Office of Diversity and Inclusion

Diversity@Work

November 2015

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Upcoming Events

November 2015

Native American Heritage Month
Military Family Month
National Family Caregivers Month

Veterans Day
National Veterans Day Ceremony
November 11; Arlington National Cemetery

National Family Week
November 23–29

Thanksgiving
November 26

ORM

Steps Toward Resolution

Alternative Dispute Resolution can help with resolving disputes. To file a discrimination or harassment complaint, you must contact the Office of Resolution Management at (toll free) 888-737-3361 within 45 calendar days of the date of the alleged discriminatory incident.

Training

Diversity News videos, produced by ODI and the VA Central Office Broadcast Center for your education initiative, are available on the ODI Web site.

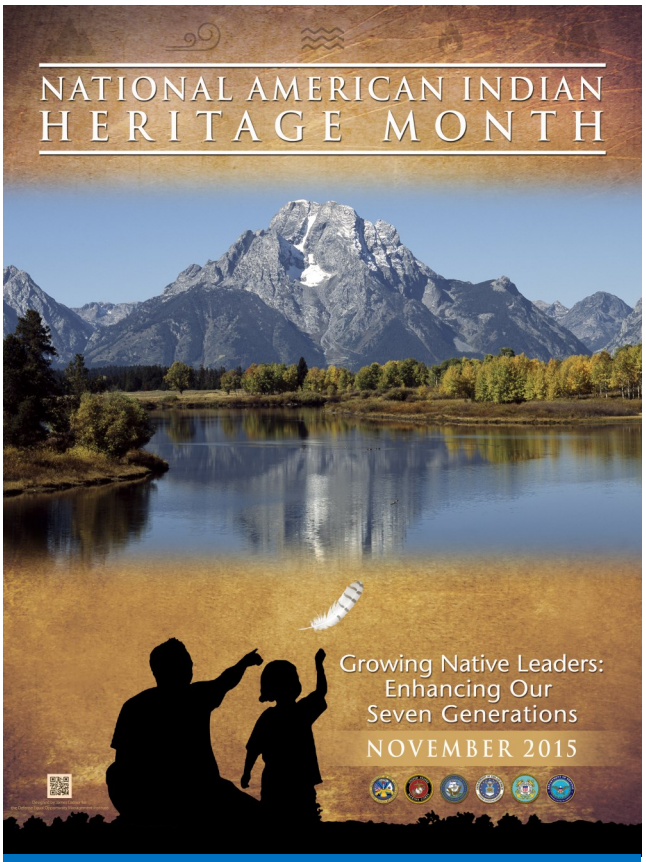
Message from the DAS

Georgia Coffey

The U.S. Department of Veterans Affairs (VA) is committed to maintaining a diverse workforce and inclusive work environment and to protecting First Amendment freedoms. As our Nation becomes increasingly diverse, so do the religious affiliations and belief systems of its citizens. VA must be mindful and respectful of the diverse belief systems and the First Amendment rights of all its employees, Veterans, stakeholders, and others in the conduct of VA business. With that in mind, the Office of Diversity and Inclusion (ODI) reminds employees of the policy on Religious Exercise and Expression in VA Facilities and Property Under the Charge and Control of VA. Read more on page 3.

VA recently hosted a briefing on Federal protections for the lesbian, gay, bisexual, and transgender (LGBT) community. The presentation, entitled "Employment Protections Against Sexual-Orientation Discrimination and Gender-Identity Discrimination in the Federal Sector," was moderated by Dan Vail, formerly of the U.S. Equal Employment Opportunity Commission, and Louis Lopez with the Office of Special Counsel. For more information on these protections, please visit ODI's LGBT Program Web page or contact Sterling Akins, VA's National LGBT Program Manager.

Finally, please join VA and the Nation in observing National Native American Heritage Month this November. American Indians and Alaska Natives (AI/AN) are important to our Nation's history and culture. We honor them and particularly AI/AN Veterans this month and always. Read more below.



