



State of Oregon
**DEPARTMENT OF CONSUMER
AND BUSINESS SERVICES**

Affirmative Action Plan
2017 - 2019 Biennium

Patrick M. Allen, Director
350 Winter St. NE
P.O. Box 14480
Salem, Oregon 97309-0405
503-947-7872



Oregon

Kate Brown, Governor

Department of Consumer and Business Services

Director's Office

350 Winter Street NE, Room 200

PO Box 14480

Salem, OR 97309-0405

Voice: 503-947-7872

Fax: 503-378-5969

www.dcbs.oregon.gov

September 21, 2016

Miss Serena Stoudamire Wesley
Governor's Diversity and Inclusion Office
255 Capitol Street NE, STE 126
Salem, OR 97301

Re: DCBS 2017-2019 Affirmative Action Plan

Dear Serena,

The Department of Consumer and Business Services is committed to having a workforce that reflects the diversity of the state. We are committed to providing equal employment opportunities and equal access to programs and services to all Oregonians.

Enclosed is the 2017-2019 Affirmative Action Plan for the Department of Consumer and Business Services. The plan highlights our accomplishments in affirmative action, diversity, and inclusion and our goals for continuing to attract and maintain a diverse workforce.

Our accomplishments in the 2015-2017 biennium included networking with members of diverse organizations to disseminate information about the services DCBS provides to Oregonians, what job openings are available, and what kinds of career services assistance we offer to applicants.

New goals for 2017-2019 include implementing a Diversity and Inclusion Council, and developing and implementing Succession Planning for DCBS managers, and to continue providing career development assistance, such as informational interviews, mock interviews, and application assistance, to people of color, people with disabilities, veterans, and women, as well as employees at DCBS who want to further their career.

In addition to our commitment to having a diverse workforce and a welcoming environment, we continue to support the work of the Governor's Diversity and Inclusion Office to promote diversity, equity, and inclusion statewide.

If you have any questions about the plan or need any additional information, don't hesitate to contact me at 503-947-7872, or Veronica Murray, our agency diversity outreach coordinator, at 503-947-7283.

Sincerely,

Patrick M. Allen
Director

**DEPARTMENT OF CONSUMER & BUSINESS SERVICES
AFFIRMATIVE ACTION PLAN
2017 - 2019 BIENNIUM**

Letter From The Director

I.	Description Of DCBS	Page
	A. DCBS Mission and Objectives.....	1
	B. Name of Director/Administrator.....	3
	C. Name of Policy Advisor.....	3
	D. Name of Affirmative Action Representatives.....	3
	E. Name and contact information for designated FTE with “diversity,” “inclusion,” “access,” or equity in their working title.....	4
	F. Organization Chart	
II.	Affirmative Action Plan	
	A. Agency Affirmative Action Policy Statement.....	5
	B. Agency Diversity & Inclusion Statement.....	7
	C. Training, Education, and Development Plan	8
	D. Programs	10
	a. Internship Program	10
	b. Mentorship Program	11
	c. Community Outreach Program	11
	d. Diversity Awareness Program	12
	i. Agency-Wide Diversity Council	12
	ii. Diversity Presentations, Training and/or Activities	12
	e. Leadership Development/Training Program	12
	E. Executive Order 16-09 Updates.....	14
	a. Respectful Leadership Training (Diversity, Equity & Inclusion) ..	14
	b. Statewide Exit Interview Survey	14
	c. Performance Evaluations of all Management Personnel	14
	F. Status of Contracts to Minority Businesses (ORS 659A.015).....	15
III.	Roles For Implementation Of Affirmative Action Plan	
	A. Director/Administrators.....	16
	B. Managers and Supervisors	17
	C. Affirmative Action Representative.....	18
IV.	July 1, 2015 To June 30, 2017 Accomplishments	
	A. Progress and Trends.....	20
	B. Accomplishments.....	23

V.	July 1, 2017 – June 30, 2019	
	A. Goals	26
	B. Strategies.....	27

VI. Appendix A - State Policy Documentation

- A. ADA and Reasonable Accommodation Policy (*Statewide Policy 50.020.10*)
- B. Discrimination and Harassment Free Workplace - (*Statewide Policy No. 50.010.01*)
- C. Employee Development and Implementation of Oregon Benchmarks for Workforce Development (*Statewide Policy 50.045.01*)
- D. Veterans Preference in Employment (*105-040-0015*)
- E. Equal Opportunity and Affirmative Action Rule (*105-040-0001*)
- F. Executive Order 16-09

VII. Appendix B - Federal Documentation

- A. Age Discrimination in Employment Act of 1967 (ADEA)
- B. Disability Discrimination Title I of the Americans with Disability Act of 1990
- C. Equal Pay and Compensation Discrimination Equal Pay Act of 1963, and Title VII of the Civil Rights Act of 1964
- D. Genetic Information Discrimination Title II of the Genetic Information Nondiscrimination Act of 2008 (GINA)
- E. National Origin Discrimination Title VII of the Civil Rights Act of 1964
- F. Pregnancy Discrimination Title VII of the Civil Rights Act of 1964
- G. Race/Color Discrimination Title VII of the Civil Rights Act of 1964
- H. Religious Discrimination Title VII of the Civil Rights Act of 1964
- I. Retaliation Title VII of the Civil Agency Affirmative Action Policy
- J. Sex-Based Discrimination Title VII of the Civil Rights Act of 1964
- K. Sexual Harassment Title VII of the Civil Rights Act of 1964

VIII. Appendix – Documentation in Support of Affirmative Action Plan

- A. Affirmative Action Policy, (DCBS, PER-27)
- B. Recruitment Process
- C. Employee Voluntary Self-Identification form (*Statewide Policy Revised EEO-4*)
- D. Diversity & Inclusion Council (DCBS, EMP-02)
- E. Diversity Council Charter
- F. Diversity Council Membership Application

I. Department of Consumer and Business Services Description

At the Department of Consumer and Business Services, we protect consumers and workers from fraud, unfair treatment, and injury in the areas we regulate. We also realize the importance of the industries we regulate to Oregon's economy, so we work hard to make sure our regulations foster a positive business climate. We take seriously our role as public servants and strive to provide the best possible value to the people of Oregon for the resources entrusted to us.

Our Mission

The Department of Consumer and Business Services' (DCBS) mission is to protect and serve Oregon's consumers and workers while supporting a positive business climate.

What We Do

DCBS is Oregon's largest business regulatory and consumer protection agency. The department focuses on the following areas:

- Safe and healthy workplaces
- Safe and efficient buildings
- Sound financial systems
- Protection for consumers of financial products
- Availability of safe, affordable financial and insurance products
- Raising awareness among consumers about health insurance options available in Oregon
- Affordable and available workers' compensation benefits
- Education for consumers, workers, and businesses

DCBS staff members are committed to carrying out the department's statutory responsibilities and fulfilling our mission and goals in a manner that serves the needs of both the public and the businesses and professionals we regulate.

What We Value

- A commitment to public service
- Integrity, expertise, and personal responsibility
- Collaborative, creative efforts to find solutions
- Effectiveness and accountability in our people and our programs
- Excellent customer service
- Effective communication
- Respect for the diverse community of DCBS and Oregon
- A positive business climate

Our Goals

DCBS has three fundamental goals to advance the department's mission:

- Protect consumers and workers in Oregon
- Regulate in a manner that supports a positive business climate
- Be accountable to the public we serve, with excellent service to our customers

Strategies to Achieve Our Goals

DCBS applies the following strategies to achieve the department's mission and goals:

- Actively work with stakeholders and customers to seek input and solve problems
- Focus efforts on improving outcomes for consumers and workers
- Structure regulatory programs to impose the minimum burden on regulated businesses consistent with achieving the desired outcomes
- Promote choices and access for Oregon consumers and businesses by supporting the success of industries in the economic sectors we regulate
- Use a combination of regulation, enforcement, education, consultation, or direct service delivery to achieve results
- Use technology and other tools to exchange information easily and conduct business
- Work with customers to solve problems and make every contact a positive experience
- Measure programs and approaches for results and look for improvement
- Improve cost-effectiveness and ensure services provide value to consumers, workers, and businesses

Customer Service Expectations of DCBS Employees

DCBS values customer service. Expecting exceptional customer service skills from all DCBS employees helps us to maintain a welcoming work environment. Below is the list of customer service expectations of DCBS employees:

- We are accessible. We listen actively, acknowledge the problem, and ask questions before we problem-solve or provide answers.
- We provide solutions and options and are empathetic and helpful even if we have to say no.
- We respond to inquiries promptly and provide consistent information.
- We do our homework before answering a question.
- We are polite and respectful.
- We are accountable and take responsibility.
- We communicate clearly, concisely, and jargon-free both verbally and in writing.
- We treat our customers, both external and internal, the way we would like to be treated.

Agency Director

Patrick M. Allen, Director
Jean Straight, Deputy Director
350 Winter St. NE
P.O. Box 14480
Salem, OR 97309-0405
503-947-7872

Governor's Policy Advisor

Vince Porter
State Capitol
Salem, OR 97301
503-378-3132

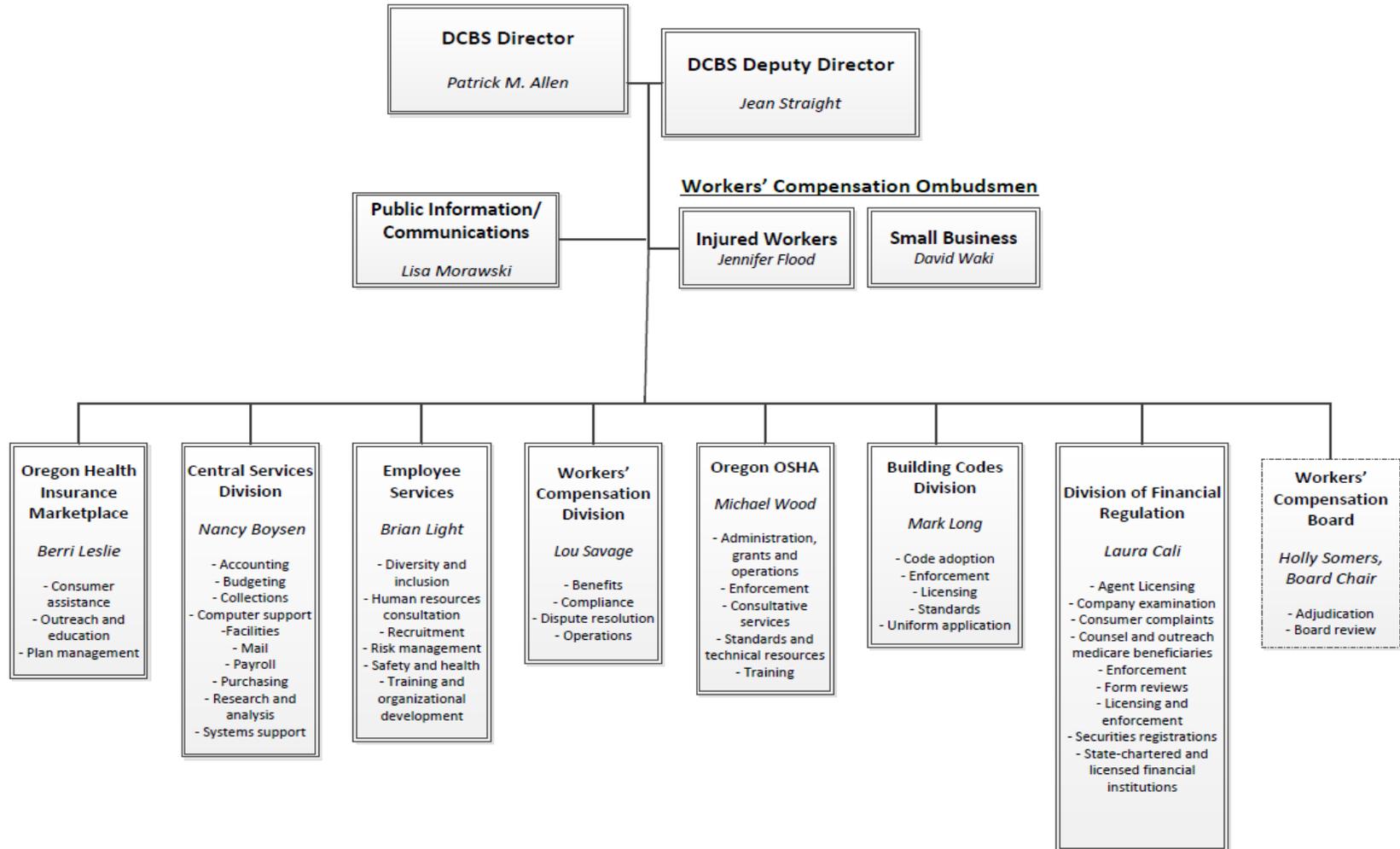
DCBS Affirmative Action Representatives

Brian Light, Administrator, Employee Services
Robert J. Newton, Deputy Administrator, Employee Services
503-378.3200

Diversity & Inclusion Outreach Coordinator

A. Veronica Murray
350 Winter St. NE
P.O. Box 14480
Salem, OR 97309-0405
503-378-3200

DCBS Organizational Chart by Division



II. Affirmative Action Plan



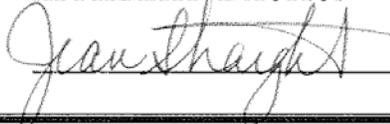
Policy & Procedure **Number: PER-27**

Date Issued: February 1, 2013

Section: Employee Services

Subject: AFFIRMATIVE ACTION

Approved:



Applicability:

This policy applies to all Department of Consumer and Business Services (DCBS) employees, including the Workers' Compensation Board (WCB).

Policy:

The Department of Consumer and Business Services is committed to providing to citizens and employees, through a program of affirmative action, equal access to programs and services and fair and equal opportunities for employment. In administering DCBS programs, DCBS employees will not discriminate against any person who is a current or potential user of DCBS services on the basis of race, color, religion, gender, marital status, military status, national origin, political affiliation, age, disability, or sexual orientation.

Our agency's ability to achieve its mission depends on our ability to attract individuals who are successful. Individual success depends on our collective practice of recognizing and respecting the value of human differences. To reach this level of success, every effort will be made to reach out to the broadest possible labor market, and to make all employment decisions based on an individual's relevant education, training and experience, and suitability relative to a position, without regard to race, color, religion, gender, marital status, military status, national origin, political affiliation, age, disability, or sexual orientation.

In addition to active recruiting efforts, the work environment is an important part in maintaining a diverse workforce. DCBS is committed to a zero-tolerance level of any form of discrimination or harassment and all managers and employees are accountable for creating and promoting a work environment that is free from any kind of hostility or unwelcome behavior.

The department maintains a copy of the department Affirmative Action Plan on the DCBS web-site for managers and employees to review. Managers will participate and encourage others to participate in the agency's activities designed to promote affirmative action. As part of their annual performance evaluation, all managers and supervisors will be evaluated on their effectiveness in promoting the affirmative action goals and objectives for DCBS.

Working together, the department's workforce at all levels can create an atmosphere of respect, fairness, and cooperation that will demonstrate our commitment to the principles that represent the highest aspiration of our rich, multi-cultural society. Through this collaborative effort, we can effectively and efficiently achieve our mission of protecting consumers and workers.

Department of Consumer & Business Services

Policy Number: PER-27

Date Issued: 2/1/13

References:

1. ORS 243.305, 243.315, 659A.012, 659A.030
2. Executive Order, EO-05-01
3. SEIU Collective Bargaining Agreement Article 44
4. AFSCME Collective Bargaining Agreement Article 4
5. Title VII, Civil Rights Act of 1964

Department of Consumer and Business Services
EQUALITY, DIVERSITY AND INCLUSION STATEMENT

The Department of Consumer and Business Services is committed to providing Oregonians with equal access to its programs and services and fair and equal employment opportunities.

DCBS employees will treat all people with dignity and respect and will not discriminate on the basis of race, color, ancestry, national origin, age, marital status, sexual orientation, political or religious affiliation, or physical or mental disability. All employment decisions will be based on an individual's relevant experience, education and training, and suitability relative to a position, without regard to race, color, ancestry, national origin, age, marital status, sexual orientation, political or religious affiliation, or physical or mental disability.

DCBS recognizes a diverse workforce is crucial to serve Oregonians. The department works to achieve and maintain diversity through its diversity recruitment outreach efforts, which includes the following:

- Reaching out to the broadest possible labor market when recruiting for positions.
- Enforcing a zero-tolerance policy against any form of discrimination or harassment.
- Holding all managers and employees accountable for creating and promoting a work environment that is welcoming and free from hostility or unwelcome behavior.
- Maintaining a copy of the DCBS Affirmative Action Plan on its web site, making it available for managers and employees to review.
- Evaluating managers and supervisors on their effectiveness in promoting diversity and a welcoming environment for DCBS.

