with, and enforcement of, all applicable civil service laws, rules and regulations.

Applicants and employees are protected from inquiries into, or actions based upon, non-job-related conduct; e.g., religious, community or social affiliations, or sexual orientation. They are also protected from any infringement of due process, self-incrimination or other constitutional rights. However, applicants competing for positions may receive credit for paid or unpaid religious, civic, welfare, service and organizational work which demonstrates possession of the knowledge, skills or abilities needed to perform the duties of the positions being filled.

In determining the suitability or fitness of an employee or applicant, this policy does not prohibit SSA managers from taking into account the employee's or applicant's conviction for any crime under the laws of any state, the District of Columbia or the United States.

MAINTAINING A NON-HOSTILE WORKPLACE FREE OF DISCRIMINATORY HARASSMENT

EEOC regulation 29 CFR, Part 1614, Section 102 (a) (3) requires agencies to remove every form of prejudice or discrimination from personnel policies, practices and working conditions. A hostile work environment allows ridicule, abuse, insults or derogatory comments that are directly or indirectly based on race, color, national origin, sex, sexual harassment, religion, age, handicap, sexual orientation, reprisal, marital status, political affiliation or parental status. It is further defined as an offensive or intimidating environment that unreasonably interferes with work performance or that otherwise adversely affects employment opportunities. Personal conversations that can be overheard by other employees who consider the conversation offensive can also create a hostile environment.

Management is responsible for maintaining a non-hostile work environment and can be held accountable for, not only their behavior, but that of their employees. If an employee makes abusive or derogatory comments of the type noted above to another employee and the matter comes to management's attention, management must take prompt action.

Such allegations should be confirmed with the employees directly involved in the incident along with any witnesses who might have firsthand information. It is very important to demonstrate to concerned employees that the allegations are taken seriously and that management will not condone offensive behavior. Disciplinary or other remedial action should reflect management's findings during the course of the inquiry.

SSA will follow guidance regarding harassment established by the Equal Employment Opportunity Commission (EEOC) and standards regarding harassment set by the Supreme Court in two landmark decisions: *Burlington Industries, Inc. v. Ellerth* 118 S. Ct. 2257 (1998) and *Faragher v. City of Boca Raton*, 118 S. Ct. 2275 (1998). In these decisions, the Supreme Court made clear that employers are subject to vicarious liability for unlawful harassment by supervisors. Liability is premised on two principles: 1) an employer is responsible for the acts of its supervisors; and 2) employers should be encouraged to prevent harassment and employees should be encouraged to avoid or limit the harm from harassment.

Employees are responsible to come forward and report any behavior they view as harassment *before* it becomes severe or pervasive. While isolated incidents of harassment generally do not violate federal law, a pattern of incidents may be unlawful. Employees are also responsible to take advantage of any preventive or corrective opportunities provided by SSA or to otherwise avoid harm.

Managers have a responsibility to maintain a workforce environment that is free from harassment. When an employee complains to management about alleged harassment, management is obligated to investigate the allegation regardless of whether the complaint conforms to a particular format or is made in writing.

For more details on this topic, visit the Office of Civil Rights and Equal Opportunity's website at <http://cofp.ba.ssa.gov/ocreo> and click on "Harassment."

**CONTACT PERSONS FOR POLICY PROHIBITING DISCRIMINATION
AGAINST EMPLOYEES AND APPLICANTS FOR EMPLOYMENT**

Below is a list of subject matter experts in the Office of Human Resources and their telephone numbers and areas of expertise. These people can help you interpret SSA's policy prohibiting discrimination employees and applicants for employment. Additionally, they can provide technical guidance in applying the policy in specific cases.

| <u>Contact Phone Numbers</u> | <u>Subject Matter</u> |
|--|---|
| Complaints Processing Team Leader (410) 965-3593 | Race Color Religion Religious Accommodation Sex National Origin Age Handicap Parental Status Reprisal Non-Hostile Environment |
| Federal Women's Program Manager (410) 965-3604 | Sexual Harassment Sexual Orientation |
| Disability Services Team Leader (410) 965-7778 | Reasonable Accommodation for Employees with Disabilities |
| Personnel Policy Group Facilitator (410) 965-1062 | Non-Job-Related Conduct Marital Status Political Affiliation |

**CONTACT PERSONS FOR POLICY PROHIBITING DISCRIMINATION
AGAINST EMPLOYEES AND APPLICANTS FOR EMPLOYMENT**

Below is a list of the Regional Civil Rights and Equal Opportunity (CREO) Managers and the Office of Hearings and Appeals (OHA) CREO Manager. Contact them for technical guidance in interpreting and applying the policy on prohibiting discrimination against employees and applicants for employment.

| | | |
|---------------|---------------------|----------------|
| Boston | Linda Tuttle | (617) 565-2879 |
| New York | Joan Freeburn | (212) 264-4513 |
| Philadelphia | Agnes Sampson | (215) 597-1694 |
| Atlanta | Herb Sanabria | (404) 562-1393 |
| Chicago | Mary Gavin | (312) 575-6394 |
| Dallas | Emerson Lattimore | (214) 767-3036 |
| Kansas City | Wanda McIntosh | (816) 936-5720 |
| Denver | Jacqueline Johannes | (303) 844-7212 |
| San Francisco | Isaac Williams | (510) 970-8424 |
| Seattle | Ann Mohageri | (206) 615-2666 |
| OHA | B.J. Thomas | (703) 605-8777 |