

Civil and Equal Opportunity Rights and Responsibilities Summary

EO and Civil Rights

VISTA members are:

- caring people who are dedicated to improving the lives of others and/or improving your community
- **not** federal employees (except for some limited purposes)
- **not** employees of your program, project, or site (for any purpose)

Service Member Rights

- Absolute right not to be subjected to discrimination or harassment by the Corporation or any sponsor organization

VISTA Member Sponsor Obligations

- Absolute obligation to make sure their actions do not subject anyone else to discrimination or harassment
- This obligation extends to:
 - clients they serve
 - co-workers, whether they are service members or employees
 - other beneficiaries of the program, project, or site
- VISTA members are “beneficiaries” of federally assisted and/or federally conducted programs
- Other beneficiaries include
 - clients served by our service members
 - members of the public entitled to receive the benefits of your programs, projects, or sites

What Gives a “Beneficiary” Civil Rights

- 5th Amendment, US Constitution
- Government-wide statutes: Title VI of Civil Rights Act, Title IX of Education Amendments, Section 504 of Rehabilitation Act, Age Discrimination Act
- Corporation statutes and policies

Service members are protected against discrimination or harassment based on their:

race
 color
 religion
 sex
 national origin
 age
 disability
 political affiliation
 sexual orientation
 marital/parental status
 military service
 religious community, or social affiliations

Title VI of the Civil Rights Act of 1964

“No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.”

Discriminatory activities include:

- denial of services
- differences in quality, quantity, or manner of services
- different standards for participation
- discrimination in facility built with federal funds
- discriminatory employment practices
- if employment practice causes discrimination against beneficiaries

Civil and Equal Opportunity Rights and Responsibilities Summary (cont.)

National and Community Service Act and Domestic Volunteer Service Act

“An individual with responsibility for the operation of a project/program that receives assistance under this subchapter/Act shall not discriminate against a participant in, or a member of the staff of, such project...on the basis of race, color, national origin, sex, age, or political affiliation of such participant or member, or on the basis of disability, if the participant or member is a qualified individual with a disability...”

“...[A]n individual with responsibility for the operation of a project...shall not discriminate on the basis of religion against a participant...or a member of the staff...who is paid with funds received under this subchapter.”

Policy Statement of the Corporation for National and Community Service

Participation in the Corporation and its programs and projects will be based on merit and equal opportunity for all, without regard to factors such as race, color, national origin, sex, sexual orientation, religion, age, disability, political affiliation, marital or parental status, military service, or religious, community, or social affiliations.

Enforcement of EO Compliance, Damages, and Process

Damages for Discrimination

- If discrimination is found, the recipient (and/or sub recipient) pays damages
 - may be prorated with Corporation if Corporation is partly responsible
- A sponsor organization manager or supervisor may have to pay personally, if liable

Enforcement of Compliance

- Terminating federal funding/VISTA assistance
- Refusing to grant federal funding/VISTA assistance
- Refusing to continue financial assistance/VISTA assistance
- Any other means authorized by law

Enforcement Steps

- Advise grantee or sponsor organization of failure to comply
- Determine voluntary compliance cannot be achieved
- Finding of noncompliance, after grantee has opportunity for hearing
- File written report with Congress and wait until 30 days after filing this report

VISTA Discrimination Complaint Process

1. EO counseling
2. Formal complaint investigation and adjudication
3. Remedial action, if necessary

Federal Court Suit May Be Authorized

- The statutes give the sponsor organization or complainant the right to file suit in federal district court
- If fund/VISTA assistance termination occurred, any aggrieved person may request judicial review

Resolution

- Settling allegations does not mean a supervisor did something wrong
- Settlements are *usually negotiated* between a program, project, and/or site and a complainant

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- Negotiation means each side gives up a little so both can live with the resolution

The Concepts

Discrimination vs. Prejudice

- Prejudice is based on stereotypes
- Discrimination is the *acting out* of prejudice

Illegal Discrimination

- Different treatment, coupled with a difference in race or sex or national origin, is not illegal discrimination
- Illegal discrimination must be a treatment that is different *because of* a difference in race or sex or national origin

One key thing to remember: There are two sides to every story – always!

Methods to Determine Discrimination

- Direct evidence of discrimination
- Circumstantial evidence based on “before/after” behavior
- Circumstantial evidence based on rebuttable presumptions
 - The only comparisons that count are those between “similarly situated” persons, i.e., persons you would expect to be treated the same
 - Don’t mix performance and conduct issues when determining “similarly situated”
- Circumstantial evidence based on violating policies and procedures
- Discrimination is applying rules and standards differently
- Circumstantial evidence based on credibility

- No witnesses does not mean nothing happened

- Look at other evidence to determine the more credible person

Some Absolutes

- English-only rules not allowed
- Denying time off for religious observances seldom allowed
- Filing a discrimination complaint does not preclude taking disciplinary action

Disabilities and Reasonable Accommodation

Section 504 of the Rehabilitation Act of 1973

“No otherwise qualified disabled individual in the United States...shall, solely by reason of his [or her] disability, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.”

Americans with Disabilities Act ADA Title III: Public Accommodations and Commercial Facilities emphasizes

- For barrier removal, “readily achievable” standard, i.e., easily accomplishable and able to be carried out without much difficulty or expense
- New construction for architectural accessibility if after January 26, 1992
- “Elevator exemption” if building less than three stories or less than 3,000 sq. ft. per story
- Religious organizations/entities controlled by religious organizations are exempt
- Enforced by DOJ or private law suits and civil monetary penalties for noncompliance may be assessed

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Defining Disability (Physical and Mental)

A disabled person is one who

- has a physical or mental impairment that substantially limits one or more major life activities;
- has a record of such an impairment; or
- is regarded as having such an impairment.