Working together, the department's workforce at all levels creates an atmosphere of respect, fairness, and cooperation that reflects our rich, multicultural society. Through this collaborative effort, we can effectively and efficiently achieve our mission of protecting consumers and workers.



Employee Services
503-378-3200

Training, Education, and Development Plan

The training plan for the 2017-2019 biennium includes training designed to reinforce the mission and values of DCBS. A new training developed during the 2015-2017 biennium was the eight-week Change Agent Management Program (CAMP) to provide managers with a common foundation of knowledge and experience. Three cohorts of this program were delivered, providing training to approximately 40 managers. Mid-biennium, DCBS transitioned its management training series to the newly developed DAS Management Development Series, taking advantage of enterprise-wide resources. DCBS will supplement the DAS training with additional DCBS-specific training topics such as diversity and inclusion, the veterans' preference process, and a new session on effective interviewing called Hiring the Best.

During the biennium, DCBS developed and facilitated numerous courses and customized others in response to division requests. Topics include generational diversity, preventing harassment and violence in the workplace, and integrating workplace differences. The full list of courses to be offered is shown below. DCBS Training Advisory Group, an executive-level committee, has been formed to provide leadership and guidance in identifying needs and prioritizing course offerings. An emphasis will be placed on training that will help with diversity and inclusion at DCBS.

Action items related to training and development to help DCBS achieve the 2017-2019 goals include diversity topics presented by guest speakers at our DCBS Leadership Forum; a regular monthly column in the agency newsletter Connections; sharing with staff monthly emails about diversity events and celebrations; and implementation of a new diversity and inclusion training. A newly developed succession planning strategy is also being reviewed with plans for implementation, which includes an internship program. There will be a focus on encouraging employees who are leaving to complete an exit interview, and the director will use the information to find solutions for positive change.

All DCBS course offerings support the DCBS value of honoring and respecting the differences inherent to a multicultural, multigenerational, and multiable workforce. Further, in order to be effective, all courses presented by DCBS will be conducted using adult learning theory and learning style methodology. Courses currently planned to be offered include:

- The Different Generations/Intergenerational Communication
- Diversity and Inclusion
- Preventing Harassment and Violence in the Workplace
- Creating a Career Action Plan
- Leadership for Non-Managers
- Giving and Receiving Feedback
- Effective Presentation Skills
- Dealing with Hostile Situations
- Information and Security Training (e-learning)
- DAS Workplace Effects of Domestic Violence, Harassment, and Stalking (e-learning)
- Writing Rock Solid Position Descriptions
- Dealing with Change
- Crucial Conversation
- Listening Intently and Speaking Clearly
- Sharpening Your Interview Skills

- Microsoft Office (Excel, Outlook & Word)
- Progressive Discipline (Available to Managers)
- Emotional Intelligence
- Speak and Share: Tools for Training and Presenting

Employee Training Data

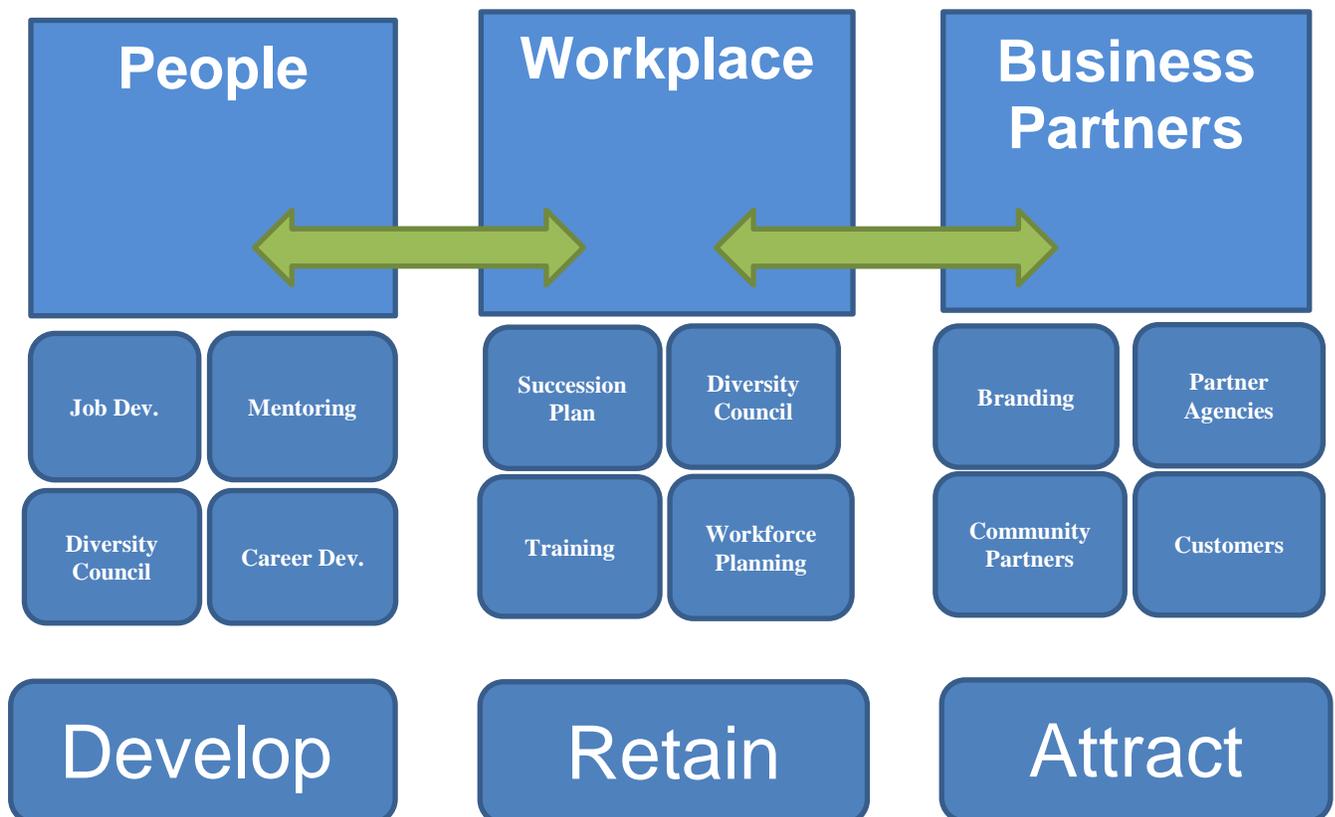
Training at DCBS consists of both in-house training opportunities and external trainings attended by DCBS employees. External training opportunities are varied; however, in-house trainings focus on soft skills and career development such as generational diversity, career planning, customer service, etc.

The table below reflects the relative distribution of the workforce at DCBS by EEO category as well as the allocation of training hours across those categories thus far during the 2015-2017 biennium. The workforce data is based on a snapshot of employees at DCBS as of June 30, 2016. Due to changes in the workforce, the statistics provided for training shift constantly and should be interpreted as accurate estimates based on available data.

Employee Training by EEO Category				
EEO Categories	Total Employees	% of Workforce	Training Hours	% of Training Hours
A01) Middle Management	17	1.9%	828	2.8%
A02) Upper Management	66	7.5%	1589	5.4%
B02) Communication/Editor	10	1.1%	169	0.6%
B04) Nurse/Health	43	4.9%	3471	11.8%
B07) Purchasing Agent/Analyst	7	0.8%	75	0.3%
B08) Natural Resource	5	0.6%	236	0.8%
B09) Social Science/Planner/Researcher	17	1.9%	398	1.4%
B10) Personnel/Employment	14	1.6%	426	1.5%
B11) Inspector/Compliance/Investigator	94	10.7%	1363	4.6%
B12) Computer Analyst	66	7.5%	1453	5.0%
B13) Attorney/Hearings Officer	32	3.6%	572	1.9%
B14) Librarian/Archival Specialist	1	0.1%	30	0.1%
B15) Accounting/Finance/Revenue	71	8.1%	2525	8.6%
B16) Program Coordinator/Analyst	128	14.5%	5955	20.3%
C03) Science	1	0.1%	58	0.2%
C04) Computer	1	0.1%	1	0.0%
C05) Audio-visual	9	1.0%	118	0.4%
C06) Revenue Agent/Examiner	6	0.7%	33	0.1%
C12) Safety Inspector	93	10.6%	7216	24.6%
E01) Non-Supervisory	2	0.2%	0	0.0%
F00) Administrative Support	195	22.1%	2831	9.6%
H00) Service Maintenance Worker	3	0.3%	12	0.0%
	881	100.0%	29358	100.0%

Programs

At the Department of Consumer and Business Services, diversity and inclusion are taken to heart. Our leaders understand and create a culture that truly values differences in people. They back this up with actions by listening and making changes that work and holding people accountable for high performance in alignment with the agency's values. We understand how having diversity and inclusion in the workplace means our business is more likely to appeal not only to future applicants, but also a wider base of customers we serve. It also allows for a richer source of creativity on the inside.



Internship Program. The Department of Consumer and Business Services (DCBS) provided several internship opportunities during the 2015-2017 biennium that included assignments with Building Codes Division and Division of Financial Regulation.

The Department of Consumer and Business Services (DCBS) summer internship program, Learn, Experience, Accomplish and Progress (LEAP), will be launched in June, 2017. The primary goal of the Internship Program is to support the agency mission of protecting and serving Oregon's consumers and workers while supporting a positive business climate. LEAP serves a valuable purpose of highlighting how a career in public service, specifically at DCBS, is an attractive path to consider for those entering the workforce. A secondary goal of the program is the creation of an additional in house recruitment channel. Graduates of LEAP will be in the unique position of building working relationships with hiring managers during the internship program. This will

allow participants to demonstrate that they possess the knowledge skills and abilities necessary to be successful in future permanent positions within the agency. Initiatives supported by LEAP include Diversity and Inclusion and Succession Planning.

Graduates of LEAP will gain valuable on the job experience along with an opportunity to begin building or add to their professional network. Interns will also be one step ahead in their future job search process by learning what it takes to earn a coveted position within DCBS.

The internship program helps promote the Oregon Department of Education's 40/40/20 plan. That plan's goal is 40 percent of adult Oregonians earning a bachelor's degree or higher, 40 percent earning an associate's degree or postsecondary credential, and 20 percent earning at least a high school diploma or equivalent. Also the local business community benefits from internships in a variety of ways. The primary benefit, however, is that more trained workers will be available to fill vacant positions.

Interns will be selected and appointed to the Student Office Worker classification based on a limited-competitive recruitment. Minimum qualifications will be developed based on knowledge skills and abilities typically associated with high performing high school or college students (enrolled at least half-time) who may have limited traditional work experience. LEAP candidates will complete the State of Oregon electronic employment application and will participate in the Interview Stream virtual interview process as well as second round in person interviews.

DCBS divisions will be contacted regarding suitable projects for the interns. Employee Services will provide outreach to a diverse pool of candidates that includes those who have participated in career fairs, referrals, and those who are contacted through the career services departments of area high schools and colleges. Employee Services will maintain a list of interns to use as a source of marketing for new recruiting announcements. Interns will be maintained on the list for one year following the end of their internship and receive email notification of DCBS open-competitive job announcements once they are posted on the state jobs page. We are compiling application process data that are intended to streamline and speed up the selection process when recruiting, thereby losing fewer candidates through selection delays and offering to those interested the help needed to expedite the process.

Mentorship/Onboarding Program. DCBS has been conducting an all-day New Employee Orientation/Customer Service Training for many years. During the 2015-2017 biennium, a new onboarding process, Right Start, has been implemented to provide an overview of DCBS as a whole. Once orientation is completed, a mentor is assigned to the employee. The outcome continues to be intended to make new employees feel welcomed and valued during the first few days and weeks when they are learning their job, the culture, and DCBS.

Community Outreach Program. In 2016, DCBS hosted our first Career Fair, which was attended by 250 applicants and current staff; attendees had the opportunity to meet and network with division managers and Employee Services staff. Applicants were invited to also attend a Getting Your Career in Gear workshop and to schedule a one-on-one meeting for more specific assistance.

DCBS continues to increase our community outreach to a variety of groups and attend events such as: Black Students Success Summit (Black Educational Achievement Movement); Meet the

Employer (WorkSource Oregon-Salem); Demystifying State Application Process (Chemeketa Community College, Western Oregon University, WorkSource Oregon, Oregon State University, and Hispanic Services Roundtable); Oregon Association for Minority Entrepreneurs; Oregon Native American Chamber; Say Hey and Breakfast for Champions (Partners in Diversity, in which DCBS is a platinum member); NAACP Keizer Chapter; Asian Pacific American Network of Oregon; Legislative Conference (Legislative Commission on Indian Services); Latino Business Alliance; Employment & Business Job Fair (Hispanic Metropolitan Chamber); Employment Fair (RISE); and International Potluck (Salem Multicultural Institute).

In addition to the diverse communities listed above, Employee Services sends appropriate job announcements to colleges and universities around Oregon to provide information for students and alumni about careers at DCBS. Job seekers and staff are supported with career help, including informational interviews, mock interviews, and application material reviews. During the 2017-2019 biennium, we will maintain and increase the number of organizations we network with to increase the number of individuals who will hear about our job announcements and career services.

As a result of ongoing monthly statewide affirmative action meetings, DCBS continues to build relationships with other state agency affirmative action representatives, human resource managers, and recruiting managers. These relationships allow DCBS and other agencies to mutually benefit from sharing expertise and best practices in affirmative action plan development, analysis of workforce representation statistics, diversity and inclusion idea sharing, career planning help for employees among agencies, and building stronger relationships between the HR offices throughout the enterprise.

Diversity Awareness Program

Agency-wide Diversity Council: DCBS has developed a diversity council to be implemented and advocated during the 2017-2019 biennium. This council will serve as an advisory body for achieving the agency's diversity and inclusion initiative and business needs through effective culture change strategies. It is a forum to share diversity information, events, and ideas; discuss diversity issues; collaborate and recommend implementation of diversity initiatives; and make recommendations regarding how to best use agency resources to achieve diversity and inclusion goals.

The diversity council will reflect an inclusive cross section of DCBS workforce: 15 staff, including management; the DCBS director will serve as the chairperson.

Diversity Presentations, Training, and Activities: DCBS will continue to conduct training during the 2017-2019 biennium to help our employees have a greater understanding and acceptance of differences and reinforce respect for all diverse communities. To continue with our progress, DCBS will implement a newly developed diversity and inclusion training and our diversity and inclusion council.

Leadership Development Program. The agency will use succession planning techniques in order to identify, recruit, and retain high-potential candidates for mission-critical leadership positions to ensure that current and future leaders have the necessary skills to manage the workforce

effectively, exercise leadership continuity, and sustain a learning environment that drives continuous performance improvement.

DCBS's Professional Readiness Employee Program (PREP) or Succession Planning Program is beginning to formulate the departure of critical institutional knowledge due to the aging workforce eligible to retire within the next five years.

PREP is a process that will support offices in identifying critical positions, the current and future competencies (knowledge, skills, and abilities), what individuals need to be successful in that position, and assessment of current talent to fulfill those roles to ensure business continuity. At the end of this process, DCBS will have a comprehensive pool of talent to draw upon to meet current and future agency needs.

Succession planning supports the agency by doing the following:

- Identifying critical positions and highlighting potential vacancies
- Selecting key competencies and skills necessary for business continuity
- Focusing development of individuals to meet future business needs
- Safeguarding the departure of critical institutional knowledge

During 2015-2017 biennium, DCBS implemented these actions:

- A new contract with Interview Stream, an online video-interviewing platform. This not only allows us to speed up our recruitment process, but also allows us to more efficiently obtain qualified, diverse candidates in front of our hiring managers.
- Changes to the recruiting process, which includes a "blind" review of applications so there is no personally identifiable information that might contribute to an unconscious bias of a candidate.
- It is recommended that all interview panels be one-third ethnically diverse.

In 2016, the agency's diversity and inclusion coordinator met individually with all division deputy administrators to find ways to collaboratively meet the DCBS mission in regards to diversity and inclusion. One outcome of these meetings is the development of training for interview panel members. A template letter inviting staff to consider becoming a panel member was developed that will be shared with staff by all managers/supervisors.

Update: Executive Order 16-09

Respectful Leadership Training (Diversity, Equity, and Inclusion). In 2016, the DCBS Diversity and Inclusion Coordinator met individually with all of the divisions' deputy administrators to hear their concerns and challenges in meeting the agency's Affirmative Action plan. One outcome of these meetings is the development of training for interview panel members. A template letter inviting staff to consider becoming a panel member was developed which will be shared with staff by all managers/supervisors.

