

August 15, 2008

**PROTECTION AGAINST GENETIC DISCRIMINATION IN FEDERAL
EMPLOYMENT**

1. PURPOSE: This Veterans Health Administration (VHA) Directive issues policy prohibiting discrimination against employees based on protected genetic information, or on information about a request for, or the receipt of, genetic services.

2. BACKGROUND: Equal opportunity laws and the Department of Veterans Affairs (VA) regulations prohibit discrimination against employees and applicants for employment based on protected genetic information, or information about a request for, or the receipt, of genetic services. Executive Order 13145, To Prohibit Discrimination in Federal Employment Based on Genetic Information, became effective February 8, 2000.

3. POLICY: It is VHA policy to provide equal employment opportunity (EEO) in Federal employment and to prohibit discrimination based on protected genetic information.

4. ACTION

a. **VHA Chief Officers, Veterans Integrated Service Network (VISN) Directors, and facility Directors** are responsible for:

(1) Developing written EEO policy to cover all qualified persons to prohibit discrimination against employees or applicants for employment based on protected genetic information, or information about a request for, or the receipt of, genetic services.

(2) Ensuring timely processing of all external civil rights and equal opportunity discrimination complaints.

(3) Issuing local guidelines consistent with the requirements of this VHA non-discrimination Directive for Federally-conducted or Federally-assisted programs.

(4) Assigning sufficient resources to effectively carry out the responsibilities cited in this Directive.

(5) Ensuring employees that are assigned responsibilities under this program are properly trained and have adequate time and assistance to carry out their responsibilities.

(6) Ensuring employees are aware that:

THIS VHA DIRECTIVE EXPIRES AUGUST 31, 2013

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(a) Applicants or employees, who believe that they have been subjected to discrimination based on genetics, may seek assistance under certain circumstances from the Merit Systems Protection Board, the Office of Special Counsel, the Agency's Negotiated Grievance Procedure, or the Agency's Internal Grievance Procedure.

(b) Employees and applicants may not seek relief from the Equal Employment Opportunity Commission or file a discrimination complaint under title VII of the Civil Rights Act of 1964, as amended, because that law does not prohibit discrimination based on genetics.

(7) Maintaining protected genetic information or information about a request for, or the receipt of, genetic services in general personnel files; such information must be treated as confidential medical records and kept separate from personnel files.

b. VHA Chief Officers, Veterans Integrated Service Network (VISN) Directors, facility Directors, and supervisors are prohibited from:

(1) Discharging, failing to or refusing to hire, or otherwise discriminate against any employee with respect to the compensation, terms, conditions, or privileges of employment of that employee based on protected genetic information, or information about a request for, or the receipt, of genetic services.

(2) Limiting, segregating, or classifying employees in any way that would deprive or tend to deprive any employee of employment opportunities or otherwise adversely affect that employee's status based on protected genetic information, or information about a request for, or the receipt, of genetic services.

(3) Requesting, requiring, collecting, or purchasing protected genetic information with respect to an employee, or information about a request for, or the receipt of, genetic services by such employee.

(4) Disclosing protected genetic information with respect to an employee or information about a request for, or the receipt of, genetic services by such employee except:

(a) To the employee who is the subject of the information, at the employee's request; or

(b) To an occupational or other health researcher, if the research conducted complies with the regulations and protections provided for under Title 45 Code of Federal Regulations (CFR) Part 46; or

(c) If required by Federal statute, congressional subpoena, or an order issued by a court of competent jurisdiction, except that if the subpoena or court order was secured without the knowledge of the individual to whom the information refers. In this case, the employer must provide the individual with adequate notice to challenge the subpoena or court order, unless the subpoena or court order also imposes confidentiality requirements; or

(d) To executive branch officials investigating compliance with this order, if the information is relevant to the investigation.

5. REFERENCES

a. Executive Order 13145, To Prohibit Discrimination in Federal Employment Based on Genetic Information.

b. The Rehabilitation Act of 1973, Section 501.

6. FOLLOW-UP RESPONSIBILITY: The Chief Workforce Management and Consulting Officer and the EEO/Affirmative Employment Team (10A2E) are responsible for the contents of this Directive. Questions may be referred to (202) 461-7290.

7. RESCISSIONS: None. This VHA Directive expires August 31, 2013.

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