Terminology

- Disability substantially limits a “major life activity:”

walking	seeing
talking	hearing
breathing	working
- Qualified individual with a disability:
 - Individual with a disability who can, with or without reasonable accommodation, perform the essential functions of the position

Specific Situations

- Substance abuse
 - is a disease and may legally be considered a disability
 - however, a person currently using illegal drugs by definition is not a person with a disability and does not have any civil-rights protection
- Infectious diseases
 - persons with diseases such as TB, HIV or AIDS may be qualified individuals with disabilities
 - disease may not pose a direct threat to the safety of self or others

Ways to Establish Disability Discrimination

- Direct evidence of discrimination (comments, slurs, stereotypes, presumptions)
- Circumstantial evidence (same analysis as race- or sex-based claims) – disparate treatment or disparate impact analyses
- Failure to provide reasonable accommodation, including site and/or program accessibility

Important Rule: #1

Do not treat persons differently because of their disability or because you think they need/require/are entitled to special treatment.

Important Rule: #2

Do not presume someone has a disability based on how he/she looks, acts, or what he/she says.

- To be entitled to reasonable accommodation and other protections, he/she must self-identify. Only then do you provide what is necessary for him/her to do the job/service.

Important Rule: #3

Do not stereotype or lump all persons with a particular type of disability together.

- Persons with the same diagnosis may evidence the condition in very different ways and have very different needs.
- Consider every situation on case-by-case basis.

Interview Questions

- Pre-offer stage: No questions on existence, nature, or severity of a disability allowed.
- After job offer made: Only questions asked of all entering the job category may be asked and information must be kept confidential.

Not Disability-Related Questions (okay to ask at interviews)

- Can you perform the functions of the job, with or without reasonable accommodation?
- Describe/demonstrate how you would perform the job functions.
- Do you have a cold? How did you break your leg?
- Can you meet the attendance requirements?

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Disability-Related Questions (*not okay to ask at interviews*)

- Do you have AIDS? Asthma?
- Do you have a disability that would interfere with your performing the job?
- How many days were you sick last year?
- Ever filed for workers' compensation?
- Ever treated for alcohol problems?
- Ever treated for mental-health problems?
- What prescription drugs do you take?

Interview Advice

- Ask all interviewees the same questions
- Ask only job-related questions
- Avoid questions on marital status or dependents

Reasonable Accommodations

- Making facilities accessible
- Job restructuring
- Part-time or modified work schedules
- Acquisition or modification of equipment or devices
- Providing readers, interpreters, or auxiliary aids

Architectural Accessibility

If building is built before May 30, 1979:

- “When viewed in its entirety” standard applies
- Programmatic accessibility may substitute for architectural accessibility

If buildings built after May 30, 1979:

- “When viewed in its entirety” standard does not apply
- Programmatic accessibility may not substitute for architectural accessibility
- Must comply with UFAS or ADAAG

Undue Financial or Administrative Burden

- Unduly costly, extensive, substantial or disruptive – results in significant difficulty or expense – high standard
- Factors to be considered include:
 - overall size of the program in numbers of service members, facilities, and budget
 - type of operation, including composition and structure of service-member force
 - nature and cost of removal or accommodation

Questions and Technical Assistance About Disabilities

- Corporation's Office of Civil Rights and Inclusiveness at (202) 606-7503 (voice); (202) 606-3472 (TDD); or eo@cns.gov
- Paula Sotnik, project director, the Institute for Community Inclusion (ICI), which has a cooperative agreement with the Corporation for National and Community Service to assist Corporation state offices and sponsor organizations with issues of inclusion, disabilities and reasonable accommodation.

Contact information: (617) 287-4343 (direct line), (888) 491-0326 (toll free voice and TTY), paula.sotnik@umb.edu, www.serviceandinclusion.org

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- Job Accommodation Network (1-800-JAN-7234; 1-800-526-7234); <http://janweb.icdi.wvu.edu>
- Access Board at www.access-board.gov
- President's Committee on Employment of People with Disabilities at www.dol.gov/odep
- State vocational rehabilitation agencies at www.ssa.gov
- Centers for Independent Living at ilru.org or (713) 520-0232

Sexual Harassment

Definition: Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature.

Types of Sexual Harassment

- **Tangible Action:** Submission is a term or condition of an individual's service
- **Hostile Environment:** Conduct has the purpose or intent of interfering with work performance or creating an intimidating, hostile, or offensive service environment
- **Third Party:** Requests for conduct of a sexual nature from someone else that adversely affects your status, requirements, or environment

Associated Behaviors

- Verbal - jokes with sexual connotations, sexual degrading language
- Nonverbal - leering, sexually oriented pictures, cartoons, letters
- Physical - touching, kissing, grabbing
- Criminal - sexual assault/battery, rape

"Hostile Environment"

- Requirement #1:
 - Conduct must be unwelcome
 - Person must be put on notice of unwelcomeness
 - Person must continue conduct despite notice
- Requirement #2:
 - Conduct must interfere with job performance, or
 - Conduct must be sufficiently severe, or
 - Conduct must be sufficiently pervasive

Most Common Causes of Discrimination Allegations

- Miscommunication
- Publicly embarrassing someone
- Not providing feedback or assistance to improve