Statewide Exit Interview Survey. DCBS is committed to providing opportunities to the workforce. This often involves the promotion of employees who accept positions in other state agencies or jobs outside of the State of Oregon. During the 2015-2017 biennium, there were not enough exit interview surveys filled out by departing DCBS employees to show any trends. We are currently in the process of reviewing a more effective procedure to ensure that employees who are leaving receive the links for the DCBS and statewide exit interview before their last day at DCBS. The importance of completing the survey will be communicated in the email to the employee, so that hopefully more departing employees will take the time to complete the survey. The DCBS exit interview will be strengthened to include questions regarding diversity and inclusion issues. The human resource administrator will review captured exit interview data. Any area of concern will be discussed with division executive management for appropriate action.

Performance Evaluations of all Management Personnel. DCBS holds its managers accountable for timely completion of effective performance evaluations. The manager's performance evaluation form includes a section used to evaluate managers on their effectiveness in achieving affirmative action objectives. The affirmative action and diversity section of the management performance appraisal states:

Affirmative Action and Diversity

Evaluate how well manager demonstrates and acts in concert with DCBS' values and policy by prompt and appropriate intervention in any situation, which may or does create a hostile environment for any employee for which the manager is responsible.

Discuss the manager's contribution to the agency's Affirmative Action goals.

Discuss the manager's familiarity with the department's workforce representation reports and Affirmative Action Plan and knowledge of which classifications under their control are under-represented.

If the manager has hired any personnel during the appraisal period, he/she takes the diversity of their unit into account when hiring. What type of advertising/outreach was done to attract qualified members of protected classes to apply? Did the interview panel reflect diversity? Were the interview questions written to gain information about the candidate's knowledge, skills and abilities only?

Has the manager demonstrated respect for the diversity of opinions, ideas, life-experiences and cultural differences of all individuals by seeking out viewpoints when making decisions affecting work assignments?

Has the manager demonstrated that he/she deals with workforce management issues and interpersonal conflict in a respectful manner and expects the same of their subordinates?

Status of Contracts to Minority Businesses

As of November 08, 2016, DCBS has 122 personal service contracts with a total value of \$32,520,310.00. Of these 122 contracts, the agency currently has twelve contracts with OMWESB-certified firms with a value of \$167,860. DCBS also has twelve contracts with women-owned businesses that are not OMWESB certified with a total value of \$116,500.00.

III. Roles for Implementation of Affirmative Action Plan

The Affirmative Action goals of the Department of Consumer and Business Services for the 2017-2019 biennium are:

1. **Workforce Diversity.** DCBS will recruit from a diverse, qualified group of potential applicants to secure a high-performing workforce drawn from all segments of our population, increasing our percentage of people of color, people with disabilities, women, and veterans in our workforce.
2. **Workplace Inclusion.** DCBS will cultivate a culture that encourages collaboration, creativity, and flexibility to enable individuals to contribute to their full potential and further the efforts of attracting new employees and retaining current employees.
3. **Sustainability.** DCBS will develop strategies to equip leaders with the ability to model and manage diversity, be accountable, measure results, and institutionalize a culture of inclusion.

Responsibility for achieving these goals is shared by all managers and employees at DCBS. The following individuals will provide the leadership for DCBS to have an inclusive workplace rich in diversity and free of discrimination.

Director

1. Foster and promote to managers and employees the importance of a diverse and discrimination and harassment free workplace by periodically sending emails to all staff.
2. Serve as a chairperson of the diversity and inclusion council.
3. Encourage managers to have diverse interview panels (one-third ethnically diverse).
4. Serve as a member of the Executive Leadership Team (ELT).
5. Ensure division administrators understand their role and responsibility to foster and promote affirmative action activities, a diverse workforce, and a welcoming and respectful environment. An important responsibility is to communicate these same principles to their subordinate managers and supervisors, as outlined in ORS 659A.012.
6. Encourage managers and staff of diversity and inclusion council participation.
7. Attend all RightStart (new employee) orientation or assign a representative to attend.
8. Chairperson of the Governor's Improving Government Steering Team (IGST) and the Enterprise Informational Technology Governance (EITG).
9. Direct division administrators that annual performance appraisals for subordinate managers will include an evaluation of their effectiveness in achieving DCBS affirmative action

goals and objectives, and promoting a welcoming and respectful environment within the performance year.

10. Participate in and encourage the participation of subordinate managers in events supporting multicultural education and celebration such as the Statewide Diversity, Equity, and Inclusion conference.
11. Meet with Employee Services to review workforce representation statistics. Approve planned strategies for meeting goals.

Administrators, Managers, and Supervisors

1. Foster and promote to subordinate managers and employees the importance of a diverse, respectful, and discrimination- and harassment-free workplace.
2. Meet monthly with the department's Employee Services administrator, affirmative action coordinator, or both to review workforce representation statistics, agency affirmative action strategies, and resources available.
3. Strive to have a diverse interview panel for any recruitment process and encourage staff participation on diverse interview panel.
4. Consider participation in diversity and inclusion council and encourage staff to do so.
5. Ensure all new employees attend RightStart orientation and assign mentor to staff.
6. Ensure that all subordinate managers receive an orientation on the department's affirmative action goals and responsibilities and understand their own responsibilities for helping attain the goals in the division/program areas.
7. Evaluate subordinate managers and supervisors on how well they foster a diverse workforce and a welcoming and respectful environment, and promote the affirmative action goals and objectives. The performance appraisal form used for managers will include the diversity criteria outlined in a prior section.
8. Promote DCBS as an employer of choice, and refer potential candidates to Employee Services for assistance.
9. Work with the Employee Services office to use and uphold State of Oregon procedures and rules in filling vacancies.
10. Attend diversity-related activities and training in order to be informed of current issues, and encourage staff to participate.
11. Inform employees of the availability of the DCBS Affirmative Action Plan that is maintained on the DCBS intranet.

12. Help identify problem areas relating to diversity and inclusion, formulate possible solutions, and work with the affirmative action coordinator.
13. If aware of a department employee engaging in any type of harassment, follow the procedures outlined in DAS 50.010.01, Discrimination & Harassment Free Workplace and contact Employee Services.

Affirmative Action Coordinator or Designee

1. With the administrator and deputy administrator of Employee Services, work with all division administrators, deputy administrators, managers, and supervisors to make sure they understand their responsibility for promoting a respectful, diverse, and inclusive workforce environment and attaining the goals in the department affirmative action plan. Help managers with ways to achieve success.
2. Ensure recruitments include outreach to sources such as minority and women-specific websites, community agencies, community leaders, and schools for the recruitment of people of color, people with disabilities, veterans, and women. Emphasize the department's support of equal employment opportunity and a diverse workforce.
3. Analyze data from NeoGov regarding how many applicants are people of color, people with disabilities, veterans, and women, and how many were invited to interview. Research, develop, and recommend strategies to increase the percentage of people invited for an interview.
4. Ensure that all advertisements and announcements of employment opportunities contain the notice that the department is “an equal opportunity/affirmative action employer.”
5. Ensure the DCBS Affirmative Action Plan that is maintained on the DCBS intranet is accessible by all employees. It will also be posted on the DCBS external website for general public viewing.
6. Review all affirmative action or diversity inclusion-related policies, statements, and marketing materials to ensure they are up to date. Develop new materials as needed.
7. Include articles in Connections, the department’s internal newsletter, that express the department’s commitment to promoting a diverse and inclusive workforce and environment. Articles will relate to equal employment opportunity, affirmative action, the ongoing development of a diverse workforce at DCBS, and the efforts and progress made toward meeting department goals.
8. Discuss the DCBS Affirmative Action Plan and Diversity and Inclusion policy during new employee orientation. Inform new employees at RightStart of their rights and responsibilities under the department's affirmative action policy, and other department policies to eliminate harassment based on race, sex, age, religion, sexual orientation, or disability.
9. Discuss the DCBS Affirmative Action Plan goals and workforce representation report

information at each division's manager meetings.

10. Present quarterly workforce representation report to Employee Services administrator, who will share with the DCBS director and administrators. Additionally, the senior human resource analyst for each division will provide this information to division management during their regularly scheduled meetings.

Maintain and update, as necessary, the management performance appraisal form that is used to evaluate managers on their effectiveness in achieving a diverse and inclusive work environment and affirmative action objectives as outlined in ORS 659A.012

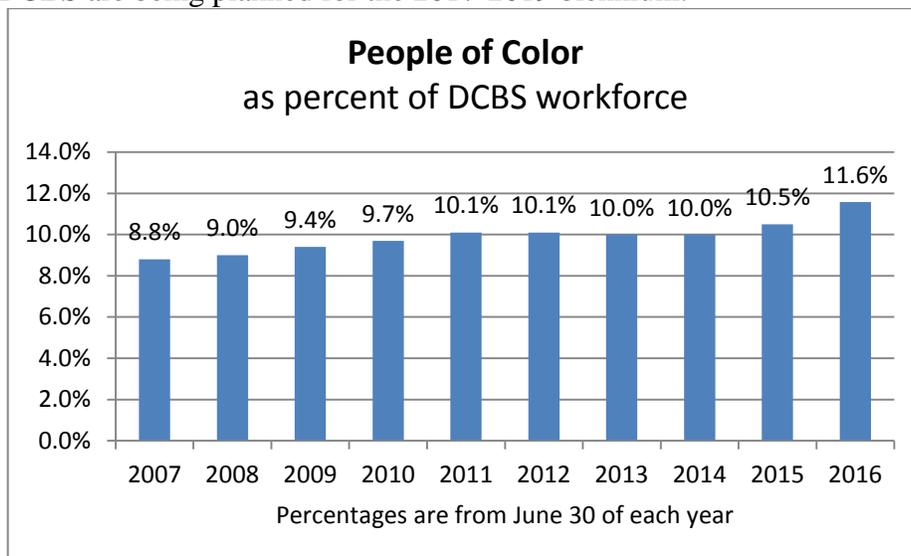
IV. July 1, 2015, to June 30, 2017 Accomplishments

The DCBS mission supports the affirmative action efforts of the State of Oregon by providing excellent customer service, using effective communication and showing respect for the diversity of the state. An important part of our success is our commitment to providing a workforce that is representative of the diversity of our state's population.

DCBS has continued its efforts to improve workplace diversity; however, the agency realizes that to make meaningful increases, we need a more aggressive plan and strategies. Over the past decade, increased outreach, creative recruitment strategies, and training have resulted in gains in the percentage of people of color in the department's workforce. The department continues to experience a low number of employees self-disclosing disabilities. The statistics used in this report are from the Department of Administrative Services quarterly affirmative action statistics. The charts below identify trends for quarters ending June 30, 2007, through June 30, 2016.

People of color

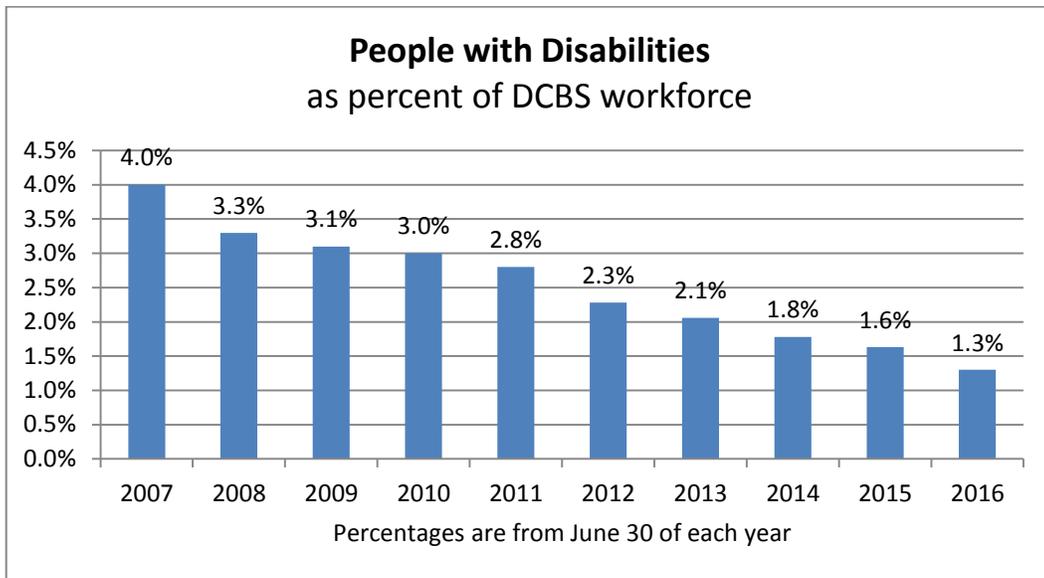
The percentage of DCBS employees who are people of color ranged from 8.8 percent in 2007 to 10.5 percent in 2015. From 2011 to 2015, the percentage increased only 0.4 percentage points, from 10.1 percent to 10.5 percent. This encouraged us to determine what other steps we can take to increase the percentage of people of color. To implement changes, the department created a new position to address diversity and inclusion outreach efforts. The agency is also using targeted recruiting and training on diversity topics such as capitalizing on diversity and continuing to emphasize a welcoming and inclusive environment. The outreach has helped. From June 2015 to June 2016, the percentage of people of color at DCBS increased from 10.5 percent to 11.6 percent, the largest increase in the past decade. More efforts to increase the number of people of color working for DCBS are being planned for the 2017-2019 biennium.



People with Disabilities

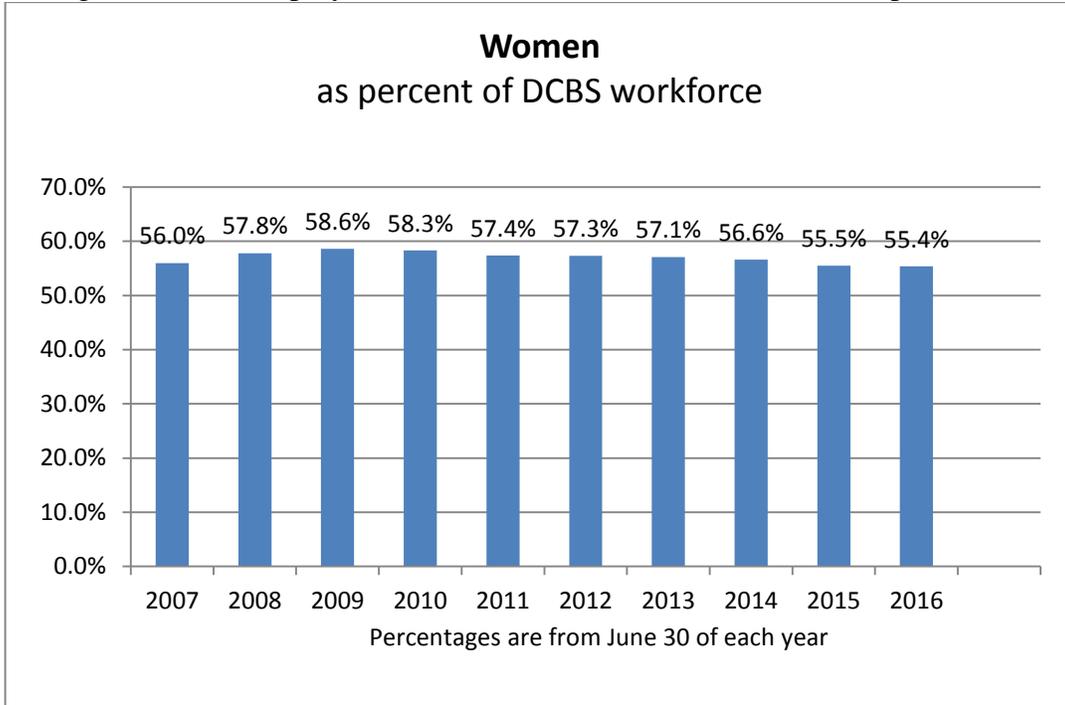
There continues to be a decrease in the number of employees reporting disabilities, leaving our percentage at 1.3 percent. Since disclosure of disabilities is voluntary for employees, the data

historically has been underreported. DCBS continues to provide outreach to this protected class. In July 2016, DCBS sent out the Voluntary Self-Identification Form supplied by Department of Administrative Services, encouraging employees to provide this information. It is too soon to determine the effect of this self-identification form.



Women

The percentage of women employed at DCBS has remained at more than 50 percent.



