DEPARTMENT OF HEALTH & HUMAN SERVICES

Public Health Service

Food and Drug Administration
Rockville MD 20857

MEMORANDUM

February 10, 2009

FROM: Commissioner of Food and Drugs

SUBJECT: EEO, Diversity and Whistleblower Protection Policy Statement

TO: FDA Employees

The Food and Drug Administration (FDA) is committed to ensuring equal employment opportunity (EEO) and promoting workforce diversity to maintain a strong, effective, high performing public service organization. This has never been more important than in this time, when our agency is undergoing remarkable transformational changes. I strongly support and vigorously enforce all applicable Federal EEO laws, regulations, Executive Orders, and management directives to ensure that all our highly talented employees are afforded an equal opportunity for success in the workplace and every protection under the law to ensure the integrity of our mission here at the FDA. These important laws include Title VII of the Civil Rights Act of 1964; the Rehabilitation Act of 1973, as amended; the Age Discrimination in Employment Act of 1975; the Equal Pay Act of 1963; and the Whistleblower Protection Act of 1989. FDA will not tolerate discrimination or harassment on the bases of race, color, religion, national origin, sex, sexual orientation, age, disability, or retaliation for opposing discriminatory practices and/or participating in the discrimination complaint process. This applies to all personnel practices and terms and conditions of employment, including recruitment, hiring, promotions, transfers, reassignments, training, career development, benefits, and separation. In addition, FDA will provide reasonable accommodation to qualified individuals with disabilities and for religious practices, as provided by the applicable laws and procedures.[1]

The EEO Complaint Process

To enforce this policy, I have empowered FDA's Office of Equal Employment Opportunity and Diversity Management (OEEODM) to administer an impartial and effective complaint management process to address and resolve complaints of discrimination at the earliest possible stage. Employees may report allegations of discrimination to OEEODM, at 301-827-4840, their immediate supervisor, another management official, their collective bargaining unit, or the Employee and Labor Relations unit in the Rockville Human Resources Center (RHRC) as appropriate. Please note that under 29 Code of Federal Regulations, Part 1614, employees who wish to go through the EEO Complaint process must report such allegations to OEEODM within 45 calendar days of the date of the alleged incident in order for the complaint to be investigated.

Harassment

As the Acting Commissioner of Food and Drugs, I am firmly committed to ensuring that all FDA's employees, applicants, contract employees, clients, customers, and anyone doing business with FDA are not subject to discrimination. Harassment is a form of prohibited discrimination and is not tolerated. The

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[1] Please see the Staff Manual Guide 3031.2, *Procedures for Processing Reasonable Accommodation Requests,* posted at the FDA's Intranet website, http://inside.fda.gov, under the heading EEO and Diversity Management.

following defines what constitutes harassment.

> Harassment is any unwelcome, hostile, or offensive conduct taken on the basis of race, color, religion, national origin, sex, sexual orientation, age, or disability that interferes with an individual's performance or creates an intimidating, hostile or offensive environment.
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> Sexual harassment is a form of sex discrimination that involves unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct Of a sexual nature when: (1) submission to or rejection of such conduct is made either explicitly or implicitly a term or condition of one's employment, or (2) submission to or rejection of such conduct by a person is used as a basis for career or employment decisions affecting that person, or (3) such conduct interferes with an individual's performance or creates an intimidating, hostile or offensive environment.

I ensure all FDA employees that allegations of discrimination and harassment, including sexual and non-sexual, will be taken seriously by agency managers and will be immediately addressed. Appropriate corrective action--up to and including termination--will be taken if allegations are substantiated.

Reporting Harassment

Both supervisors and employees bear responsibility to maintain a work environment free from discrimination and harassment. Employees must not engage in harassing conduct and should report such conduct to their supervisor, another management official, their collective bargaining unit; Employee and Labor Relations office, and/or OEEODM, as appropriate. The recipient of such harassment claims will ensure the confidentiality of the individual making the claim to the greatest extent possible. If an employee brings an issue of harassment to a supervisor's attention, the supervisor must promptly investigate the matter in a thorough and impartial manner, share the outcome of such inquiries with the affected parties, and take appropriate and effective corrective action, as necessary. Supervisors are encouraged to seek guidance from OEEODM when addressing issues of discrimination or harassment. [2] Both employees and supervisors should resolve such issues at the earliest stage and I encourage their participation in the alternative dispute resolution services provided by OEEODM's *Conflict Prevention and Resolution Program.* In addition, it is every supervisor's responsibility to inform his/her staff of this policy and to ensure that discrimination and workplace harassment of any type will not be tolerated.