DEFENSE EQUAL OPPORTUNITY MANAGEMENT INSTITUTE POSTER

Commemorate

National Native American Heritage Month

VA proudly pays tribute to the rich ancestry and traditions of American Indians and Alaska Natives (AI/ANs) by commemorating National Native American Heritage Month this November. This year's theme is "Growing Native Leaders: Enhancing Our Seven Generations." VA managers and supervisors are encouraged to support events and activities that recognize contributions of AI/ANs. VA Central Office will observe Native American Heritage Month on Thursday, November 19, 2015, in the G.V. "Sonny" Montgomery Veterans Conference Center, room 230, at noon. Ms. Stephanie Birdwell, Director, Office of Tribal Government Relations, will serve as this year's senior host. Ms. Jody L. TallBear, Esq., Strategic Initiatives and Policy Advisor, Office of Economic Impact and Diversity, Department of Energy, will serve as this year's keynote speaker. For more information about this event, contact Ms. Tynnetta Lee, Special Emphasis Observance Coordinator. (Continued on the next page.)

Commemorate

Veterans Day

VA joins the Nation in proudly saluting those who have served our Nation on Veterans Day, November 11. Information about the National Veterans Day Ceremony are online. From the 2014 Presidential Proclamation: *Since the birth of our Nation, American patriots have stepped forward to serve our country and defend our way of life. With honor and distinction, generations of servicemen and women have taken up arms to win our independence, preserve our Union, and secure our freedom. From the Minutemen to our Post-9/11 Generation, these heroes have put their lives on the line so that we might live in a world that is safer, freer, and more just, and we owe them a profound debt of gratitude. On Veterans Day, we salute the Soldiers, Sailors, Airmen, Marines, and Coast Guardsmen who have rendered the highest service any American can offer, and we rededicate ourselves to fulfilling our commitment to all those who serve in our name...Today, we are reminded of our solemn obligation: to serve our Veterans as well as they have served us. As we continue our responsible drawdown from the war in Afghanistan and more members of our military return to civilian life, we must support their transition and make sure they have access to the resources and benefits they have earned...As a Nation, we must ensure that every Veteran has the chance to share in the opportunity he or she has helped to defend. Those who have served in our Armed Forces have the experience, skills, and dedication necessary to achieve success as members of our civilian workforce, and it is critical that we harness their talent...Across our country, Veterans who fought to protect our democracy around the globe are strengthening it here at home. Once leaders in the Armed Forces, they are now pioneers of industry and pillars of their communities. Their character reflects our enduring American spirit, and in their example, we find inspiration and strength...This day, and every day, we pay tribute to America's sons and daughters who have answered our country's call. We recognize the sacrifice of those who have been part of the finest fighting force the world has ever known and the loved ones who stand beside them. We will never forget the heroes who made the ultimate sacrifice and all those who have not yet returned home. As a grateful Nation, let us show our appreciation by honoring all our Veterans and working to ensure the promise of America is within the reach of all who have protected it.*

National Native American Heritage Month

National Native American Heritage Month is a time to reflect, honor, and celebrate the diverse AI/AN cultural traditions and heritage. It's also a time to learn about the unique role AI/AN have played in the shaping of our Nation's history and culture. Some of the unique and important contributions AI/ANs have made can be found in medicine, literature, language, music, arts, and agriculture.

