

105TH CONGRESS
1ST SESSION

H. R. 1703

IN THE SENATE OF THE UNITED STATES

OCTOBER 7, 1997

Received; read twice and referred to the Committee on Veterans' Affairs

AN ACT

To amend title 38, United States Code, to provide for improvements in the system of the Department of Veterans Affairs for resolution and adjudication of complaints of employment discrimination.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Department of Veter-
3 ans Affairs Employment Discrimination Resolution and
4 Adjudication Act”.

5 **SEC. 2. EQUAL EMPLOYMENT RESPONSIBILITIES IN THE**
6 **DEPARTMENT OF VETERANS AFFAIRS.**

7 (a) IN GENERAL.—(1) Chapter 5 of title 38, United
8 States Code, is amended by inserting at the end of sub-
9 chapter I the following new section:

10 **“§ 516. Equal employment responsibilities**

11 “(a) The Secretary shall provide that the employment
12 discrimination complaint resolution system within the De-
13 partment be established and administered so as to encour-
14 age timely and fair resolution of concerns and complaints.
15 The Secretary shall take steps to ensure that the system
16 is administered in an objective, fair, and effective manner
17 and in a manner that is perceived by employees and other
18 interested parties as being objective, fair, and effective.

19 “(b) The Secretary shall provide—

20 “(1) that employees responsible for counseling
21 functions associated with employment discrimination
22 and for receiving, investigating, and processing com-
23 plaints of employment discrimination shall be super-
24 vised in those functions by, and report to, an Assist-
25 ant Secretary or a Deputy Assistant Secretary for
26 complaint resolution management; and

1 “(2) that employees performing employment
2 discrimination complaint resolution functions at a
3 facility of the Department shall not be subject to the
4 authority, direction, and control of the Director of
5 the facility with respect to those functions.

6 “(c) The Secretary shall ensure that all employees of
7 the Department receive adequate education and training
8 for the purposes of this section and section 319 of this
9 title.

10 “(d) The Secretary shall impose appropriate discipli-
11 nary measures, as authorized by law, in the case of em-
12 ployees of the Department who engage in unlawful em-
13 ployment discrimination, including retaliation against an
14 employee asserting rights under an equal employment op-
15 portunity law.

16 “(e) The number of employees of the Department
17 whose duties include equal employment opportunity coun-
18 seling functions as well as other, unrelated functions may
19 not exceed 40 full-time equivalent employees. Any such
20 employee may be assigned equal employment opportunity
21 counseling functions only at Department facilities in re-
22 mote geographic locations (as determined by the Sec-
23 retary). The Secretary may waive the limitation in the pre-
24 ceding sentence in specific cases.

1 “(f) The provisions of this section shall be imple-
2 mented in a manner consistent with procedures applicable
3 under regulations prescribed by the Equal Employment
4 Opportunity Commission.”.

5 (2) The table of sections at the beginning of such
6 chapter is amended by inserting after the item relating
7 to section 515 the following new item:

“516. Equal employment responsibilities.”.

8 (b) REPORTS ON IMPLEMENTATION.—The Secretary
9 of Veterans Affairs shall submit to Congress reports on
10 the implementation and operation of the equal employ-
11 ment opportunity system within the Department of Veter-
12 ans Affairs. The first such report shall be submitted not
13 later than April 1, 1998, and subsequent reports shall be
14 submitted not later than January 1, 1999, and January
15 1, 2000. Each such report shall set forth the actions taken
16 by the Secretary to implement section 516 of title 38,
17 United States Code, as added by subsection (a), and other
18 actions taken by the Secretary in relation to the equal em-
19 ployment opportunity system within the Department of
20 Veterans Affairs.