Workforce Representation Report
 Department of Consumer and Business Services
 Affirmative Action Analysis as of June 30, 2016

Updated 7/8/16

EEO Categories	Total Emp	WOMEN (W)				PEOPLE OF COLOR (P)				People with Disabilities				Total Hires for Qtr.	Protected Class Hires** (Last Three Months)		
		Actual	FTE*	Parity	FTE*	Actual	FTE*	Parity	FTE*	Actual	FTE*	Parity	FTE*		W	P	D
A01) Middle Management	17	10	58.8%	43.0%	7.3	3	17.6%	13.6%	2.3	0	0.0%	6.0%	1.0	0			
A02) Upper Management	66	31	47.0%	36.6%	24.2	5	7.6%	12.2%	8.1	0	0.0%	6.0%	4.0	4	2		
B02) Communication/Editor	10	6	60.0%	41.7%	4.2	2	20.0%	9.0%	0.9	0	0.0%	6.0%	0.6	0			
B04) Nurse/Health	43	19	44.2%	70.4%	30.3	6	14.0%	11.3%	4.9	0	0.0%	6.0%	2.6	5	3	2	
B07) Purchasing Agent/Analyst	7	6	85.7%	43.2%	3.0	2	28.6%	5.3%	0.4	0	0.0%	6.0%	0.4	1			
B08) Natural Resource	5	2	40.0%	25.1%	1.3	2	40.0%	7.2%	0.4	0	0.0%	6.0%	0.3	0			
B09) Social Science/Planner/Resrch	17	7	41.2%	43.7%	7.4	3	17.6%	10.0%	1.7	0	0.0%	6.0%	1.0	1			
B10) Personnel/Employment	14	11	78.6%	57.6%	8.1	2	14.3%	11.6%	1.6	0	0.0%	6.0%	0.8	1	1		
B11) Inspector/Compliance/Investgtr	94	63	67.0%	48.1%	45.2	6	6.4%	10.7%	10.1	1	1.1%	6.0%	5.6	2	2		
B12) Computer Analyst	66	24	36.4%	32.4%	21.4	7	10.6%	13.0%	8.6	0	0.0%	6.0%	4.0	5	2	2	
B13) Attorney/Hearings Officer	32	16	50.0%	30.6%	9.8	3	9.4%	7.9%	2.5	0	0.0%	6.0%	1.9	0			
B14) Librarian/Archival Specialist	1	1	100.0%	70.4%	0.7	0	0.0%	10.0%	0.1	0	0.0%	6.0%	0.1	0			
B15) Accounting/Finance/Revenue	71	33	46.5%	53.0%	37.6	11	15.5%	13.0%	9.2	2	2.8%	6.0%	4.3	4	2	1	
B16) Program Coordinator/Analyst	128	72	56.3%	41.1%	52.6	18	14.1%	9.5%	12.2	0	0.0%	6.0%	7.7	8	4	2	
C03) Science	1	0	0.0%	47.9%	0.5	0	0.0%	7.8%	0.1	0	0.0%	6.0%	0.1	0			
C04) Computer	1	0	0.0%	36.0%	0.4	0	0.0%	12.7%	0.1	0	0.0%	6.0%	0.1	0			
C05) Audio-visual	9	7	77.8%	40.6%	3.7	0	0.0%	9.2%	0.8	0	0.0%	6.0%	0.5	0			
C06) Revenue Agent/Examiner	6	4	66.7%	68.1%	4.1	0	0.0%	7.6%	0.5	0	0.0%	6.0%	0.4	1	1		
C12) Safety Inspector	93	9	9.7%	27.5%	25.6	4	4.3%	6.4%	6.0	0	0.0%	6.0%	5.6	7	4		
E01) Non-Supervisory	2	1	50.0%	58.1%	1.2	0	0.0%	9.8%	0.2	0	0.0%	6.0%	0.1	0			
F00) Administrative Support	195	166	85.1%	70.3%	137.1	27	13.8%	9.7%	18.9	7	3.6%	6.0%	11.7	17	16	3	
H00) Service Maintenance Worker	3	0	0.0%	37.8%	1.1	1	33.3%	11.6%	0.3	0	0.0%	6.0%	0.2	0			
	881	488				102				10				56	37	10	0

Affirmative Action Statistics are voluntary and may not accurately reflect the actual diversity of the agency.

* Maybe duplication in counts of individuals within the W, P and D categories

July 1, 2015, to June 30, 2017 Progress Made

During the 2015-2017 biennium, DCBS had three goals: workforce diversity, workplace inclusion, and sustainability. The accomplishments for each goal are described in the following pages.

Goal 1

Workforce Diversity. DCBS will recruit from a diverse, qualified group of potential applicants to secure a high-performing workforce drawn from all segments of our population, increasing our percentage of people of color, people with disabilities, women, and veterans in our workforce.

Accomplishments

During the 2015-2017 biennium, DCBS coordinated outreach and recruitment strategies to maximize ability to recruit from diverse groups of potential applicants. This included the following:

1. Created a new position for diversity and inclusion outreach coordinator in 2016.
2. Networked and built relationships with diverse organizations such as NAACP, Hispanic Services Roundtable, Oregon Association for Minority Entrepreneurs, Oregon Native American Chamber, Asian Pacific American Chamber, and Partners in Diversity. DCBS shared new job announcements with all groups, and continues to add diverse organizations to our networking list.
3. Hosted our first job fair, which was attended by managers of all divisions where they had the opportunity to meet with more than 250 applicants.
4. Had the first Right Start (new employee orientation) in 2016 composed of multiple ethnic groups: Asian, Latino, African American, Pacific Islander, and Caucasian.
5. Provided career services to anyone who wanted it, including career exploration, career planning seminars (Getting Your Career in Gear), informational interviews, application material review, and mock interviews.
6. Invited as one of three Oregon state agencies to participate as a subject matter expert on the topic of recruitment. This was sponsored by Oregon State University. DCBS followed up by email, extending an invitation to students and graduates to have a more meaningful conversation on the phone or in person regarding a career with DCBS or the State of Oregon.
7. Joined Partners in Diversity in 2015 as platinum member. Hosted “Breakfast for Champions” in April 2016 and continue to attend quarterly “Say Hey” events.
8. DCBS diversity and inclusion coordinator attended four meetings of various University of Oregon strategy student groups (diverse student population).
9. Participated with Salem Keizer high school career days and mock interview fairs to encourage high school students to consider and explore the State of Oregon as a career choice.
10. Implemented a new contract with Interview Stream, an online video interviewing platform. This not only allows us to speed up our recruitment process, but also allows us to more efficiently broaden and diversify our candidate’s pool.

11. Increased use of the DCBS Rapid Response Recruitment methodology (RRRM), which is intended to streamline and speed up the selection process, thereby losing fewer candidates through selection delays.
12. Used social media to attract new job seekers by providing aggressive online presence.
13. Changed recruiting process, which includes a “blind” review of applications by managers, so there is no personally identifiable information that might contribute to an unconscious bias of a candidate.
14. It is recommended that all interview panels be one-third ethnically diverse.
15. Collaborated with DCBS managers and supervisors in developing recruitment and outreach strategies. Employee Services will provide the technical know-how, but the managers and supervisors provide valuable information about specific associations, trade organizations, and other membership-driven websites to use for advertising and outreach.
16. Attended several Incight Live Resume sessions for outreach to people with disabilities.
17. Participated on employer panel for Incite, Workforce Innovation and Opportunity Act.
18. Attended diversity job fairs such as: Urban League Job Fair; Hispanic Metropolitan Chamber Business and Employment Job Fair; and Legislative Commission on Indian Services “2016 Spring Gathering & Training for State Agencies;” and OHSU “Night for Networking” for outreach to people with disabilities.

Goal 2

Workplace Inclusion. DCBS will cultivate a culture that encourages collaboration, creativity, and flexibility to enable individuals to contribute to their full potential and further the efforts of attracting new employees and retaining current employees.

Accomplishments

1. Promoted diversity and inclusion in leadership development programs. This included:
 - a. Monthly diversity column in the DCBS newsletter, Connections. Articles covered different diversity topics, such as the importance of welcoming new employees, diversity theme of the month and interesting historical information.
 - b. Administer a robust orientation/onboarding process for new employees that include a welcoming email on the first day of employment and mentorship program.
 - c. Maintain lobby bulletin board promoting and recognizing diversity and inclusion celebrations.
2. Examine applicant turnover rates from a diversity and inclusion perspective. Specifically, develop strategies to eliminate excessive turnover of diverse applicants not meeting announcements minimum qualifications.
3. Review data to determine the reason an employee leaves the agency. Ensure employees who are leaving are invited to complete an exit interview (DAS or DCBS); include D & I issues in the questions on the DCBS exit interview.

4. Review the DCBS Equality, Diversity and Inclusion Statement annually and revise, if necessary, and any policies or recruiting materials related to affirmative action or D & I.
5. Implemented Diversity and Inclusion policy and posted on intranet to be shared with all staff.
6. Employee Services representative participated in all planning meetings for the statewide diversity and inclusion two-day conference. DCBS employees attended this conference.
7. Created message template for managers to encourage staff to become members of interview panel.
8. Established a full time diversity and inclusion outreach coordinator position as result of evaluating the option to contract to outside services for the purpose of accomplishing our affirmative action goals. Provided additional training for D & I topics for managers and staff, including cross-cultural awareness, communication styles, disability awareness, and team effectiveness.

Goal 3

Sustainability. DCBS will develop strategies to equip leaders with the ability to model and manage diversity, be accountable, measure results, and institutionalize a culture of inclusion.

Accomplishments

1. DCBS Director Patrick Allen has developed a culture of respect promoting the benefits and values of diversity and inclusion in the workplace.
2. Executive management meetings have diversity and inclusion as a regular agenda item.
3. Division management meetings with staff diversity and inclusion topics to discuss as a group.
4. Evaluated all managers and supervisors on their efforts to foster a diverse workforce and a welcoming and respectful environment.
5. Ensured all employees have access to diversity and inclusion training offered by DCBS.
6. Posted the DCBS Affirmative Action Plan and Diversity and Inclusion policy on the intranet and external website.
7. Coordinated changing displays featuring monthly diversity themes on the bulletin board in the main lobby.
8. Established the DCBS Training Advisory Group comprised of executive managers. The purpose of this committee is to review the current training schedule and to make recommendations for more diversity-related training topics to be offered.

V. July1, 2017- June 30, 2019 Goals and Strategies

“I have learned that people will forget what you did, people will forget what you said, but they’ll never forget how you made them feel.”

Maya Angelou

Goals for DCBS Affirmative Action Plan

The DCBS value “respect for the diverse community of DCBS and Oregon” is why we continue to pursue goals that help us increase our representation of people of color, people with disabilities, veterans, and women within the DCBS workforce. We define workforce diversity as a collection of individuals whose characteristics help us pursue organizational efficiency and effectiveness. These characteristics include national origin, language, race, color, disability, ethnicity, gender, age, religion, sexual orientation, gender identity, family structure, veteran status, socioeconomic status, and differences of thought and life experiences.

We define inclusion as a culture that connects each employee to the organization and encourages all employees to participate and contribute to their full potential through collaboration, creativity, and flexibility.

With constantly changing demographics, DCBS must develop new and creative ways to attract, retain, and develop talent, and create a more inclusive environment. Our new goals and strategies described below will continue the efforts made in the past.

In the 2017-2019 biennium, DCBS will pursue the following goals:

Workforce Diversity. DCBS will continue to offer outreach and application assistance to all job seekers. This will allow us to recruit from a diverse, qualified group of potential applicants to secure a high-performing workforce drawn from all segments of our population, increasing our percentage of people of color, people with disabilities, women, and veterans in our workforce.

Workplace Inclusion. DCBS will cultivate a culture that encourages collaboration, creativity, and flexibility to enable individuals to contribute to their full potential and further the efforts of attracting new employees and retaining current employees.

Sustainability. DCBS will develop strategies to equip leaders with the ability to model and manage diversity, be accountable, measure results, and institutionalize a culture of inclusion. Complete development and implementation of succession plan.

The three goals listed above are absolutely necessary for the successful development and growth of diversity and inclusion and will ensure DCBS is on a more aggressive path to success.

The strategies and timelines for achieving DCBS goals:

Workforce Diversity:

1. DCBS will intensify our outreach and recruitment strategies to maximize ability to recruit from diverse groups of potential applicants. This will include:
 - a. Network and build relationships with diverse organizations such as NAACP, APANO, Hispanic Services Roundtable, Oregon Association for Minority Entrepreneurs, Latino Business Alliance, Oregon State Hispanic Employees Network, Oregon Native American Chamber, Asian Pacific American Chamber, and Partners in Diversity. Share new job announcements with all groups, and continue to add diverse organizations to networking list.
 - b. Offer career services to anyone, including career exploration, informational interviews, application material review, and mock interviews.
 - c. Attend career fairs and minority outreach events and accept resumes from job seekers that will be followed up by an email with an invitation to have a more meaningful conversation on the phone or in person regarding a career with DCBS or the State of Oregon.
 - d. Maintain recruitment and career services partnership with veterans' organizations, such as Oregon Department of Veterans Affairs, USDOL-Vets, United State Guards and Reserves, E3 Federal Solutions, and local Disabled Veterans Outreach Program.
 - e. Develop strong partnerships with a diverse range of high schools, college and university strategy/working groups, career centers and alumni organizations, trade schools, and apprentice programs around Oregon and across the country.
 - f. Participate in high school career days and mock interview fairs to encourage high school students to consider and explore the State of Oregon as a career choice or possible internship. This will throw interest on student success and progress from earliest learning to entry into workforce and career.
2. Continue to use Interview Stream, our online video interviewing platform, which allows to efficiently capturing more diverse qualified applicants.
3. Continue to encourage managers/supervisors to ensure all interview panels to be one-third ethnically diverse.
4. Implement a new internship program during 2017. This will help students to become more qualified and job-ready. The internship program will consist of college and high school students.
5. Continue to use the DCBS Rapid Response Recruitment methodology (RRRM), which is intended to streamline and speed up the selection process, thereby losing fewer candidates through selection delays.
6. Remain recruiting process, which includes a "blind" review of applications by managers, so there is no personally identifiable information that might contribute to an unconscious bias of a candidate.
7. Use other divisions' outreach, including the Director's Office Multicultural Communication Program manager to attend various community events to provide information about the services DCBS provides to all Oregonians who have a primary language other than English. We will partner with her to share information about jobs at DCBS when she is at these events. Depending on the venue, the diversity and inclusion coordinator will also attend to answer questions about applying for DCBS and State of Oregon jobs.

8. Develop and implement a succession plan program. As part of succession planning, we will review organization charts and determine key entry points for candidates with limited management experience, such as graduating college students, or people starting new career paths, such as veterans or people with disabilities.
9. Involve and partner with managers and supervisors in developing recruitment and outreach strategies. Employee Services will provide the technical expertise, but the managers and supervisors will provide valuable information about specific associations, trade organizations, and other membership-driven websites to use for advertising and outreach.
10. Review data to determine where barriers exist for people of color in our recruitment process.
11. The diversity and inclusion coordinator will develop relationships with other agencies' recruiting and diversity and inclusion staff to share best practices. Continue to attend the governor's Diversity and Inclusion/Affirmative Action Office meetings to learn and share best practices.
12. DCBS will hold another agency job fair with all divisions represented to meet with potential applicants.
13. Complete analysis of data from NeoGov and develop ways to eliminate the barriers of entry for applicants. Data will include how many people of color, women, or people with disabilities have applied for DCBS jobs; how many have met/not met the minimum qualifications; and reasons why the applicants met/did not meet the minimum qualifications.
14. Prepare quarterly reports to executive team regarding diversity and inclusion activities and impact based on exit interview responses and actual workforce representation numbers.

Workplace Inclusion:

1. Promote diversity and inclusion in leadership development programs. This will include:
 - a. Guest speakers present diversity topics at the DCBS Leadership Forum. Topics could include tips on setting up internship programs, employee resource groups, or issues veterans face in their job search.
 - b. Monthly diversity column in Connections. Articles will cover different diversity topics, such as the importance of welcoming new employees, diversity theme of the month, and interesting historical information.
 - c. Administer Right Start, a robust orientation/onboarding process for new employees, including a welcome email on the first day of employment and a mentor assigned.
 - d. Implement a DCBS diversity council in 2016 to address the overall plan for diversity and inclusion that is chaired on a rotating basis by a member of the executive committee and includes staff as members of the council.
2. Examine turnover rates from a diversity and inclusion perspective. Determine if there is more turnover in diverse populations. Develop strategies to eliminate excessive turnover.
3. Develop procedure to ensure employees who are leaving are invited to complete an exit interview (DAS or DCBS); include diversity and inclusion issues in the questions on the DCBS exit interview.
4. Review annually and revise, if necessary, the DCBS Equality, Diversity, and Inclusion Statement and any policies or recruiting materials related to affirmative action or diversity and inclusion.

5. Review and revise, if necessary, the DCBS Core Values to demonstrate the importance of diversity and inclusion.
6. The DCBS Training Advisory Group, comprised of executive managers, will review the current training schedule and recommend additional or different training topics to be offered at DCBS.