AI/ANs continue to serve in the U.S. Armed Forces with honor and distinction, defending and sacrificing their lives for the security of our Nation. According to 2010 U.S. Census, there are over 150,000 AI/AN U.S. Veterans and ten percent of these AI/AN Veterans are women. VA commends those courageous AI/AN servicemen and women, to include employees across the Department, for their continued commitment and dedication in service to our Nation's Veterans, their families, and survivors. From the 2014 Presidential Proclamation: *Every year, our Nation pauses to reflect on the profound ways the First Americans have shaped our country's character and culture. The first stewards of our environment, early voices for the values that define our Nation, and models of government to our Founding Fathers—American Indians and Alaska Natives helped build the very fabric of America. Today, their spirit and many contributions continue to enrich our communities and strengthen our country. During National Native American Heritage Month, we honor their legacy, and we recommit to strengthening our nation-to-nation partnerships...As we celebrate the rich traditions of the original peoples of what is now the United States, we cannot forget the long and unfortunate chapters of violence, discrimination, and deprivation they had to endure. For far too long, the heritage we honor today was disrespected and devalued, and Native Americans were told their land, religion, and language were not theirs to keep. We cannot ignore these events or erase their consequences for Native peoples—but as we work together to forge a brighter future, the lessons of our past can help reaffirm the principles that guide our Nation today…Every American, including every Native American, deserves the chance to work hard and get ahead. This month, we recognize the limitless potential of our tribal nations, and we continue our work to build a world where all people are valued and no child ever has to wonder if he or she has a place in our society.* For more information on VA's AI/AN Employment Program, visit the AI/AN Employment Program Web page or contact Aurelia Waters, VA's National AI/AN Employment Program Manager, ODI.

Military Family Month

VA joins the Nation in observing Military Family Month this November. From the 2014 Presidential Proclamation: *For more than two centuries, members of our Armed Forces have defended our country with unyielding courage. In our Nation's times of need, these brave patriots step forward to answer America's call, leaving behind everything they know and love. And as they help secure our freedom and democracy, their families sacrifice alongside them. During Military Family Month, we recognize every spouse, parent, sibling, child, and loved one who stands with our service members, and we reaffirm our solemn vow to serve these families as well as they serve us...The selflessness of our military families tells a story of unfailing duty and devotion. Through long deployments, difficult separations, and moves across the country and overseas, spouses and partners put their careers on hold and children take on extra responsibilities. With grace and resilience, families endure the absence of loved ones and shoulder the burdens of war. And when battle ends and our service members return home, their families support their transition and recovery...Every day, our military families at home and abroad inspire us and remind us of our obligation to take care of those who do so much for our country. As a grateful Nation, we pay tribute to the women and men who have made our military the finest fighting force the world has ever known, and we honor the enduring strength and dedication of their families.*

Commemorate

National Family Caregivers Month

VA joins the Nation in commemorating National Family Caregivers Month also observed this November. From the 2014 Presidential Proclamation: *Each day, courageous individuals step forward to help care for family members in need, their quiet acts of selflessness and sacrifice telling a story of love and devotion. Across our country, parents and children, siblings and spouses, friends and neighbors heroically give of themselves to support those in their lives affected by illness, injury, or disability. During National Family Caregivers Month, we salute the people who play difficult and exhausting roles, and we recommit to lifting up these Americans as they care for their loved ones while protecting their dignity and individuality...In the United States, more than 60 million caregivers provide invaluable strength and assistance to their family members, and as the number of older Americans rises, so will the number of caregivers. Many of these dedicated people work full time and raise children of their own while also caring for the needs of their loved ones. Caregivers support the independence of their family members and enable them to more fully participate in their communities, and as a Nation, we have an obligation to empower these selfless individuals...Not only this month, but every month, let us work alongside our Nation's caregivers and make certain they are able to provide the best possible care for their loved ones for as long as necessary. Together, we recognize those who place service above self, including the women and men looking after our Veterans. By offering them the same comfort, social engagement, and stability they bring to others, may we remind them that they are not alone.* (Download the Office of Personnel Management's Handbook on Workplace Flexibilities and Work-Life Programs for Elder Care [July 2015]).