Whistleblower Protection

Employees are entitled to all the protection afforded under the Whistleblower Protection Act, which prohibits retaliation against public employees or applicants for employment who report official wrongdoing. In an effort to protect the integrity and high standards of the scientific and attendant processes that guide this agency, in accordance with applicable interpretations, FDA supports the rights of all employees to engage in protected activity under civil rights statutes, Executive Orders and whistleblower protection laws. The U.S. Office of Special Counsel is empowered to administer an impartial and effective complaint management process to address complaints of whistleblower retaliation

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[2] Please also see the *Preventing Harassment* brochure for more guidance, including a checklist for managers and supervisors, available from OEEODM and posted on the FDA Intranet under the heading EEO and Diversity Management.

for most of the Executive Branch, including the FDA. Reprisal against individuals for disclosure of information, in which the employee believes evidence is a reasonable violation of any law, rule or regulation; gross mismanagement; gross waste of funds; abuse of authority; or a substantial and specific danger to public health or safety will not be tolerated. Reprisal for whistleblowing includes taking or failing to take, or threatening to take or failing to take, a personnel action with respect to any employee because of a protected disclosure of information. Employees may report allegations of reprisal for whistleblowing to the Office of the Special Counsel.

Protection from Retaliation

Retaliation against individuals for opposition to discrimination or participation in the discrimination complaint process is unlawful and will not be tolerated. This includes complainants, witnesses, and others who provide information concerning such claims. We will work aggressively to protect employees from reprisal for participation in such protected activity, including the reporting of waste, fraud, and abuse in government practices.

Training

I am hereby notifying all employees of their rights to these fundamental protections pursuant to the aforementioned Federal EEO laws and the Notification and Federal Employee Anti-discrimination and Retaliation (No FEAR) Act of 2002. Under the Final Rule of this statute, all FDA employees were required to take No FEAR training on or before December 17, 2006, and thereafter every other year and within ninety (90) days from the date of their initial hire. This training is currently being offered by the HHS University on-line, available at the HHS learning portal. More information and training on these statutes are available to all employees on the EEO and Diversity website on the FDA intranet. In addition to this training, OEEODM provides Mandatory EEO Compliance Training for Managers and Supervisors. This training educates supervisory employees on their legal responsibilities in the EEO area and promotes early conflict resolution. This training is mandatory for all management and supervisory personnel. In any event, retaliation against individuals for opposition to discrimination or participation in the discrimination complaint process or as a whistleblower is unlawful and will not be tolerated.

Towards the Future

To ensure a discrimination-free workplace where all individuals are valued, we will not limit ourselves to the requirements of the law but will proactively cultivate an inclusive work environment that values human diversity in all its aspects. To become a high performing science based, science driven, public agency in the 21st century, we must tap into the rich resources of the global community in which we live and recruit, while simultaneously retaining and developing an inclusive workforce that reflects the pluralistic society we serve.

It continues to be both an economic and moral imperative. I am convinced that the unique attributes of each employee offers incalculable benefits to our organization. Therefore, I am committed to creating an environment within FDA that is free of barriers to full participation, values diversity of perspectives, and empowers every individual to contribute to the mission of the agency. To this end, employees are encouraged to report any gross misconduct, waste or abuse, with the assurance that we support every good faith effort that seeks to preserve the moral solvency of our agency.

Moreover, each of us bears the responsibility to ensure that discrimination in the workplace is not tolerated and that diversity is valued. Supervisors and managers serve as agents of FDA and bear a special responsibility to ensure that the work environment is free from discrimination and harassment. Promoting the complementary principles of equity and diversity in the workplace is a pivotal element in building a strong FDA. FDA remains committed to these principles as it pursues its critical mission of protecting and promoting America's health.

This memorandum supersedes the Memorandum from the Commissioner of Food and Drugs dated July 16, 2007 to all FDA employees.

Frank M. Torti, MD, MPH, FACP