Sustainability:

1. Affirm the value of workforce diversity and inclusion in the DCBS strategic plan.
2. Executive management meetings will have diversity and inclusion as a regular agenda item.
3. Division meetings with staff will have diversity and inclusion topics to discuss as a group.
4. Evaluate all managers and supervisors on their efforts to foster a diverse workforce and a welcoming and respectful environment.
5. Ensure all employees have access to diversity and inclusion training offered by DCBS.
6. Conduct employee engagement survey that includes questions regarding diversity and inclusion issues.
7. Post the DCBS Affirmative Action Plan and Diversity and Inclusion Policy on the intranet and external website.
8. Review and revise, if necessary, the form in the new employee packet that asks for voluntary information regarding disability. Coordinate request to entire agency for employees to disclose disability for reporting purposes.
9. Coordinate changing displays about monthly diversity themes on the bulletin board in the main lobby. Organize internal events that highlight and celebrate differences.

DCBS continues to work toward diversifying the composition of its workforce; to increase the number of people of color, people with disabilities, and women; and to make sure the workplace is a welcoming environment. While we have not yet achieved parity for every group in every EEO category, we remain committed to reaching our goal as we develop and implement creative ideas and approaches which will further our progress. Through the leadership of Director Patrick Allen and Deputy Director Jean Straight, we expect that each employee of DCBS will live by the DCBS values and treat all stakeholders, customers, vendors, the public, and employees with respect to provide the best customer service possible.

We will continue our strong partnership with the Governor's Affirmative Action Office. Also, we will work with other state agency human resource and affirmative action managers to tackle statewide diversity issues. We believe our creative recruiting strategies, our focus on networking and social media, increased training, and offering career development help all serve to support the DCBS affirmative action goals. These actions support the DCBS goal of reflecting the diversity of the State of Oregon in order to effectively and efficiently deliver services to all Oregonians.

VI. Appendix A - State Policy Documentation

SUBJECT: ADA and Reasonable Accommodation in Employment	NUMBER: 50.020.10
DIVISION: Human Resource Services Division	EFFECTIVE DATE: 6/7/10
APPROVED: Signature on file with Human Resource Services Division	

POLICY STATEMENT:

Oregon state government follows the clear mandate in state law and the Americans with Disabilities Act (ADA) of 1990, as amended by the ADA Amendments Act of 2008, to remove barriers that prevent qualified people with disabilities from enjoying the same employment opportunities that are available to people without disabilities.

Oregon state government provides equal access and equal opportunity in employment. Its agencies do not discriminate based on disability. Oregon state government uses only job-related standards, criteria, and methods of administration that are consistent with business necessity. These standards, criteria and methods do not discriminate or perpetuate discrimination based on disability.

According to OAR 105-040-0001 Equal Employment Opportunity and Affirmative Action, Oregon state government takes positive steps to recruit, hire, train, and provide reasonable accommodation to applicants and employees with disabilities.

AUTHORITY:

ORS 240.145; 240.240; 240.250; ORS 659A.103 -145; 243.305; 243.315; The Americans with Disabilities Act (ADA) of 1990 as amended by the Americans with Disabilities Act Amendments Act (ADAAA) of 2008; Civil Rights Act of 1991; and 42 U.S.C. §12101 *et seq.*

APPLICABILITY:

This policy applies to all state employees, including state temporary employees, according to provisions of federal and state law.

ATTACHMENTS:

ADA Accommodation Tool Kit

DEFINITIONS:

See State HR Policy 10.000.01 Definitions and OAR 105-010-0000

The following definitions apply to terms referenced in this policy and its attachments:

Americans with Disabilities Act (ADA) –The ADA is a federal civil rights statute that removes barriers that prevent qualified people with disabilities from enjoying the same employment opportunities available to people without disabilities. References to ADA also refer to amendments to that Act.

Essential Functions – These include, but are not limited to, duties that are necessary because:

- The primary reason the position exists is to perform these duties.
- A limited number of employees are available who can perform these duties.
- The incumbent is hired or retained to perform highly specialized duties.

Individual with a Disability – This term means a person to whom one or more of the following apply:

- A person with a physical or mental impairment that substantially limits one or more of the major life activities of such a person without regard to medications or other assistive measures a person might use to eliminate or reduce the effect of impairment.
- A person with a record of such an impairment
- A person regarded as having such impairment.

Major Life Activities – This term means the basic activities the average person in the general population can perform with little or no difficulty. These including breathing; walking; hearing; thinking; concentrating; seeing; communicating; speaking; reading; learning; eating; self-care; performing manual tasks such as reaching, bending, standing and lifting; sleeping; or working (working in general, not the ability to perform a specific job). The term also includes but not limited to “major bodily functions,” such as functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions.

Physical or Mental Impairment – This term refers to any of the following:

- Physiological disorder, condition, cosmetic disfigurement, or anatomical loss that affects one or more bodily systems, including neurological, musculoskeletal, special sense organs, respiratory, cardiovascular or reproductive
- Mental or psychological disorder including but not limited to mental retardation, organic brain syndrome, emotional or mental illness or specific learning disability
- Disease or condition including orthopedic, visual, speech and hearing impairment, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, HIV disease or alcoholism
- Any other physical or mental impairment listed under the ADA.

Qualified Person – This term means a person who has the personal and professional attributes, including skill, experience, education, physical and mental ability, medical, safety and other requirements to hold the position.

“Qualified person” does not include people who currently engage in illegal use of drugs. A person may qualify, however, if he or she is currently enrolled in or has completed a rehabilitation program, and continues to abstain from illegal use of drugs.

Reasonable Accommodation – This term means change or adjustment to a job or work environment that enables a qualified employee with a disability to perform the essential functions of a job, or enjoy the benefits and privileges of employment equal to those enjoyed by employees who have no disabilities. “Reasonable accommodation” does not include modifications or adjustments that cause an undue hardship to the agency.

“Reasonable accommodation” does not mean providing personal auxiliary aids or services, such as service dogs or hearing aids that person uses both on and off the job.

A reasonable accommodation does not include lowering production standards, promoting or assigning an employee to a higher-paying job, creating a position or reassigning essential functions to another worker.

Undue Hardship – This term means significant difficulty or expense. Whether a particular accommodation imposes undue hardship is determined on a case-by-case basis, with consideration of such factors as the following:

- The nature and cost of the accommodation needed
- The agency's size, employee's official worksite, and financial resources
- The agency's operation, structure, functions, and geographic separateness
- The agency's administrative or fiscal relationship to its facility responding to the accommodation request and to the other state agencies
- The impact of the accommodation on the operation of the agency or its facility.

POLICY

- (1) Each state agency director or authorized designee (agency) administers State HR Policy 50.020.10 as the agency's policy. Compliance with the ADA is mandatory.
 - (a) Each agency identifies an ADA Coordinator for the agency to coordinate ADA accommodation requests and function as an agency resource on ADA matters.
 - (b) Each agency develops and follows its own procedures for receiving, processing and documenting accommodation requests under this policy. The attached tool kit will assist in this process.
- (2) An employee may request an accommodation under this policy by following agency procedures.
- (3) The agency must review and respond in a timely manner to each request for accommodation. The agency must engage in an interactive dialogue with the employee to determine whether the accommodation is necessary and will be effective.
- (4) Each accommodation is unique to the person, the disability and the nature of the job. No specific form of accommodation can guarantee success for all people in any particular job. The agency must give primary consideration to the specific accommodation requested by the employee. Through the interactive process the agency may identify and provide an alternative accommodation.
- (5) The duty to provide reasonable accommodation is ongoing. The agency and the employee must engage in the interactive process again if an accommodation proves ineffective.
- (6) The agency may deny an accommodation if it is not effective, if it will cause undue hardship to the agency, or if the agency identifies imminent physical harm or risk. The undue hardship exception is available only after careful consideration. The agency must consider alternative accommodations, should a requested accommodation pose undue hardship.
- (7) Federal and state law prohibit retaliation against an employee with respect to hiring or any other term or condition of employment because the employee asked about, requested, or was previously accommodated under the ADA.



SUBJECT: Discrimination and Harassment Free Workplace	NUMBER: 50.010.01
DIVISION: Human Resource Services Division	EFFECTIVE DATE: 01/25/08
APPROVED: Signature on file with Human Resource Services Division	

POLICY STATEMENT: The State of Oregon is committed to a discrimination and harassment free work environment. This policy outlines types of prohibited conduct and procedures for reporting and investigating prohibited conduct.

AUTHORITY: ORS 174.100, 240.086(1); 240.145(3); 240.250; 240.316(4); 240.321; 240.555; 240.560; 659A.029; 659A.030; Title VII; Civil Rights Act of 1964; Executive Order EO-93-05; Rehabilitation Act of 1973; Employment Act of 1967; Americans with Disabilities Act of 1990; and 29 CFR §37.

APPLICABILITY: All employees, state temporary employees and volunteers.

ATTACHMENTS: None

DEFINITIONS: See also HRSD State Policy 10.000.01, Definitions; and OAR 105-010-0000

Collective Bargaining Agreement (CBA): A written agreement between the State of Oregon, (Department of Administrative Services) and a labor union. References to CBAs contained in this policy are applicable only to employees covered by a CBA.

Complainant: A person or persons allegedly subjected to discrimination, workplace harassment or sexual harassment.

Contractor: For the purpose of this policy, a contractor is an individual or business with whom the State of Oregon has entered into an agreement or contract to provide goods or services. Qualified rehabilitation facilities who by contract provide temporary workers to state agencies are considered contractors. Contractors are not subject to ORS 240 but must comply with all federal and state laws.

Discrimination: Making employment decisions related to hiring, firing, transferring, promoting, demoting, benefits, compensation, and other terms and conditions of employment, based on or because of an employee's protected class status.

Employee: Any person employed by the state in one of the following capacities: management service, unclassified executive service, unclassified or classified unrepresented service, unclassified or classified represented service, or represented or unrepresented temporary service. For the purpose of this policy, this definition includes board and commission members, and individuals who volunteer their services on behalf of state government.

Higher Standard: Applies to managers and supervisors. Proactively taking an affirmative

posture to create and maintain a discrimination and harassment free workplace.

Manager/Supervisor: Those who supervise or have authority or influence to effect employment decisions.

Protected Class Under Federal Law: Race; color; national origin; sex (includes pregnancy-related conditions); religion; age (40 and older); disability; a person who uses leave covered by the Federal Family and Medical Leave Act; a person who uses Military Leave; a person who associates with a protected class; a person who opposes unlawful employment practices, files a complaint or testifies about violations or possible violations; and any other protected class as defined by federal law.

Protected Class Under Oregon State Law: All Federally protected classes, plus: age (18 and older); physical or mental disability; injured worker; a person who uses leave covered by the Oregon Family Leave Act; marital status; family relationship; sexual orientation; whistleblower; expunged juvenile record; and any other protected class as defined by state law.

Sexual Harassment: Sexual harassment is unwelcome, unwanted, or offensive sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when:

- 1) Submission to such conduct is made either explicitly or implicitly a term or condition of the individual's employment, or is used as a basis for any employment decision (granting leave requests, promotion, favorable performance appraisal, etc.); or
- 2) Such conduct is unwelcome, unwanted or offensive and has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile or offensive working environment.

Examples of sexual harassment include but are not limited to: unwelcome, unwanted, or offensive touching or physical contact of a sexual nature, such as, closeness, impeding or blocking movement, assaulting or pinching; gestures; innuendoes; teasing, jokes, and other sexual talk; intimate inquiries; persistent unwanted courting; sexist put-downs or insults; epithets; slurs; or derogatory comments.

Sexual Orientation under Oregon State Law: An individual's actual or perceived heterosexuality, homosexuality, bisexuality or gender identity, regardless of whether the individual's gender identity, appearance, expression or behavior differs from that traditionally associated with the individual's sex at birth.

Workplace Harassment: Unwelcome, unwanted or offensive conduct based on or because of an employee's protected class status.

Harassment may occur between a manager/supervisor and a subordinate, between employees, and among non-employees who have business contact with employees. A complainant does not have to be the person harassed, but could be a person affected by the offensive conduct.

Examples of harassing behavior include, but are not limited to, derogatory remarks, slurs and jokes about a person's protected class status.

POLICY

(1) **The State of Oregon is committed to a discrimination and harassment free work environment. This policy outlines types of prohibited conduct and procedures for reporting and investigating prohibited conduct.**

(a) **Discrimination, Workplace Harassment and Sexual Harassment.** The State of Oregon provides a work environment free from unlawful discrimination or workplace harassment based on or because of an employee's protected class status. Additionally, the state of Oregon provides a work environment free from sexual harassment. Employees at every level of the organization, including state temporary employees and volunteers, must conduct themselves in a business-like and professional manner at all times and not engage in any form of discrimination, workplace harassment or sexual harassment.

(b) **Higher Standard.** Managers/supervisors are held to a higher standard and are expected to take a proactive stance to ensure the integrity of the work environment. Managers/supervisors must exercise reasonable care to prevent and promptly correct any discrimination, workplace harassment or sexual harassment they know about or should know about.

(c) **Reporting.** Anyone who is subject to or aware of what he or she believes to be discrimination, workplace harassment, or sexual harassment should report that behavior to the employee's immediate supervisor, another manager, or the agency, board, or commission Human Resource section, Executive Director, or chair, as applicable. A report of discrimination, workplace harassment or sexual harassment is considered a complaint. A supervisor or manager receiving a complaint should promptly notify the Human Resource section, Executive Director, or chair, as applicable.

(A) A complaint may be made orally or in writing.

(B) A complaint must be filed within one year of the occurrence.

(C) An oral or written complaint should contain the following:

(i) the name of the person filing the report;

(ii) the name of the complainant;

(iii) the names of all parties involved, including witnesses;

(iv) a specific and detailed description of the conduct or action that the employee believes is discriminatory or harassing;

(v) the date or time period in which the alleged conduct occurred; and

(vi) a description of the remedy the employee desires.

(d) **Other Reporting Options.** Nothing in this policy prevents any person from filing a formal grievance in accordance with a CBA, or a formal complaint with the Bureau of Labor and Industries (BOLI) or the Equal Employment Opportunity Commission (EEOC) **or if applicable, the United States Department of Labor (USDOL) Civil Rights Center.** However, some CBAs require an employee to choose between the complaint procedure outlined in the CBA and filing a BOLI or EEOC complaint.

(e) **Filing a Report with the USDOL Civil Rights Center.** An employee whose position is funded by the Oregon Workforce Investment Act (WIA), such as employees of the Oregon Workforce One-stop System, may file a complaint under the WIA, Methods of Administration (MOA) with the State of Oregon WIA, MOA Equal Opportunity Officer or directly through the USDOL, Civil Rights Center. The

complaint must be written, signed and filed within 180 days of when the alleged discrimination or harassment occurred.

- (f) **Investigation.** The agency, board, or commission Human Resource section, Executive Director, or chair, as applicable, will coordinate and conduct or delegate responsibility for coordinating and conducting an investigation.
- (A) All complaints will be taken seriously and an investigation will be initiated as quickly as possible.
 - (B) The agency, board or commission may need to take steps to ensure employees are protected from further potential discrimination or harassment.
 - (C) Complaints will be dealt with in a discreet and confidential manner, to the extent possible.
 - (D) All parties are expected to cooperate with the investigation and keep information regarding the investigation confidential.
 - (E) The agency, board or commission will notify the accused and all witnesses that retaliating against a person for making a report of discrimination, workplace harassment or sexual harassment will not be tolerated.
 - (F) The agency, board or commission will notify the complainant and the accused when the investigation is concluded.
 - (G) Immediate and appropriate action will be taken if a complaint is substantiated.
 - (H) The agency, board or commission will inform the complainant if any part of a complaint is substantiated and that action has been taken. The complainant will not be given the specifics of the action.
 - (I) The complainant and the accused will be notified by the agency, board or commission if a complaint is not substantiated.
- (g) **Penalties.** Conduct in violation of this policy will not be tolerated.
- (A) Employees engaging in conduct in violation of this policy may be subject to disciplinary action up to and including dismissal.
 - (B) State temporary employees and volunteers who engage in conduct in violation of this policy may be subject to termination of their working or volunteer relationship with the agency, board or commission.
 - (C) An agency, board or commission may be liable for discrimination, workplace harassment or sexual harassment if it knows of or should know of conduct in violation of this policy and fails to take prompt, appropriate action.
 - (D) Managers and supervisors who know or should know of conduct in violation of this policy and who fail to report such behavior or fail to take prompt, appropriate action may be subject to disciplinary action up to and including dismissal.
 - (E) An employee who engages in harassment of other employees while away from the workplace and outside of working hours may be subject to the provisions of this policy if that conduct has a negative impact on the work environment and/or working relationships.
 - (F) If a complaint involves the conduct of a contracted employee or a contractor, the agency, board, or commission Human Resource section, Executive Director, chair, or designee must inform the contractor

of the problem behavior and require prompt, appropriate action.

(G) If a complaint involves the conduct of a client, customer, or visitor, the agency, board or commission should follow its own internal procedures and take prompt, appropriate action.

