

# Equal Opportunity Update

*In the middle of every difficulty lies opportunity. –Albert Einstein*

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## EDITOR'S NOTE:

### Extreme Makeover—Work Edition

The Opportunity Development Center, like the larger world in which we live, has undergone changes in the last year or so. With so much change occurring throughout our nation, and our institution, it soon became clear that the way we operated in previous times was no longer sufficient. So, the ODC underwent a makeover. Our physical facelift consisted of a few coats of paint, new carpet, and rearranged furniture and artwork. Internally, we focused on policies and procedures. This edition of our newsletter spotlights the particulars of our internal makeover and how it affects you.

Supervisors and managers should pay close attention to the articles discussing several new and revised federal laws and Vanderbilt policies relevant to the employment and education settings here. As for internal

## 2009 Brings Significant Changes to Laws

The New Year brings with it significant changes to two major laws and a new law is founded.

On January 1, 2009, the **ADA Amendments Act of 2008** (ADAAA) went into effect. Signed by President Bush on September 25, 2008, the ADAAA broadens the ADA's definition of "disability" making it easier for employees to fall within the gamut of its protection. As a result, individuals with fully-managed diabetes, controlled asthma or fertility difficulties may now be protected from discrimination and entitled to accommodations such as time off from work under the ADA.

On January 16, 2009, revisions to the **Family and Medical Leave Act** (FMLA) went into effect. Implemented by the U.S.

Department of Labor's Wage and Hour Division (DOL) on November 17, 2008, the revisions clarify previous uncertainties and expand rights to caregivers and active duty military family members.

Selected clarifications include the non-FMLA exhaustion of "light duty" assignments and the requirement that employees must follow the employer's normal and customary call-in procedures, absent unusual circumstances.

Even more substantial is that family members caring for covered service members may now take up to 26 workweeks of leave, as opposed to 12, in a single 12-month period.

On January 29, 2009, President Barack Obama

signed the **Lilly Ledbetter Fair Pay Act** (LLFPA). It affects employers charged with wage discrimination by significantly expanding employees' time for filing suit. Specifically, the 180-day statute of limitations will now be extended on every occurrence of an unlawful employment practice, including issuance of paychecks.

It's in response to the 2007 U.S. Supreme Court (Court) ruling in the case of Lilly Ledbetter v. Goodyear Tire and Rubber Company. In the 5-4 decision, the Court ruled that Ledbetter was no longer entitled to file a wage discrimination claim because she had failed to do so within 180 days of the initial discriminatory wage decision.

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## Nondiscrimination Policies Revised

Vanderbilt now recognizes gender identity and expression as protected bases in its nondiscrimination policies.

Chancellor Nicholas S.

Zeppos directed the change in response to the growing trend in recognition by a number of top businesses and universities. The trend likely comes from recent legal protection granted

by a few states as an extension of protection against sex discrimination.

The revisions became

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**EDITOR'S NOTE  
(cont.):**

revisions, we have worked with a number of our collaborators to revise the nondiscrimination and anti-harassment policies to more accurately reflect Vanderbilt's inclusive environment.

Another exciting makeover occurred with the ODC website. It received a much needed update. You can find more information about our services, policies and procedures online at [www.vanderbilt.edu/odc](http://www.vanderbilt.edu/odc).

The last of our internal makeover concerns our staff hiring's, procedural efficiency and accomplishments. We have gained three new staff persons who are also assisting in developing innovative and creative ways to serve the Vanderbilt community. Our disability programs area has clearer lines of communication between the faculty, students and staff. We successfully completed a routine federal audit of the institution's EEO/AA compliance programs in the spring of 2008. As a result of the audit, we self identified areas for increased proactive measures that we are working with our leadership to implement.

We hope this issue of our newsletter helps you better understand your rights and/or obligations as it relates to the ODC. ■

*Anita J. Jenious, J.D.,  
Interim Director, ODC*

## U.S. Sup. Ct. Settles Retaliation Dispute

The U.S. Supreme Court (Court) settles the dispute among lower courts concerning Title VII's retaliation provision and who it protects.

The lower courts were split on this issue: some courts interpreted Title VII's anti-retaliation provision to allow only those who participated in an actual EEOC or court case to file an agency retaliation claim, whereas other courts interpreted it to allow participants in internal investigations to file as well.