1 **SEC. 3. DISCRIMINATION COMPLAINT ADJUDICATION AU-**
2 **THORITY IN THE DEPARTMENT OF VETERANS**
3 **AFFAIRS.**

4 (a) IN GENERAL.—(1) Chapter 3 of title 38, United
5 States Code, is amended by adding at the end the follow-
6 ing new section:

7 **“§ 319. Office of Employment Discrimination Com-**
8 **plaint Adjudication**

9 “(a)(1) There is in the Department an Office of Em-
10 ployment Discrimination Complaint Adjudication. There is
11 at the head of the Office a Director.

12 “(2) The Director shall be a career appointee in the
13 Senior Executive Service.

14 “(3) The Director reports directly to the Secretary
15 or the Deputy Secretary concerning matters within the re-
16 sponsibility of the Office.

17 “(b)(1) The Director is responsible for making the
18 final agency decision within the Department on the merits
19 of any employment discrimination complaint filed by an
20 employee, or an applicant for employment, with the De-
21 partment. The Director shall make such decisions in an
22 impartial and objective manner.

23 “(2) No person may make any ex parte communica-
24 tion to the Director or to any employee of the Office with
25 respect to a matter on which the Director has responsibil-
26 ity for making a final agency decision.

1 “(c) Whenever the Director has reason to believe that
2 there has been retaliation against an employee by reason
3 of the employee asserting rights under an equal employ-
4 ment opportunity law, the Director shall report the sus-
5 pected retaliatory action directly to the Secretary or Dep-
6 uty Secretary, who shall take appropriate action thereon.

7 “(d)(1) The Office shall employ a sufficient number
8 of attorneys and other personnel as are necessary to carry
9 out the functions of the Office. Attorneys shall be com-
10 pensated at a level commensurate with attorneys employed
11 by the Office of General Counsel.

12 “(2) The Secretary shall ensure that the Director is
13 furnished sufficient resources in addition to personnel
14 under paragraph (1) to enable the Director to carry out
15 the functions of the Office in a timely manner.

16 “(3) The Secretary shall ensure that any performance
17 appraisal of the Director of the Office of Employment Dis-
18 crimination Complaint Adjudication or of any employee of
19 the Office does not take into consideration the record of
20 the Director or employee in deciding cases for or against
21 the Department.”.

22 (2) The table of sections at the beginning of such
23 chapter is amended by adding at the end the following
24 new item:

“319. Office of Employment Discrimination Complaint Adjudication.”.

1 (b) REPORTS ON IMPLEMENTATION.—The Director
2 of the Office of Employment Discrimination Complaint
3 Adjudication of the Department of Veterans Affairs (es-
4 tablished by section 319 of title 38, United States Code,
5 as added by subsection (a)) shall submit to the Secretary
6 and to Congress reports on the implementation and the
7 operation of that office. The first such report shall be sub-
8 mitted not later than April 1, 1998, and subsequent re-
9 ports shall be submitted not later than January 1, 1999,
10 and January 1, 2000.

11 **SEC. 4. EFFECTIVE DATE.**

12 Sections 516 and 319 of title 38, United States Code,
13 as added by sections 2 and 3 of this Act, shall take effect
14 90 days after the date of the enactment of this Act.

15 **SEC. 5. INDEPENDENT PANEL TO REVIEW EQUAL EMPLOY-**
16 **MENT OPPORTUNITY AND SEXUAL HARASS-**
17 **MENT PROCEDURES WITHIN THE DEPART-**
18 **MENT OF VETERANS AFFAIRS.**

19 (a) ESTABLISHMENT.—There is hereby established a
20 panel to review the equal employment opportunity and sex-
21 ual harassment practices and procedures within the De-
22 partment of Veterans Affairs and to make recommenda-
23 tions on improvements to those practices and procedures.