(h) Retaliation. This policy prohibits retaliation against employees who file a complaint, participate in an investigation, or report observing discrimination, workplace harassment or sexual harassment.

(A) Employees who believe they have been retaliated against because they filed a complaint, participated in an investigation, or reported observing discrimination, workplace harassment or sexual harassment, should report this behavior to the employee's supervisor, another manager, the Human Resource section, the Executive Director, or the chair, as applicable. Complaints of retaliation will be investigated promptly.

(B) Employees who violate this policy by retaliating against others may be subject to disciplinary action, up to and including dismissal.

(C) State temporary employees and volunteers who retaliate against others may be subject to termination of their working or volunteer relationship with the agency, board or commission.

(i) Policy Notification. All employees including state temporary employees and volunteers shall:

(A) be given a copy or the location of Statewide Policy 50.010.01, Discrimination and Harassment Free Workplace;

(B) be given directions to read the policy;

(C) be provided an opportunity to ask questions and have their questions answered; and

(D) sign an acknowledgement indicating the employee read the policy and had the opportunity to ask questions.

(i) Signed acknowledgements are kept on file at the agency, board or commission.

(1) Performance Measure: Percent of employees informed of Policy 50.010.01, prohibited behavior and reporting procedures.

Performance Standard: 100%

(2) Performance Measure: Percent of complaints where prompt, appropriate action is taken following investigation of a substantiated complaint.

Performance Standard: 100%

State of Oregon
DEPARTMENT OF ADMINISTRATIVE SERVICES
Human Resource Services Division



State Policy: 50.045.01 Employee Development and Implementation of Oregon Benchmarks for Workforce Development

APPLICABILITY: Classified (where not in conflict with the collective bargaining contract), management service, executive service and unclassified unrepresented employees

REFERENCE: ORS 240.145(3)(4); 240.250; Oregon Benchmarks

(1) **Policy:** Oregon state government shall be a leader in achieving or exceeding the Oregon workforce development benchmarks of developing the best trained workforce in the U.S. by the year 2000 and in the world by the year 2010.

- (a) For each biennium, an agency head shall develop a written agency training plan to require a minimum of 20 hours of education and training related to work skills and knowledge for at least 50% of their permanent employees in each fiscal year.
- (b) Supervisors, in discussion with their employees, shall develop and update annually a written development plan for each employee that provides for the continuous improvement of the employee's job related knowledge and skills.
- (c) An agency head shall maintain written documentation of agency workforce development hours and expenditures per instructions from Department of Administrative Services regarding expenditures and account numbers related to training and travel.
- (d) When opportunities permit, agencies shall invite other state agencies to fill staff development openings and share training facilities and other employee development resources.
- (e) An agency head may provide educational assistance to employees when it directly relates to their job responsibility and can be accommodated within the agency budget:
 - (A) When an employee is assigned to attend courses, the agency shall reimburse all of the costs of course registration fees, course materials, and necessary travel.
 - (B) When an employee makes a request to attend a class(s), either during or after working hours, the agency may reimburse all or part of the costs attendant to the class(s).
 - (C) Educational assistance to employees may include paid leave. Provisions of the paid leave agreement between the agency and the employee shall be documented and maintained in the agency file.

(2) **Policy Clarification:**

- (a) The written agency training plan is intended to relate individual employee development plans and agency workforce development priorities to the agency mission.
- (b) Training or education related to work skills and knowledge includes formal instructions or a structured learning plan related to:
 - (A) employee's competence to perform a specific job,
 - (B) employee's state government career, or
 - (C) Employee's work environment.

(c) Modes of training delivery may be formal education, on the job training, supervised learning activities, and other specific training approved by the employee's supervisor as job related.

(1) **Performance Measure:** Percentage of agency employees who received 20 or more hours of job related training in each fiscal year.

Performance Standard: 50%

(2) **Performance Measure:** A current, completed written agency training plan for each biennium.

Performance Standard: 100%

(3) **Performance Measure:** Percentage of agency employees with current written individual development plans.

Performance Standard: 100%

105-040-0015**Veteran's Preference in Employment**

Applicability: Recruitment and selection processes for all State of Oregon positions in agencies subject to ORS 240, State Personnel Relations Law, including but not limited to promotional opportunities.

(1) Definitions: (See also HRSD Rule 105-010-0000 Definitions Applicable Generally to Personnel Rules and Policies.)

(a) Initial Application Screening: An agency's process of determining whether an applicant meets the minimum and special qualifications for a position. An Initial Application Screening may also include an evaluation of skills or grading of supplemental test questions if required on the recruiting announcement.

(b) Application Examination: The selection process utilized by an agency after Initial Application Screening. This selection process includes, but is not limited to, formal testing or other assessments resulting in a score as well as un-scored examinations such as interviews and reference checks.

(c) Veteran and Disabled Veteran: As defined by ORS 408.225 and 408.235.

(2) Application of preference points upon Initial Application Screening: Qualifying Veterans and Disabled Veterans receive preference points as follows;

(a) Five Veteran's Preference points are added upon Initial Application Screening when an applicant submits as verification of eligibility a copy of the Certificate of Release or Discharge from Active Duty (DD Form 214 or 215), or a letter from the US Department of Veteran's Affairs indicating the applicant receives a non-service connected pension with the State of Oregon Application; or

(b) Ten Disabled Veteran's points are added upon Initial Application Screening when an applicant submits as verification of eligibility a copy of the Certificate of Release or Discharge from Active Duty (DD Form 214 or 215) with the State of Oregon Application. Disabled Veterans must also submit a copy of their Veteran's disability preference letter from the US Department of Veteran Affairs, unless the information is included in the DD Form 214 or 215.

(c) Veteran's and Disabled Veteran's preference points are not added when a Veteran or Disabled Veteran fails to meet the minimum or the special qualifications for a position.

(3) Following an Initial Application Screening the agency generates a list of qualified applicants to consider for Appointment. An Appointing Authority or designee may then:

(a) Determine whether or not to interview all applicants who meet the minimum and special qualifications of the position (including all Veterans and Disabled Veterans); or

(b) Select a group of Veteran and Disabled Veteran applicants who most closely match the agency's purposes in filling the position. This group of applicants may be considered along with non-veteran applicants who closely match the purposes of the agency in filling the position as determined by:

(A) Scored Application Examinations (including scored interviews): If an agency utilizes, after an Initial Application Screening, a scored Application Examination to determine whom to consider further for Appointment, the agency will add (based on a 100-point scale) five points to a Veteran's score or 10 points to a Disabled Veteran's score or;

(B) Un-scored Application Examinations: Un-scored Application Examinations done by sorting into levels (such as “unsatisfactory,” “satisfactory,” “excellent”) based on desired attributes or other criteria for further consideration will be accomplished by:

- (i) Advancing the application of a Veteran one level;
- (ii) Advancing an application of a Disabled Veteran two levels.

(4) Preference in un-scored interviews: A Veteran or Disabled Veteran who, in the judgment of the Appointing Authority or designee, meets all or substantially all of the agency’s purposes in filling the position will continue to be considered for Appointment.

(5) If a Veteran or Disabled Veteran has been determined to be equal to the top applicant or applicants for a position by the Appointing Authority or designee then the Veteran or Disabled Veteran is ranked more highly than non-veteran applicants and, a Disabled Veteran is ranked more highly than non-veteran and Veteran applicants.

(6) Preference described in Sections 2 through 5 of this rule is not a requirement to appoint a Veteran or Disabled Veteran to a position. An agency may base a decision not to appoint the Veteran or Disabled Veteran solely on the Veteran’s or Disabled Veteran’s merits or qualifications.

(7) A Veteran or a Disabled Veteran applicant not appointed to a position may request an explanation from the agency. The request must be in writing and be sent within 30 calendar days of the date the Veteran or Disabled Veteran was notified that they were not selected. The agency will respond in writing with the reasons for not appointing the Veteran or Disabled Veteran.

[ED. NOTE: Forms referenced are available from the agency.]

Stat. Auth: ORS 240.145(3) & 240.250

Stats. Implemented: ORS 408.225, 408.230 & 408.235

Hist.: HRSD 3-2007(Temp), f. & cert ef. 9-5-07 thru 3-3-08; HRSD 1-2008, f. 2-27-08, cert. ef. 3-1-08;

HRSD 3-2009, f. 12-30-09, cert. ef. 1-1-10

105-040-0001**Equal Employment Opportunity and Affirmative Action**

(1) The State of Oregon is committed to achieving a workforce that represents the diversity of the Oregon community and being a leader in providing its citizens with fair and equal employment opportunities.

Accordingly:

(a) State agency heads shall insure:

(A) Equal employment opportunities are afforded to all applicants and employees by making employment related decisions that are non-discriminatory;

(B) Employment practices are consistent with the state's Affirmative Action Guidelines under ORS 659A.012–659A.015 and federal laws to:

(i) Promote good faith efforts to achieve established affirmative action objectives; and

(ii) Take proactive steps to develop diverse applicant pools for position vacancies.

(b) The Department of Administrative Services shall:

(A) Maintain an automated affirmative action tracking system which uses a uniform methodology for communicating affirmative action objectives for each state agency.

(B) Produce periodic reports showing hiring opportunities and each agency's progress toward achieving established affirmative action objectives as identified in the state wide automated system.

(c) Persons, who believe they have been subjected to discrimination by an agency in violation of this rule, may file a complaint with the agency's affirmative action representative within 365 calendar days of the alleged act or upon knowledge of the occurrence.

(2) Employment related decisions include, but are not limited to: hiring, promotion, demotion, transfer, termination, layoff, training, compensation, benefits, and performance evaluations;

(3) Diverse applicant pools are developed by using proactive outreach strategies.

(4) This rule does not preclude any person from filing a formal complaint in accordance with a collective bargaining agreement, or with appropriate state or federal agency under the applicable law.

Stat. Auth.: ORS 184.340, 240.145 & 240.250

Stats. Implemented: ORS 240.306, 243.305 & 659A.012 - 659A.015

Hist.: PD 2-1994, f. & cert. ef. 8-1-94; HRSD 11-2003, f. 7-15-03, cert. ef. 7-21-03; HRSD 2-2008, f. & cert. ef. 11-4-08



EXECUTIVE ORDER 16-09

RELATING TO AFFIRMATIVE ACTION AND DIVERSITY & INCLUSION

On January 26, 2005, former Governor Kulongoski issued Executive Order 05-01, relating to affirmative action. That Executive Order directed Agency Directors and Administrators to review and discuss their affirmative action plans, to initiate training on affirmative action issues, to include affirmative action responsibilities in key job descriptions, and to conduct Cultural Competency Assessment and Training.

Since the issuance of Executive Order 05-01 and Amendment 08-18, many state agencies have met with the Governor's Affirmative Action Office (GAAO) to review and discuss their affirmative action plans. The Department of Administrative Services (DAS) has concluded an audit of position descriptions for the inclusion of affirmative action duties and DAS has shared audit results with GAAO. In addition, a number of state agencies have completed Cultural Competency Assessment and Training.

Despite these gains, much more can be accomplished. The State of Oregon remains committed to the right of all persons to work and advance on the basis of merit, ability, and potential. In order to continue implementation of the goals and policies set forth in Executive Orders 05-01 and 08-18, I extend these orders as follows:

NOW THEREFORE, IT IS HEREBY DIRECTED AND ORDERED:

1. The GAAO and each Agency Director and Administrator shall review and discuss each agency's affirmative action plan and affirmative action goals to identify resources for improving the hiring and developmental opportunities of underrepresented persons.
2. To continue the State of Oregon's progress in promotion of diversity in the workplace, as well as the elimination of the effects of past and present discrimination, intended or unintended, Agency Directors and Administrators shall:
 - a. Provide ongoing leadership in implementing each agency's affirmative action plan;
 - b. Ensure incorporation of affirmative action, diversity, and inclusion responsibilities in executive and/or management job descriptions, as appropriate;



EXECUTIVE ORDER 16-09
PAGE TWO

- c. Ensure that Affirmative Action Representatives attend GAAO's informational trainings to assist Representatives in fulfilling their affirmative action responsibilities;
 - d. Post each agency's affirmative action policy statement in a visible area. The policy statement shall include contact information for the agency's Affirmative Action Representative;
 - e. Communicate to all employees about the Affirmative Action resources available within each agency and the important role of Affirmative Action Representatives in responding to employees' concerns of discrimination in the areas of hiring, retention, promotion, and career development;
 - f. Evaluate and assess any trends showing an increase or decrease in discrimination and/or harassment claims; and
 - g. Work to improve implementation of the agency's affirmative action plan through the use of performance assessments and/or performance evaluations.
3. Under ORS 659A.012, state agencies are "required to include in the evaluation of all management personnel the manager's or supervisor's effectiveness in achieving affirmative action objectives as a key consideration of the manager's or supervisor's performance." Periodically, DAS shall conduct audits of agencies to determine whether management personnel are being evaluated based on effectiveness in achieving affirmative action objectives. Results of this audit shall be provided to GAAO.
4. GAAO will continue to coordinate with DAS in the development and presentation of training designed to improve employees' skills and competency in managing affirmative action and diversity issues.
5. GAAO will continue to monitor agencies' implementation of Cultural Competency Assessment and Implementation Services. Agency Directors and Administrators are strongly encouraged to utilize Cultural Competency Assessment and Implementation Services within their agencies if, in the opinion of GAAO and the Agency Director or Administrator, it is beneficial and appropriate for the agencies to do so.



EXECUTIVE ORDER 16-09
PAGE THREE

6. DAS, in conjunction with GAAO and the Oregon Department of Justice, has developed a confidential web-based exit interview survey tool. Agency Directors and Administrators shall allow employees to utilize state equipment to access the Exit Interview survey and shall encourage all employees to complete the survey prior to their transfer or departure.
7. This Executive Order will expire on December 31, 2020.

Done at Salem, Oregon, this 3rd day of May, 2016.



Handwritten signature of Kate Brown in blue ink.

Kate Brown
GOVERNOR

ATTEST:

Handwritten signature of Jeanne P. Atkins in blue ink.

Jeanne P. Atkins
SECRETARY OF STATE

VII. Appendix B – Federal Documentation

The Age Discrimination in Employment Act of 1967

[The Age Discrimination in Employment Act of 1967 \(ADEA\)](#) protects individuals who are 40 years of age or older from employment discrimination based on age. The ADEA's protections apply to both employees and job applicants. Under the ADEA, it is unlawful to discriminate against a person because of his/her age with respect to any term, condition, or privilege of employment, including hiring, firing, promotion, layoff, compensation, benefits, job assignments, and training. The ADEA permits employers to favor older workers based on age even when doing so adversely affects a younger worker who is 40 or older.

It is also unlawful to retaliate against an individual for opposing employment practices that discriminate based on age or for filing an age discrimination charge, testifying, or participating in any way in an investigation, proceeding, or litigation under the ADEA.

The ADEA applies to employers with 20 or more employees, including state and local governments. It also applies to employment agencies and labor organizations, as well as to the federal government. ADEA protections include:

- **Apprenticeship Programs**

It is generally unlawful for apprenticeship programs, including joint labor-management apprenticeship programs, to discriminate on the basis of an individual's age. Age limitations in apprenticeship programs are valid only if they fall within certain specific exceptions under the ADEA or if the EEOC grants a specific exemption.

- **Job Notices and Advertisements**

The ADEA generally makes it unlawful to include age preferences, limitations, or specifications in job notices or advertisements. A job notice or advertisement may specify an age limit only in the rare circumstances where age is shown to be a "bona fide occupational qualification" (BFOQ) reasonably necessary to the normal operation of the business.

- **Pre-Employment Inquiries**

The ADEA does not specifically prohibit an employer from asking an applicant's age or date of birth. However, because such inquiries may deter older workers from applying for employment or may otherwise indicate possible intent to discriminate based on age, requests for age information will be closely scrutinized to make sure that the inquiry was made for a lawful purpose, rather than for a purpose prohibited by the ADEA. If the information is needed for a lawful purpose, it can be obtained after the employee is hired.

- **Benefits**

The Older Workers Benefit Protection Act of 1990 (OWBPA) amended the ADEA to specifically prohibit employers from denying benefits to older employees. Congress recognized that the cost of providing certain benefits to older workers is greater than the cost of providing those same benefits to younger workers, and that those greater costs might create a disincentive to hire older workers. Therefore, in limited circumstances, an employer may be permitted to reduce benefits based on age, as long as the cost of providing the reduced benefits to older workers is no less than the cost of providing benefits to younger workers.

Employers are permitted to coordinate retiree health benefit plans with eligibility for Medicare or a comparable state-sponsored health benefit.