National Family Week

VA joins the Nation in observing National Family Week November 23 through 29. From the 2014 Presidential Proclamation: *In big cities and small towns throughout our Nation, the strength and diversity of hardworking families reflect the promise of America—that with grit and determination, anyone can build a better future for themselves and their children. Families provide love and encouragement, and they are a source of support and inspiration to a generation limited only by the size of their dreams and the power of their imagination. During National Family Week, we celebrate our family members and the countless ways they lift us up, and we continue our work to bolster the bonds that tie all of us together...Working mothers and fathers should not have to choose between their career and their life at home—especially when a new baby or an aging parent needs them most—and no one who works full-time should have to raise their family in poverty. Family leave, childcare, and workplace flexibility are not bonuses, they are basic needs...Each day, American families do everything right: they work hard, live responsibly, take care of their children, and participate in their neighborhoods. They deserve the opportunity to succeed and a country that supports lasting economic security for all. This week, we recognize the employers and communities that empower families, and we honor our family members and all those who sacrifice to ensure every possibility is within our reach. Let us recommit to building a society where dynamic workplaces support strong families, where time with our loved ones is precious but not rare.* (Download the Office of Personnel Management's Handbook on Leave and Workplace Flexibilities for Childbirth, Adoption and Foster Care [April 2015]).

Training

Generations at Work

VA's Office of the Medical Inspector (OMI) embraces the concepts of diversity and inclusion (D&I) and incorporates the "I CARE" Core Values in their daily practice. OMI has had a robust D&I program since 2010, and has developed annual D&I performance goals in alignment with the VA and Veterans Health Administration strategic goals. Annually, as a part of OMI's D&I program, the office holds multiple education and training sessions to heighten awareness and to ensure that OMI employees remain abreast of VA D&I policies, updates, and trends. ODI was invited to provide training to OMI on September 30, 2015, on "Generations at Work." OMI has a diverse group of employees comprising three of the four generations discussed by ODI in this training. OMI continues to enhance their program by valuing inclusion and demonstrating that there is strength in diversity, including generational diversity. ODI applauds OMI for their initiatives and for allowing ODI to help them reach their 2015 D&I goals. ODI's training and communications team is available to deliver sessions on the following topics: generations at work, cultural competency, incivility, bullying and more. Contact Antony Washington in ODI to have your organization's training needs assessed.

Policy

Religious Exercise and Expression in VA Facilities and Property Under the Charge and Control of VA

The First Amendment to the United States Constitution prohibits the making of any law respecting an establishment of religion or prohibiting the free exercise of religion. The First Amendment has been interpreted to prohibit the government including its employees acting in their official capacities from endorsing, favoring, or inhibiting religion. Title VII of the Civil Rights Act of 1964, as amended, prohibits discrimination on the basis of religion, among other bases, and protects all aspects of an employee's religious beliefs or practices. According to the United States Equal Employment Opportunity Commission for the purposes of Title VII, religion includes not only traditional, organized religions, but also beliefs that are theistic, nontheistic, new, uncommon, or unaffiliated with a formal church or sect. Accordingly, VA prohibits discrimination on the basis of religion and shall not endorse, favor or disfavor any faith or belief system. The entire policy guidance and Frequently Asked Questions document are available online.

In 2015, the Federal government once again demonstrated that it is a model employer by expanding anti-discrimination protections for its LGBT employees. In landmark decisions issued in March and July, the Equal Employment Opportunity Commission (EEOC) unequivocally held that the protection of Title VII extends to claims of discrimination, harassment, and reprisal based on an employee's gender identity, including transgender status. Summaries of these decisions follow.

In Lusardi v. Department of the Army (EEOC Appeal No. 0120133395, April 1, 2015), the EEOC found that Ms. Lusardi was discriminated against based on her transgender status when she was denied access to the women's restroom. The Commission further found that she was subjected to a hostile work environment when her supervisor repeatedly and intentionally referred to her by her former male name and used male pronouns to describe her gender.

Ms. Lusardi, a Veteran, worked as a software quality assurance specialist for the Army in Huntsville, Alabama. She is a transgender woman who began the process of transitioning in 2010, three years before she filed an EEO complaint. During her transition, Ms. Lusardi was prohibited from using the women's restroom and was provided with a single-user restroom otherwise known as the executive restroom. Ms. Lusardi used the women's restroom on three occasions in 2011 when the executive restroom was being cleaned or was otherwise unavailable. She was confronted after each incident by her second level supervisor who stated that she was making people uncomfortable and that she was required to use the executive restroom until she could show proof of having undergone the "final surgery." Also during this period, Ms. Lusardi was referred to by her third level supervisor in conversations and in emails as "sir". The supervisor also repeatedly and intentionally used Ms. Lusardi's former male name in front of co-workers, contractors, and people who had no knowledge of her transition.