24 (b) PANEL FUNCTIONS RELATING TO EQUAL EM-
25 PLOYMENT OPPORTUNITY AND SEXUAL HARASSMENT.—

1 The panel shall assess the culture of the Department of
2 Veterans Affairs in relationship to the issues of equal em-
3 ployment opportunity and sexual harassment, determine
4 the effect of that culture on the operation of the Depart-
5 ment overall, and provide recommendations as necessary
6 to change that culture. As part of the review, the panel
7 shall do the following:

8 (1) Determine whether laws relating to equal
9 employment opportunity and sexual harassment, as
10 those laws apply to the Department of Veterans Af-
11 fairs, and regulations and policy directives of the
12 Department relating to equal employment oppor-
13 tunity and sexual harassment have been consistently
14 and fairly applied throughout the Department and
15 make recommendations to correct any disparities.

16 (2) Review practices of the Department of Vet-
17 erans Affairs, relevant studies, and private sector
18 training and reporting concepts as those practices,
19 studies, and concepts pertain to equal employment
20 opportunity, sexual misconduct, and sexual harass-
21 ment policies and enforcement.

22 (3) Provide an independent assessment of the
23 Report on the Equal Employment Opportunity Com-
24 plaint Process Review Task Force of the Depart-
25 ment.

1 (c) COMPOSITION.—(1) The panel shall be composed
2 of six members, appointed as follows:

3 (A) Three members shall be appointed jointly
4 by the chairman and ranking minority party member
5 of the Committee on Veterans' Affairs of the House
6 of Representatives.

7 (B) Three members shall be appointed jointly
8 by the chairman and ranking minority party member
9 of the Committee on Veterans' Affairs of the Senate.
10 (2) The members of the panel shall choose one of the
11 members to chair the panel.

12 (d) QUALIFICATIONS.—Members of the panel shall be
13 appointed from among private United States citizens with
14 knowledge and expertise in one or more of the following:

15 (1) Extensive prior military experience, particu-
16 larly in the area of personnel policy management.

17 (2) Extensive experience with equal employment
18 opportunity complaint procedures, either within Fed-
19 eral or State government or in the private sector.

20 (3) Extensive knowledge of the Department of
21 Veterans Affairs, and particularly knowledge of per-
22 sonnel practices within the Department.

23 (e) REPORTS.—(1) Not later than six months after
24 the members of the panel are appointed, the panel shall
25 submit an interim report on its findings and conclusions

1 to the Committees on Veterans' Affairs of the Senate and
2 House of Representatives.

3 (2) Not later than one year after establishment of
4 the panel, the panel shall submit a final report to the Com-
5 mittees on Veterans' Affairs of the Senate and House of
6 Representatives. The final report shall include an assess-
7 ment of the equal employment opportunity system and the
8 culture within the Department of Veterans Affairs, with
9 particular emphasis on sexual harassment. The panel shall
10 include in the report recommendations to improve the cul-
11 ture within the Department.

12 (f) PAY AND EXPENSES OF MEMBERS.—(1) Each
13 member of the panel shall be paid at a rate equal to the
14 daily equivalent of the annual rate of basic pay payable
15 for level IV of the Executive Schedule under section 5315
16 of title 5, United States Code, for each day (including
17 travel time) during which the member is engaged in the
18 performance of the duties of the panel.

19 (2) The members of the panel shall be allowed travel
20 expenses, including per diem in lieu of subsistence, at
21 rates authorized for employees of agencies under sub-
22 chapter I of chapter 57 of title 5, United States Code,
23 while away from their homes or regular places of business
24 in the performance of services for the panel.

1 (g) ADMINISTRATIVE SUPPORT.—The Chairman may
2 hire such staff as necessary to accomplish the duties out-
3 lined under this title.

4 (h) FUNDING.—The Secretary of Veterans Affairs
5 shall, upon the request of the panel, make available to the
6 panel such amounts as the panel may require, not to ex-
7 ceed \$400,000, to carry out its duties under this title.

8 (i) TERMINATION OF PANEL.—The panel shall termi-
9 nate 60 days after the date on which it submits its final
10 report under subsection (e)(2).

Passed the House of Representatives October 6,
1997.

Attest:

ROBIN H. CARLE,
Clerk.