- **Waivers of ADEA Rights**

An employer may ask an employee to waive his/her rights or claims under the ADEA. Such waivers are common in settling ADEA discrimination claims or in connection with exit incentive or other employment termination programs. However, the ADEA, as amended by OWBPA, sets out specific minimum standards that must be met in order for a waiver to be considered knowing and voluntary and, therefore, valid. Among other requirements, a valid ADEA waiver must:

- be in writing and be understandable;
- specifically refer to ADEA rights or claims;
- not waive rights or claims that may arise in the future;
- be in exchange for valuable consideration in addition to anything of value to which the individual already is entitled;
- advise the individual in writing to consult an attorney before signing the waiver; and
- provide the individual at least 21 days to consider the agreement and at least seven days to revoke the agreement after signing it.

If an employer requests an ADEA waiver in connection with an exit incentive or other employment termination program, the minimum requirements for a valid waiver are more extensive. See "Understanding Waivers of Discrimination Claims in Employee Severance Agreements" at http://www.eeoc.gov/policy/docs/ganda_severance-agreements.html

Title I of the Americans with Disabilities Act of 1990 (ADA)

[Title I of the Americans with Disabilities Act of 1990](#) prohibits private employers, state and local governments, employment agencies and labor unions from discriminating against qualified individuals with disabilities in job application procedures, hiring, firing, advancement, compensation, job training, and other terms, conditions, and privileges of employment. The ADA covers employers with 15 or more employees, including state and local governments. It also applies to employment agencies and to labor organizations. The ADA's nondiscrimination standards also apply to federal sector employees under section 501 of the Rehabilitation Act, as amended, and its implementing rules.

An individual with a disability is a person 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.
- A qualified employee or applicant with a disability is an individual who, with or without reasonable accommodation, can perform the essential functions of the job in question. Reasonable accommodation may include, but is not limited to:
 - Making existing facilities used by employees readily accessible to and usable by persons with disabilities.
 - Job restructuring, modifying work schedules, reassignment to a vacant position;
 - Acquiring or modifying equipment or devices, adjusting or modifying examinations, training materials, or policies, and providing qualified readers or interpreters.

An employer is required to make a reasonable accommodation to the known disability of a qualified applicant or employee if it would not impose an "undue hardship" on the operation of the employer's business. Reasonable accommodations are adjustments or modifications provided by an employer to enable people with disabilities to enjoy equal employment opportunities.

Accommodations vary depending upon the needs of the individual applicant or employee. Not all people with disabilities (or even all people with the same disability) will require the same accommodation. For example:

- A deaf applicant may need a sign language interpreter during the job interview.
- An employee with diabetes may need regularly scheduled breaks during the workday to eat properly and monitor blood sugar and insulin levels.
- A blind employee may need someone to read information posted on a bulletin board.
- An employee with cancer may need leave to have radiation or chemotherapy treatments.

An employer does not have to provide a reasonable accommodation if it imposes an "undue hardship." Undue hardship is defined as an action requiring significant difficulty or expense when considered in light of factors such as an employer's size, financial resources, and the nature and structure of its operation.

An employer is not required to lower quality or production standards to make an accommodation; nor is an employer obligated to provide personal use items such as glasses or hearing aids.

An employer generally does not have to provide a reasonable accommodation unless an individual with a disability has asked for one. If an employer believes that a medical condition is causing a performance or conduct problem, it may ask the employee how to solve the problem and if the employee needs a reasonable accommodation. Once a reasonable accommodation is requested, the employer and the individual should discuss the individual's needs and identify the appropriate reasonable accommodation. Where more than one accommodation would work, the employer may choose the one that is less costly or that is easier to provide.

Title I of the ADA also covers:

- **Medical Examinations and Inquiries**
Employers may not ask job applicants about the existence, nature, or severity of a disability. Applicants may be asked about their ability to perform specific job functions. A job offer may be conditioned on the results of a medical examination, but only if the examination is required for all entering employees in similar jobs. Medical examinations of employees must be job related and consistent with the employer's business needs.

Medical records are confidential. The basic rule is that with limited exceptions, employers must keep confidential any medical information they learn about an applicant or employee. Information can be confidential even if it contains no medical diagnosis or treatment course and even if it is not generated by a health care professional. For example, an employee's request for a reasonable accommodation would be considered medical information subject to the ADA's confidentiality requirements.

- **Drug and Alcohol Abuse**
Employees and applicants currently engaging in the illegal use of drugs are not covered by the ADA when an employer acts on the basis of such use. Tests for illegal drugs are not subject to the ADA's restrictions on medical examinations. Employers may hold illegal drug users and alcoholics to the same performance standards as other employees.

It is also unlawful to retaliate against an individual for opposing employment practices that discriminate based on disability or for filing a discrimination charge, testifying, or participating in any way in an investigation, proceeding, or litigation under the ADA.

Federal Tax Incentives to Encourage the Employment of People with Disabilities and to Promote the Accessibility of Public Accommodations

The Internal Revenue Code includes several provisions aimed at making businesses more accessible to people with disabilities. The following provides general – non-legal – information about three of the most significant tax incentives. (Employers should check with their accountants or tax advisors to determine eligibility for these incentives or visit the Internal Revenue Service's website, www.irs.gov, for more information. Similar state and local tax incentives may be available.)

- **Small Business Tax Credit (Internal Revenue Code Section 44: Disabled Access Credit)**
Small businesses with either \$1,000,000 or less in revenue or 30 or fewer full-time employees may take a tax credit of up to \$5,000 annually for the cost of providing reasonable accommodations such as sign language interpreters, readers, materials in alternative format

(such as Braille or large print), the purchase of adaptive equipment, the modification of existing equipment, or the removal of architectural barriers.

- **Work Opportunity Tax Credit (Internal Revenue Code Section 51)**
Employers who hire certain targeted low-income groups, including individuals referred from vocational rehabilitation agencies and individuals receiving Supplemental Security Income (SSI) may be eligible for an annual tax credit of up to \$2,400 for each qualifying employee who works at least 400 hours during the tax year. Additionally, a maximum credit of \$1,200 may be available for each qualifying summer youth employee.
- **Architectural/Transportation Tax Deduction (Internal Revenue Code Section 190 Barrier Removal):**
This annual deduction of up to \$15,000 is available to businesses of any size for the costs of removing barriers for people with disabilities, including the following: providing accessible parking spaces, ramps, and curb cuts; providing wheelchair-accessible telephones, water fountains, and restrooms; making walkways at least 48 inches wide; and making entrances accessible.

Disability Discrimination

Disability discrimination occurs when an employer or other entity covered by the Americans with Disabilities Act, as amended, or the Rehabilitation Act, as amended, treats a qualified individual with a disability who is an employee or applicant unfavorably because she has a disability.

Disability discrimination also occurs when a [covered employer or other entity](#) treats an applicant or employee less favorably because she has a history of a disability (such as cancer that is controlled or in remission) or because she is believed to have a physical or mental impairment that is not transitory (lasting or expected to last six months or less) and minor (even if she does not have such an impairment).

The law requires an employer to provide reasonable accommodation to an employee or job applicant with a disability, unless doing so would cause significant difficulty or expense for the employer ("undue hardship").

The law also protects people from discrimination based on their relationship with a person with a disability (even if they do not themselves have a disability). For example, it is illegal to discriminate against an employee because her husband has a disability.

Note: Federal employees and applicants are covered by the Rehabilitation Act of 1973, instead of the Americans with Disabilities Act. The protections are mostly the same.

Disability Discrimination & Work Situations

The law forbids discrimination when it comes to any aspect of employment, including hiring, firing, pay, job assignments, promotions, layoff, training, fringe benefits, and any other term or condition of employment.

Disability Discrimination & Harassment

It is illegal to harass an applicant or employee because he has a disability, had a disability in the past, or is believed to have a physical or mental impairment that is not transitory (lasting or expected to last six months or less) and minor (even if he does not have such an impairment). Harassment can include, for example, offensive remarks about a person's disability. Although the law doesn't prohibit simple teasing, offhand comments, or isolated incidents that aren't very serious, harassment is illegal when it is so frequent or severe that it creates a hostile or offensive work environment or when it results in an adverse employment decision (such as the victim being fired or demoted).

The harasser can be the victim's supervisor, a supervisor in another area, a co-worker, or someone who is not an employee of the employer, such as a client or customer.

Disability Discrimination & Reasonable Accommodation

The law requires an employer to provide reasonable accommodation to an employee or job applicant with a disability, unless doing so would cause significant difficulty or expense for the employer.

A reasonable accommodation is any change in the work environment (or in the way things are usually done) to help a person with a disability apply for a job, perform the duties of a job, or enjoy the benefits and privileges of employment.

Reasonable accommodation might include, for example, making the workplace accessible for wheelchair users or providing a reader or interpreter for someone who is blind or hearing impaired.

While the federal anti-discrimination laws don't require an employer to accommodate an employee who must care for a disabled family member, the Family and Medical Leave Act (FMLA) may require an employer to take such steps. The Department of Labor enforces the FMLA. For more information, call: 1-866-487-9243.

Disability Discrimination & Reasonable Accommodation & Undue Hardship

An employer doesn't have to provide an accommodation if doing so would cause undue hardship to the employer.

Undue hardship means that the accommodation would be too difficult or too expensive to provide, in light of the employer's size, financial resources, and the needs of the business. An employer may not refuse to provide an accommodation just because it involves some cost. An employer does not have to provide the exact accommodation the employee or job applicant wants. If more than one accommodation works, the employer may choose which one to provide.

Definition Of Disability

Not everyone with a medical condition is protected by the law. In order to be protected, a person must be qualified for the job and have a disability as defined by the law.

A person can show that he or she has a disability in one of three ways:

- A person may be disabled if he or she has a physical or mental condition that substantially limits a major life activity (such as walking, talking, seeing, hearing, or learning).
- A person may be disabled if he or she has a history of a disability (such as cancer that is in remission).

- A person may be disabled if he is believed to have a physical or mental impairment that is not transitory (lasting or expected to last six months or less) and minor (even if he does not have such an impairment).

Disability & Medical Exams During Employment Application & Interview Stage

The law places strict limits on employers when it comes to asking job applicants to answer medical questions, take a medical exam, or identify a disability.

For example, an employer may not ask a job applicant to answer medical questions or take a medical exam before extending a job offer. An employer also may not ask job applicants if they have a disability (or about the nature of an obvious disability). An employer may ask job applicants whether they can perform the job and how they would perform the job, with or without a reasonable accommodation.

Disability & Medical Exams After A Job Offer For Employment

After a job is offered to an applicant, the law allows an employer to condition the job offer on the applicant answering certain medical questions or successfully passing a medical exam, but only if all new employees in the same type of job have to answer the questions or take the exam.

Disability & Medical Exams For Persons Who Have Started Working As Employees

Once a person is hired and has started work, an employer generally can only ask medical questions or require a medical exam if the employer needs medical documentation to support an employee's request for an accommodation or if the employer believes that an employee is not able to perform a job successfully or safely because of a medical condition.

The law also requires that employers keep all medical records and information confidential and in separate medical files.

Available Resources

In addition to a variety of [formal guidance documents](#), EEOC has developed a wide range of fact sheets, question & answer documents, and other publications to help employees and employers understand the complex issues surrounding disability discrimination.

- [Your Employment Rights as an Individual With a Disability](#)
- [Job Applicants and the ADA](#)
- [Understanding Your Employment Rights Under the ADA: A Guide for Veterans](#)
- [Questions and Answers: Promoting Employment of Individuals with Disabilities in the Federal Workforce](#)
- [The Family and Medical Leave Act, the ADA, and Title VII of the Civil Rights Act of 1964](#)
- [The ADA: A Primer for Small Business](#)
- [Your Responsibilities as an Employer](#)
- [Small Employers and Reasonable Accommodation](#)
- [Work At Home/Telework as a Reasonable Accommodation](#)
- [Applying Performance And Conduct Standards To Employees With Disabilities](#)
- [Obtaining and Using Employee Medical Information as Part of Emergency Evacuation Procedures](#)
- [Veterans and the ADA: A Guide for Employers](#)
- [Pandemic Preparedness in the Workplace and the Americans with Disabilities Act](#)

- [Employer Best Practices for Workers with Caregiving Responsibilities](#)
- [Reasonable Accommodations for Attorneys with Disabilities](#)
- [How to Comply with the Americans with Disabilities Act: A Guide for Restaurants and Other Food Service Employers](#)
- [Final Report on Best Practices For the Employment of People with Disabilities In State Government](#)
- [ABCs of Schedule A Documents](#)

The ADA Amendments Act

- [Final Regulations Implementing the ADAAA](#)
- [Questions and Answers on the Final Rule Implementing the ADA Amendments Act of 2008](#)
- [Questions and Answers for Small Businesses: The Final Rule Implementing the ADA Amendments Act of 2008](#)
- [Fact Sheet on the EEOC's Final Regulations Implementing the ADAAA](#)

The Questions and Answers Series

- [Health Care Workers and the Americans with Disabilities Act](#)
- [Deafness and Hearing Impairments in the Workplace and the Americans with Disabilities Act](#)
- [Blindness and Vision Impairments in the Workplace and the ADA](#)
- [The Americans with Disabilities Act's Association Provision](#)
- [Diabetes in the Workplace and the ADA](#)
- [Epilepsy in the Workplace and the ADA](#)
- [Persons with Intellectual Disabilities in the Workplace and the ADA](#)
- [Cancer in the Workplace and the ADA](#)

Mediation and the ADA

- [Questions and Answers for Mediation Providers: Mediation and the Americans with Disabilities Act \(ADA\)](#)
- [Questions and Answers for Parties to Mediation: Mediation and the Americans with Disabilities Act \(ADA\)](#)

Equal Pay and Compensation Discrimination Equal Pay Act of 1963, and Title VII of the Civil Rights Act of 1964

The right of employees to be free from discrimination in their compensation is protected under several federal laws, including the following enforced by the U.S. Equal Employment Opportunity Commission: the [Equal Pay Act of 1963](#), [Title VII of the Civil Rights Act of 1964](#), the [Age Discrimination in Employment Act of 1967](#), and [Title I of the Americans with Disabilities Act of 1990](#).

The law against compensation discrimination includes all payments made to or on behalf employees as remuneration for employment. All forms of compensation are covered, including salary, overtime pay, bonuses, stock options, profit sharing and bonus plans, life insurance, vacation and holiday pay, cleaning or gasoline allowances, hotel accommodations, reimbursement for travel expenses, and benefits.

Equal Pay Act

The Equal Pay Act requires that men and women be given equal pay for equal work in the same establishment. The jobs need not be identical, but they must be substantially equal. It is job content, not job titles, that determines whether jobs are substantially equal. Specifically, the EPA provides that employers may not pay unequal wages to men and women who perform jobs that require substantially equal skill, effort and responsibility, and that are performed under similar working conditions within the same establishment. Each of these factors is summarized below:

Skill

- Measured by factors such as the experience, ability, education, and training required to perform the job. The issue is what skills are required for the job, not what skills the individual employees may have. For example, two bookkeeping jobs could be considered equal under the EPA even if one of the job holders has a master's degree in physics, since that degree would not be required for the job.

Effort

- The amount of physical or mental exertion needed to perform the job. For example, suppose that men and women work side by side on a line assembling machine parts. The person at the end of the line must also lift the assembled product as he or she completes the work and place it on a board. That job requires more effort than the other assembly line jobs if the extra effort of lifting the assembled product off the line is substantial and is a regular part of the job. As a result, it would not be a violation to pay that person more, regardless of whether the job is held by a man or a woman.

Responsibility

- The degree of accountability required in performing the job. For example, a salesperson who is delegated the duty of determining whether to accept customers' personal checks has more responsibility than other salespeople. On the other hand, a minor difference in responsibility, such as turning out the lights at the end of the day, would not justify a pay differential.

Working Conditions

- This encompasses two factors: (1) physical surroundings like temperature, fumes, and ventilation; and (2) hazards.

Establishment

- The prohibition against compensation discrimination under the EPA applies only to jobs within an establishment. An establishment is a distinct physical place of business rather than an entire business or enterprise consisting of several places of business. In some circumstances, physically separate places of business may be treated as one establishment. For example, if a central administrative unit hires employees, sets their compensation, and assigns them to separate work locations, the separate work sites can be considered part of one establishment.

Pay differentials are permitted when they are based on seniority, merit, quantity or quality of production, or a factor other than sex. These are known as “affirmative defenses” and it is the employer’s burden to prove that they apply.

In correcting a pay differential, no employee’s pay may be reduced. Instead, the pay of the lower paid employee(s) must be increased.