The EEOC first held that an agency cannot condition access to facilities, such as restrooms—or other terms, conditions, or privileges of employment—on the completion of medical procedures. Second, the Commission concluded that the agency's justification for not allowing Ms. Lusardi to use the women's restroom because coworkers would feel "uncomfortable" did not justify discriminating against her. The EEOC wrote, "Allowing the preferences of coworkers to determine whether sex discrimination is valid reinforces the very stereotypes and prejudices that Title VII is intended to overcome."

In regard to Ms. Lusardi's harassment by her supervisors, the EEOC found that the Army subjected Ms. Lusardi to a hostile work environment by allowing her supervisor to intentionally and repeatedly refer to her by her former male name and use male pronouns to identify her. The EEOC wrote, "Persistent failure to use the employee's correct name and pronoun may constitute unlawful, sex-based harassment if such conduct is severe or pervasive enough to create a hostile work environment… While inadvertent and isolated slips of the tongue likely would not constitute harassment, under the fact of this case, [the supervisor's] actions and demeanor made clear that his use of a male name and male pronouns in referring to [Ms. Lusardi] was not accidental, but instead was intended to humiliate and ridicule [her]." The EEOC ordered the Army to immediately provide Ms. Lusardi with "equal and full access" to the women's restroom and conduct an investigation to determine if she was entitled to compensatory damages.

The second case is Complainant v. Department of Transportation (EEOC Appeal No. 0120133080, July 15, 2015). Complainant is an air traffic controller at the Federal Aviation Administration's (FAA's) Miami facility. The complainant is gay and alleged that he was not selected for a promotion because of his sexual orientation. Complainant stated that his supervisor, who was involved in the selection decision, made several negative comments about his sexual orientation. For example, complainant stated that when he mentioned that he and his partner had attended Mardi Gras in New Orleans, his supervisor said, "We don't need to hear about that gay stuff." On multiple occasions, the complainant alleged the same supervisor told him that he was "a distraction in the radar room" when he mentioned his partner in workplace conversations.

After accepting and investigating complainant's allegations, the FAA subsequently dismissed the sexual orientation allegations relying on the FAA's policy on processing sexual orientation complaints. The policy required that sexual orientation allegations be adjudicated internally with no appeal rights to the EEOC because sexual orientation was not specifically identified in Title VII as a prohibited basis for challenging employment actions.

On appeal, the EEOC held as follows. First, the EEOC determined that it had jurisdiction over the complainant's sexual orientation claim. The Commission in its comprehensive and well-reasoned decision, stated that the complainant's claim of sexual orientation discrimination was a claim of discrimination based on his sex. The Commission wrote, "Sexual orientation discrimination is sex discrimination because it necessarily entails treating an employee less favorably because of his sex." The EEOC offered the following example, "Assume a woman is suspended because she has placed a picture of her husband on her desk, but her gay colleague is not suspended after he places of picture of his husband on his desk. The straight female employee could bring a cognizable Title VII claim of disparate treatment because of sex."

The EEOC also held that sexual orientation discrimination is sex discrimination because it "necessarily involves discrimination based on gender stereotypes." The Commission cited a long list of Federal court cases that have found that sexual orientation discrimination and harassment often is motivated by desire to enforce heterosexual defined gender norms. As relief, the Commission remanded the case to the FAA for further processing including notifying the complainant of his right to request a hearing by an EEOC administrative judge, or in the alternative, issuing a final agency decision adjudicating the merits of his claims.

