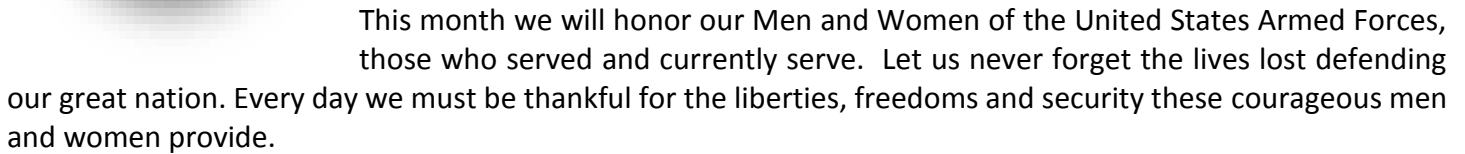




**COUNCIL OF PRISON LOCALS 33  
WOMEN AND FAIR PRACTICES  
NEWSLETTER**

*"All of us do not have equal talents, but all of us should have an equal opportunity to develop our talents" — [John F. Kennedy](#)*

**Tyrone L. Covington**  
**CPL 33 Vice President For**  
**Women and Fair Practices**



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During the week of October 23-27, 2017, Executive Board members met in Washington DC, to begin working on the implementation of secure gun lockers. Clifton Buchanan, South Central Regional Vice-President, chairs the group. Darrell Palmer Northeast Regional Vice President and I, are members of the committee. I attended the National Labor Management Relations meeting (LMR) held in Washington, DC from October 31 – November 3, 2017. In addition, I met with Mina Raskin (Chief EEO branch) to discuss changes made by the Equal Employment Opportunity Commission (EEOC) and the current state of the EEO process within the agency.

## Overview of Federal Sector EEO Changes



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Equal Employment Opportunity Commission (EEOC) amended the regulation implementing Section 501 of the Rehabilitation Act of 1973 (Section 501), the law that prohibits the federal government from employment discrimination on the basis of disability and requires it to engage in affirmative action for people with disabilities.

As part of the agencies' obligation to engage in affirmative action, federal agencies are required by the new regulations to provide Personal Assistance Services (PAS) to individuals with certain disabilities. See 29 C.F.R. § 1614.203(d)(5). PAS are services that help individuals who, because of targeted disabilities, require assistance to perform basic daily living activities, such as eating and using the restroom.

#### **Did You Know?**

All agencies are required to have an Alternative Dispute Resolution (ADR) program. The EEOC has requirements that all agencies must follow when developing ADR programs. The most important ADR program requirement is fairness. Generally, an ADR program is fair if it is voluntary, confidential, enforceable by the parties (if an agreement is reached), and led by a neutral person, such as a mediator, who has no personal interest in the dispute.

If mediation is conducted during the informal stage of the EEO process, traditional counseling will be terminated and the counseling process will be extended automatically from 30 to 90 days.

The aggrieved person must be given a Notice of Right to File a Formal Complaint no later than:

30 calendar days after the first contact with the counselor. The period may be extended if the aggrieved person and the agency agree to an extension of no more than an additional 60 calendar days.

90 calendar days after the first contact with the counselor if the aggrieved person agrees to use the agency's alternate dispute resolution procedures.

The aggrieved person may file a formal complaint

- At any time after the 30th calendar day when the aggrieved person and the agency agree to an extension and resolution efforts continue.
- Within 15 calendar days after receiving a Notice of Right to File a Formal Complaint.

Staff should know that the EEO process continues even during the process of attempting to resolve a complaint. A resolution can be declared at any time during the process. While ADR can be used, it is not a requirement. As NVPWFP I strongly encourage staff to consider if ADR is the best avenue for them, while keeping in mind the agency can settle a case at any time.



***"WE MUST BE WILLING TO CLOSE THE DOOR ON RETALATION"***



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### Case Track

#### **JUST 10 DAYS OF HARASSMENT MERITS \$75,000 IN DAMAGES & MORE**

An employee of the Federal Bureau of Prisons filed a formal EEO complaint wherein he alleged that from April 15 through April 24, 2013, several senior management officials subjected him to a hostile work environment because of his race (Caucasian), sex (male), and disability (hearing loss). Specifically, the employee alleged that he was subjected to harassment in the form of jokes, comments, and ridicule with regard to his hearing impairment. The Judge agreed with the employee and ordered the agency to pay \$75,000 in compensatory damages. The agency was stunned to learn that just ten days of illegal harassment merited so much money and asked EEOC to review the judge's decision. Here is why the EEOC not only agreed with the Judge but also ordered the agency to restore 180 hours of leave to the employee.