The Court settled the

dispute after hearing arguments in a 2009 TN case, Crawford v. Metro Government of Nashville and Davidson County. It involved a participant acting as a witness in an internal sexual harassment investigation. Following her participation in the internal investigation, she was fired. The Court ruled that her participation in the internal discrimination investigation amounted to "participation" under Title VII, and she is entitled to file a retaliation claim.

This ruling is consistent with Vanderbilt's anti-

retaliation policy, which allows participants in an internal discrimination investigation who believe they were retaliated against to file a retaliation claim with the ODC. To see who else may qualify to file a retaliation complaint with the ODC, see the nondiscrimination policies or visit ODC's website at [www.vanderbilt.edu/odc](http://www.vanderbilt.edu/odc). ■



## ODC Welcomes New Staff

ODC welcomes four new staff persons to its team and congratulates one for her recent promotion.

Tiffany Taylor joined the ODC on December 2, 2008. Tiffany serves as ODC's Disability Services Program Director where she primarily assists individuals with the accommodation process. Prior to joining the ODC, Tiffany worked as an Affirmative Action Officer for the State Department of General Services.

Michael Carter joined us on November 10, 2008. Michael serves as one of the ODC's Compliance Specialists where he primarily conducts

investigations of discrimination, harassment and related retaliation. Michael previously worked as a Staff Attorney for the Disability Law and Advocacy Center.

Sam Starks joined us on January 16, 2008. Sam serves as ODC's Compliance Manager where he primarily manages Vanderbilt's Affirmative Action Program. He joins us from Western Kentucky University where he worked as the Special Assistant to the Associate Vice President for Enrollment Management.

Kristi Corder was

promoted to Compliance Associate on January 25, 2008. Kristi primarily assists with the ODC's compliance processes. Kristi formerly worked as ODC's Assistant Office Manager.

Tammy King joined us on June 2, 2008. Tammy serves as ODC's Assistant Office Manager. Tammy primarily proctors student exams and directs calls. She formerly served as an Attendance Officer at the Metropolitan Nashville Public School System. ■

## 2009 Brings Significant Changes (cont.)

### Important Take-Aways

Now that the ADA's definition of a disability has been broadened, it is important to contact the ODC if you notice your employee struggling due to a medical condition or if he or she requests an accommodation. Note that an employee may use plain language in requesting an

accommodation.

Concerning FMLA, since many revisions have been made, it's a good idea to review the changes now and learn how it will affect your employees, particularly with military service members and their families.

Lastly, pay employees based on merit, not based

on their gender. Keep all documents which reflect reasons for rate of pay decisions.

For questions concerning the ADA, ADAAA or LLFPA, contact the ODC. Employee Relations can answer FMLA-related questions. ■



## Nondiscrimination Policies Revised (cont.)

part of Vanderbilt's Equal Opportunity and Affirmative Action Policy and Anti-Harassment Policy on May, 1 2008. Handbooks and manuals are currently being updated to reflect the changes.

Due to the limited awareness of gender identity and gender expression issues, the revisers included definitions of each in the

policies:

(1) gender identity is generally defined as a person's own sense of identification as male, female, both, or neither as distinguished from actual biological sex; it is one's psychological sense of self; and (2) gender expression is everything we do that communicates our sense of identification to others.

In addition to the recent add-ons, race, sex, religion, color, national or ethnic origin, age, disability, military status and sexual orientation are protected at Vanderbilt. A definition of sexual orientation has also been added.

Those needing the updated EEO statement should refer to ODC's website under "Publications." ■

## ODC's Website Gets a Makeover

The ODC website has been revamped. The new site can be viewed at: [www.vanderbilt.edu/odc](http://www.vanderbilt.edu/odc).

You'll find information on an array of topics such as disability services, the grievance process and training programs.

Resources include a list of Vanderbilt's nondiscrimination policies and state and federal laws, pdf's of publications and a list of clubs and organizations at Vanderbilt that represent diversity.

Soon, we will be adding pod casts and videos covering equal opportunity and affirmative action issues.

Detailed directions, parking and contact information can also be found at the site. ■

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