—Maxanne R. Witkin, Director, Office of Employment Discrimination Complaint Adjudication

National Diversity Internship Program

Centralized Fund Available for Fiscal Year 2016

ODI is seeking VA organizations to host National Diversity Internship Program (NDIP) interns during the Fiscal Year (FY) 2016 NDIP Summer Session (June through August 2016). Specific information regarding the application process will be available shortly in an all station memorandum from the Assistant Secretary for Human Resources and Administration.

VA organizations interested in hosting a NDIP intern should start planning now as centralized funding is limited. It is recommended that host organizations begin to identify a discrete project or description of tasks that the intern can complete within 10 weeks. Please provide as much detail as possible as this information is important in helping the interns determine if an internship opportunity is a good fit for them. If exact work is unknown, provide examples of the work your organization performs.

ODI will score, evaluate, and approve all applications based upon the 1) completeness of application; 2) complexity of projects/assignments identified by the organization; 3) knowledge, skills and abilities to be acquired from identified projects/assignments; 4) exposure level to the VA organization and mission, and 5) career development benefits to interns. Multiple applications from the same organization will be accepted; however, more than one application from the same organization may not be approved dependent upon funding levels.

NDIP interns shall not be placed in positions such as clinical settings, direct patient care, processing clinical data, or research positions that fall under the purview of the Office of Academic Affiliations. Interns are permitted to perform administrative duties in a clinical setting; however, these duties cannot be directly related to clinical work or data. VA will not provide NDIP interns academic credit through the NDIP although participating vendors may offer interns academic credit through their programs. Organizations shall refrain from signing academic credit agreements without authorization from the VA Office of Academic Affiliations. Additional information regarding NDIP is available online or by contacting the NDIP Program Managers.

Workforce Recruitment Program

Centralized Program for Fiscal Year 2016

VA is strongly committed to the employment of individuals with disabilities, including Veterans and individuals with targeted disabilities. VA strives to be the model employer for individuals with disabilities and to meet the Secretary's three percent hiring goal for individuals with targeted disabilities. To this end, ODI is pleased to announce the VA Centralized Workforce Recruitment Program (WRP) for Fiscal Year (FY) 2016.

WRP is a recruitment and referral program that connects Federal sector employers with highly motivated college students and recent graduates with disabilities who are interested in temporary or permanent Federal jobs. Through its Web site, WRP maintains the largest database of Schedule A candidates in the Government. Schedule A is an excepted service appointing authority that serves as a critical and efficient tool for hiring individuals with disabilities in the Federal Government under Schedule A, 5 CFR, 213.3102(u), for hiring individuals with physical disabilities, psychiatric disabilities, and intellectual disabilities.

We are pleased to report that Department-wide, VA converted seven of its FY 2015 WRP interns. Kudos to the VA Greater Los Angeles Health Care System, Los Angeles, CA; El Paso VA Health Care System, El Paso, TX; Perry Point VA Medical Center, Perry Point, MD; W.G. (Bill) Hefner VA Medical Center, Salisbury, NC; Office of Asset Enterprise Management, Washington, DC; National Cemetery Administration, Washington, DC; and ODI. For the second year in a row, VA exceeded its goal to appropriately convert 20 percent of WRP interns to permanent status.

The VA Centralized WRP is a centrally funded source managed by ODI to bring new talent into VA's workforce through Schedule A appointments for winter, spring, and summer sessions, at no cost to the requesting office. Effective FY 2016, in accordance with VA budget policy, ODI will centrally manage all payroll functions for WRP interns. VA will no longer reimburse facilities and offices for their WRP intern payroll.

Managers seeking to hire WRP interns under this program will be responsible for interviewing and selecting their WRP interns from the WRP Web site, and performing all onboarding activities. ODI will be responsible for paying the WRP intern directly from its cost center. VA facilities and offices who are interested in hiring WRP interns for winter (December through February), spring (March through May), or summer (June through September) sessions, should contact Aurelia Waters, ODI's Centralized WRP Manager. More specific guidance will be provided in an all station memorandum from the Assistant Secretary for Human Resources and Administration. Provision of WRP interns under this Program is subject to funding availability. Thank you for your support of diversity and inclusion in VA!

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