EEOC began by noting that, "When discrimination is found, the Agency must provide the Complainant with a remedy that constitutes full, make-whole relief, to restore him as near as possible to the position he would have occupied absent the discrimination." Consequently, aside from back pay, employees also "may receive compensatory damages for past and future pecuniary losses (i.e., out-of-pocket expenses) and non-pecuniary losses (e.g., pain and suffering, mental anguish) as part of this "make whole" relief."

The employee stated via an affidavit "He continued to suffer from the effects of the harassment, including emotional distress, anxiety, post-traumatic stress disorder, depression, humiliation, and embarrassment." He testified that he had to take personal sick days to alleviate some of the pressure he felt, that he could no longer go out to dinner or to social events, that his fiancée had left him because of his need to move out of the area as a result of the harassment, and that as of the date of the hearing, which took place over three years after the occurrence of the harassment, he was still struggling with the trauma. When the agency offered no evidence to rebut the employee's testimony, EEOC wrote, "Complainant's hearing testimony, deemed credible by the AJ, constitutes enough evidence to document the severity and duration of the harm he suffered. Statements from health care providers, family members, friends or coworkers, which undoubtedly would have been helpful, were not necessary to justify the size of the award in light of Complainant's hearing testimony."

In response to the agency argument that the award was too much given that the harassment lasted only ten days, the Commission declared, "While the duration of the discriminatory conduct is a factor in determining the extent of the harm suffered, so too is the duration of the harm itself."





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If you are ever involved in a case with a short duration of harassment, remember this case and how much back pay liability was awarded. It is worth pursuing. For more details on this case check out Ricardo K. v. Jeff B. Sessions, Attorney General, (Federal Bureau of Prisons), EEOC Appeal No. 0720170030 (2017).

#### EEOC ENFORCES 9 YEARS OF BACK PAY

One of the latest bundle of decisions out of the EEOC is about reasonable accommodations. The FBI forced a disabled employee to quit her Security Specialist job by denying her reasonable accommodation. The employee's doggedness through the EEOC charge and complaint stages paid off big time when the EEOC ordered that she be paid \$481,878 in back pay, another \$53,000 in interest, and \$30,000 on top of that for compensatory damages. While it is satisfying to win a partial victory, it is an entirely higher level of joy to get everything you had coming to you and more. So, here is a very sincere, "Congrats" to Kesha who took Attorney General Jeff Sessions to the cleaners in, Kesha Y v. Jeff Sessions, Attorney General, DOJ (FBI) EEOC No. 0120121339 (2017)

Now these decision will be sent to the Department of Justice to determine if it concur with the courts findings. If the DOJ agrees, this case will be upheld, however if the DOJ determines a different remedy or no remedy, the aggrieved must then appeal to the Office of Federal Operations (OFO).

#### DENIALS OF LATERAL REASSIGNMENTS CAN BE CONSIDERED AN EEO ADVERSE ACTION:

Here is the process:

Rather than an involuntary lateral reassignment, the employee in this case was denied a lateral reassignment he requested for several reasons. First, it would enable him to move to the same city where his wife lived, which was about 300 miles from his current agency location. Second, he wanted to get out of HQ and into the field because the work was more challenging and career enhancing. Third, the employee, Mr. Ortiz-Diaz, wanted to get away from the control of a higher-level manager in HQ who showed all the signs of not liking minority employees.

Although the manager of the field office the employee wanted to move to said he did have a vacant position, but also that he wanted to hire this particular employee, the higher-level HQ blocked the move. Ultimately, the employee left the HQ office for a lower-grade position, but not before he filed an EEO alleging illegal discrimination by the higher-level manager for blocking the requested reassignment.



Although the court stopped short of agreeing that all involuntary lateral reassignments or denial of requested lateral reassignments are always sufficiently adverse to the



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employee. It does permit him to file an EEO complaint. The court stated “A discriminatory denial of a lateral transfer away from a biased supervisor can certainly be actionable under Title VII” because it likely affects “future employment consequences.” In other words, if an employee is denied a requested reassignment or transfer, s/he can safely file an EEO complaint if s/he can point to some evidence that the denial was based on illegal discrimination, e.g., disparate treatment with a similarly situated employee, the denial decision was made by someone who has shown his/her bias in the past, etc.

***“WE MUST BE WILLING TO STAND UP TO INJUSTICE”***

***“DIVERSITY CAN CHANGE THE WORLD”***







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### **Helpful Links:**

<https://www.eeoc.gov/federal/directives/md110.cfm>

<https://osc.gov>

<https://www.mspb.gov>

[https://www.bop.gov/resources/policy\\_and\\_forms.jsp](https://www.bop.gov/resources/policy_and_forms.jsp)

### **Training links:**

<https://www.traliant.com/eeoc/copliance> (Free Courses)

<https://www.eeoc.gov> (EEOC Training Institute)



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