Title VII, ADEA, and ADA

Title VII, the ADEA, and the ADA prohibit compensation discrimination on the basis of race, color, religion, sex, national origin, age, or disability. Unlike the EPA, there is no requirement that the claimant’s job be substantially equal to that of a higher paid person outside the claimant’s protected class, nor do these statutes require the claimant to work in the same establishment as a comparator. Compensation discrimination under Title VII, the ADEA, or the ADA can occur in a variety of forms. For example:

- An employer pays an employee with a disability less than similarly situated employees without disabilities and the employer’s explanation (if any) does not satisfactorily account for the differential.
- An employer sets the compensation for jobs predominately held by, for example, women or African-Americans below that suggested by the employer’s job evaluation study, while the pay for jobs predominately held by men or whites is consistent with the level suggested by the job evaluation study.
- An employer maintains a neutral compensation policy or practice that has an adverse impact on employees in a protected class and cannot be justified as job-related and consistent with business necessity. For example, if an employer provides extra compensation to employees who are the “head of household,” i.e., married with dependents and the primary financial contributor to the household, the practice may have an unlawful disparate impact on women.

It is also unlawful to retaliate against an individual for opposing employment practices that discriminate based on compensation or for filing a discrimination charge, testifying, or participating in any way in an investigation, proceeding, or litigation under Title VII, ADEA, ADA or the Equal Pay Act.

Title II of the Genetic Information Nondiscrimination Act of 2008 (GINA)

Title II of the [Genetic Information Nondiscrimination Act of 2008 \(GINA\)](#), which prohibits genetic information discrimination in employment, took effect on November 21, 2009.

Under Title II of GINA, it is illegal to discriminate against employees or applicants because of genetic information. Title II of GINA prohibits the use of genetic information in making employment decisions, restricts employers and other entities covered by Title II (employment agencies, labor organizations and joint labor-management training and apprenticeship programs - referred to as "covered entities") from requesting, requiring or purchasing genetic information, and strictly limits the disclosure of genetic information.

The EEOC enforces Title II of GINA (dealing with genetic discrimination in employment). The Departments of Labor, Health and Human Services and the Treasury have responsibility for issuing regulations for Title I of GINA, which addresses the use of genetic information in health insurance.

Definition of "Genetic Information"

Genetic information includes information about an individual's genetic tests and the genetic tests of an individual's family members, as well as information about the manifestation of a disease or disorder in an individual's family members (i.e. family medical history). Family medical history is included in the definition of genetic information because it is often used to determine whether someone has an increased risk of getting a disease, disorder, or condition in the future. Genetic information also includes an individual's request for, or receipt of, genetic services, or the participation in clinical research that includes genetic services by the individual or a family member of the individual, and the genetic information of a fetus carried by an individual or by a pregnant woman who is a family member of the individual and the genetic information of any embryo legally held by the individual or family member using an assisted reproductive technology.

Discrimination Because of Genetic Information

The law forbids discrimination on the basis of genetic information when it comes to any aspect of employment, including hiring, firing, pay, job assignments, promotions, layoffs, training, fringe benefits, or any other term or condition of employment. *An employer may never use genetic information to make an employment decision because genetic information is not relevant to an individual's current ability to work.*

Harassment Because of Genetic Information

Under GINA, it is also illegal to harass a person because of his or her genetic information. Harassment can include, for example, making offensive or derogatory remarks about an applicant or employee's genetic information, or about the genetic information of a relative of the applicant or employee. Although the law doesn't prohibit simple teasing, offhand comments, or isolated incidents that are not very serious, harassment is illegal when it is so severe or pervasive that it creates a hostile or offensive work environment or when it results in an adverse employment decision (such as the victim being fired or demoted). The harasser can be the victim's supervisor, a supervisor in another area of the workplace, a co-worker, or someone who is not an employee, such as a client or customer.

Retaliation

Under GINA, it is illegal to fire, demote, harass, or otherwise “retaliate” against an applicant or employee for filing a charge of discrimination, participating in a discrimination proceeding (such as a discrimination investigation or lawsuit), or otherwise opposing discrimination.

Rules Against Acquiring Genetic Information

- It will usually be unlawful for a covered entity to get genetic information. There are six narrow exceptions to this prohibition:
- Inadvertent acquisitions of genetic information do not violate GINA, such as in situations where a manager or supervisor overhears someone talking about a family member’s illness.
- Genetic information (such as family medical history) may be obtained as part of health or genetic services, including wellness programs, offered by the employer on a voluntary basis, if certain specific requirements are met.
- Family medical history may be acquired as part of the certification process for FMLA leave (or leave under similar state or local laws or pursuant to an employer policy), where an employee is asking for leave to care for a family member with a serious health condition.
- Genetic information may be acquired through commercially and publicly available documents like newspapers, as long as the employer is not searching those sources with the intent of finding genetic information or accessing sources from which they are likely to acquire genetic information (such as websites and on-line discussion groups that focus on issues such as genetic testing of individuals and genetic discrimination).
- Genetic information may be acquired through a genetic monitoring program that monitors the biological effects of toxic substances in the workplace where the monitoring is required by law or, under carefully defined conditions, where the program is voluntary.
- Acquisition of genetic information of employees by employers who engage in DNA testing for law enforcement purposes as a forensic lab or for purposes of human remains identification is permitted, but the genetic information may only be used for analysis of DNA markers for quality control to detect sample contamination.

Confidentiality of Genetic Information

It is also unlawful for a covered entity to disclose genetic information about applicants, employees or members. Covered entities must keep genetic information confidential and in a separate medical file. (Genetic information may be kept in the same file as other medical information in compliance with the Americans with Disabilities Act.) There are limited exceptions to this non-disclosure rule, such as exceptions that provide for the disclosure of relevant genetic information to government officials investigating compliance with Title II of GINA and for disclosures made pursuant to a court order.



U.S. Equal Employment Opportunity Commission

Title VII of the Civil Rights Act of 1964

EDITOR'S NOTE: The following is the text of Title VII of the Civil Rights Act of 1964 (Pub. L. 88-352) (Title VII), as amended, as it appears in volume 42 of the United States Code, beginning at section 2000e. Title VII prohibits employment discrimination based on race, color, religion, sex and national origin. The Civil Rights Act of 1991 (Pub. L. 102-166) (CRA) and the Lily Ledbetter Fair Pay Act of 2009 (Pub. L. 111-2) amend several sections of Title VII. In addition, section 102 of the CRA (which is printed elsewhere in this publication) amends the Revised Statutes by adding a new section following section 1977 (42 U.S.C. 1981), to provide for the recovery of compensatory and punitive damages in cases of intentional violations of Title VII, the Americans with Disabilities Act of 1990, and section 501 of the Rehabilitation Act of 1973. Cross references to Title VII as enacted appear in italics following each section heading. Editor's notes also appear in italics.

An Act

To enforce the constitutional right to vote, to confer jurisdiction upon the district courts of the United States to provide injunctive relief against discrimination in public accommodations, to authorize the attorney General to institute suits to protect constitutional rights in public facilities and public education, to extend the Commission on Civil Rights, to prevent discrimination in federally assisted programs, to establish a Commission on Equal Employment Opportunity, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Civil Rights Act of 1964".

* * *

DEFINITIONS

SEC. 2000e. [Section 701]

For the purposes of this subchapter-

(a) The term "person" includes one or more individuals, governments, governmental agencies, political subdivisions, labor unions, partnerships, associations, corporations, legal representatives, mutual companies, joint-stock companies, trusts, unincorporated organizations, trustees, trustees in cases under Title 11 [*originally, bankruptcy*], or receivers.

(b) The term "employer" means a person engaged in an industry affecting commerce who has fifteen or more employees for each working day in each of twenty or more calendar weeks in the current or preceding calendar year, and any agent of such a person, but such term does not include (1) the United States, a corporation wholly owned by the Government of the United States, an Indian tribe, or any department or agency of the District of Columbia subject by statute to procedures of the competitive service (as defined in section 2102 of Title 5 [*United States Code*]), or

(2) a bona fide private membership club (other than a labor organization) which is exempt from taxation under section 501(c) of Title 26 [*the Internal Revenue Code of 1986*], except that during the first year after March 24, 1972 [*the date of enactment of the Equal Employment Opportunity Act of 1972*], persons having fewer than twenty-five employees (and their agents) shall not be considered employers.

(c) The term "employment agency" means any person regularly undertaking with or without compensation to procure employees for an employer or to procure for employees opportunities to work for an employer and includes an agent of such a person.

(d) The term "labor organization" means a labor organization engaged in an industry affecting commerce, and any agent of such an organization, and includes any organization of any kind, any agency, or employee representation committee, group, association, or plan so engaged in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours, or other terms or conditions of employment, and any conference, general committee, joint or system board, or joint council so engaged which is subordinate to a national or international labor organization.

(e) A labor organization shall be deemed to be engaged in an industry affecting commerce if (1) it maintains or operates a hiring hall or hiring office which procures employees for an employer or procures for employees opportunities to work for an employer, or (2) the number of its members (or, where it is a labor organization composed of other labor organizations or their representatives, if the aggregate number of the members of such other labor organization) is (A) twenty-five or more during the first year after March 24, 1972 [*the date of enactment of the Equal Employment Opportunity Act of 1972*], or (B)

fifteen or more thereafter, and such labor organization-

- (1) is the certified representative of employees under the provisions of the National Labor Relations Act, as amended [29 U.S.C. 151 *et seq.*], or the Railway Labor Act, as amended [45 U.S.C. 151 *et seq.*];
- (2) although not certified, is a national or international labor organization or a local labor organization recognized or acting as the representative of employees of an employer or employers engaged in an industry affecting commerce; or
- (3) has chartered a local labor organization or subsidiary body which is representing or actively seeking to represent employees of employers within the meaning of paragraph (1) or (2); or
- (4) has been chartered by a labor organization representing or actively seeking to represent employees within the meaning of paragraph (1) or (2) as the local or subordinate body through which such employees may enjoy membership or become affiliated with such labor organization; or
- (5) is a conference, general committee, joint or system board, or joint council subordinate to a national or international labor organization, which includes a labor organization engaged in an industry affecting commerce within the meaning of any of the preceding paragraphs of this subsection.

(f) The term “employee” means an individual employed by an employer, except that the term “employee” shall not include any person elected to public office in any State or political subdivision of any State by the qualified voters thereof, or any person chosen by such officer to be on such officer’s personal staff, or an appointee on the policy making level or an immediate adviser with respect to the exercise of the constitutional or legal powers of the office. The exemption set forth in the preceding sentence shall not include employees subject to the civil service laws of a State government, governmental agency or political subdivision. With respect to employment in a foreign country, such term includes an individual who is a citizen of the United States.

(g) The term “commerce” means trade, traffic, commerce, transportation, transmission, or communication among the several States; or between a State and any place outside thereof; or within the District of Columbia, or a possession of the United States; or between points in the same State but through a point outside thereof.

(h) The term “industry affecting commerce” means any activity, business, or industry in commerce or in which a labor dispute would hinder or obstruct commerce or the free flow of commerce and includes any activity or industry “affecting commerce” within the meaning of the Labor-Management Reporting and Disclosure Act of 1959 [29 U.S.C. 401 *et seq.*], and further includes any governmental industry, business, or activity.

(i) The term “State” includes a State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, Guam, Wake Island, the Canal Zone, and Outer Continental Shelf lands defined in the Outer Continental Shelf Lands Act [43 U.S.C. 1331 *et seq.*].

(j) The term “religion” includes all aspects of religious observance and practice, as well as belief, unless an employer demonstrates that he is unable to reasonably accommodate to an employee’s or prospective employee’s religious observance or practice without undue hardship on the conduct of the employer’s business.

(k) The terms “because of sex” or “on the basis of sex” include, but are not limited to, because of or on the basis of pregnancy, childbirth, or related medical conditions; and women affected by pregnancy, childbirth, or related medical conditions shall be treated the same for all employment-related purposes, including receipt of benefits under fringe benefit programs, as other persons not so affected but similar in their ability or inability to work, and nothing in section 2000e-2(h) of this title [section 703(h)] shall be interpreted to permit otherwise. This subsection shall not require an employer to pay for health insurance benefits for abortion, except where the life of the mother would be endangered if the fetus were carried to term, or except where medical complications have arisen from an abortion: Provided, That nothing herein shall preclude an employer from providing abortion benefits or otherwise affect bargaining agreements in regard to abortion.

(l) The term “complaining party” means the Commission, the Attorney General, or a person who may bring an action or proceeding under this subchapter.

(m) The term “demonstrates” means meets the burdens of production and persuasion.

(n) The term “respondent” means an employer, employment agency, labor organization, joint labor management committee controlling apprenticeship or other training or retraining program, including an on-the-job training program, or Federal entity subject to section 2000e-16 of this title.

APPLICABILITY TO FOREIGN AND RELIGIOUS EMPLOYMENT

SEC. 2000e-1. [Section 702]

(a) Inapplicability of subchapter to certain aliens and employees of religious entities

This subchapter shall not apply to an employer with respect to the employment of aliens outside any State, or to a religious corporation, association, educational institution, or society with respect to the employment of individuals of a particular religion to perform work connected with the carrying on by such corporation, association, educational institution, or society of its activities.

(b) Compliance with statute as violative of foreign law

It shall not be unlawful under section 2000e-2 or 2000e-3 of this title [section 703 or 704] for an employer (or a corporation controlled by an employer), labor organization, employment agency, or joint labor-management committee controlling apprenticeship or other training or retraining (including on-the-job training programs) to take any action otherwise prohibited by such section, with respect to an employee in a workplace in a foreign country if compliance with such section would cause such employer (or such corporation), such organization, such agency, or such committee to violate the law of the foreign country in which such workplace is located.

(c) Control of corporation incorporated in foreign country

(1) If an employer controls a corporation whose place of incorporation is a foreign country, any practice prohibited by section 2000e-2 or 2000e-3 of this title [section 703 or 704] engaged in by such corporation shall be presumed to be engaged in by such employer.

(2) Sections 2000e-2 and 2000e-3 of this title [sections 703 and 704] shall not apply with respect to the foreign operations of an employer that is a foreign person not controlled by an American employer.

(3) For purposes of this subsection, the determination of whether an employer controls a corporation shall be based on-

(A) the interrelation of operations;

(B) the common management;

(C) the centralized control of labor relations; and

(D) the common ownership or financial control, of the employer and the corporation.

UNLAWFUL EMPLOYMENT PRACTICES

SEC. 2000e-2. [Section 703]

(a) Employer practices

It shall be an unlawful employment practice for an employer -

(1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin; or

(2) to limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's race, color, religion, sex, or national origin.

(b) Employment agency practices

It shall be an unlawful employment practice for an employment agency to fail or refuse to refer for employment, or otherwise to discriminate against, any individual because of his race, color, religion, sex, or national origin, or to classify or refer for employment any individual on the basis of his race, color, religion, sex, or national origin.

(c) Labor organization practices

It shall be an unlawful employment practice for a labor organization-

(1) to exclude or to expel from its membership, or otherwise to discriminate against, any individual because of his race, color, religion, sex, or national origin;

(2) to limit, segregate, or classify its membership or applicants for membership, or to classify or fail or refuse to refer for employment any individual, in any way which would deprive or tend to deprive any individual of employment opportunities, or would limit such employment opportunities or otherwise adversely affect his status as an employee or as an applicant for employment, because of such individual's race, color, religion, sex, or national origin; or

(3) to cause or attempt to cause an employer to discriminate against an individual in violation of this section.

(d) Training programs

It shall be an unlawful employment practice for any employer, labor organization, or joint labor-management committee controlling apprenticeship or other training or retraining, including on-the-job training programs to discriminate against any individual because of his race, color, religion, sex, or national origin in admission to, or employment in, any program established to provide apprenticeship or other training.

(e) Businesses or enterprises with personnel qualified on basis of religion, sex, or national origin; educational institutions with personnel of particular religion

Notwithstanding any other provision of this subchapter, (1) it shall not be an unlawful employment practice for an employer to hire and employ employees, for an employment agency to classify, or refer for employment any individual, for a labor organization to classify its membership or to classify or refer for employment any individual, or for an employer, labor organization, or joint labor management committee controlling apprenticeship or other training or retraining programs to admit or employ any individual in any such program, on the basis of his religion, sex, or national origin in those certain instances where religion, sex, or national origin is a bona fide occupational qualification reasonably necessary to the normal operation of that particular business or enterprise, and (2) it shall not be an unlawful employment practice for a school, college, university, or other educational institution or institution of learning to hire and employ employees of a particular religion if such school, college, university, or other educational institution or institution of learning is, in whole or in substantial part, owned, supported, controlled, or managed by a particular religion or by a particular religious corporation, association, or society, or if the curriculum of such school, college, university, or other educational institution or institution of learning is directed toward the propagation of a particular religion.

(f) Members of Communist Party or Communist-action or Communist-front organizations

As used in this subchapter, the phrase "unlawful employment practice" shall not be deemed to include any action or measure taken by an employer, labor organization, joint labor management committee, or employment agency with respect to an individual who is a member of the Communist Party of the United States or of any other organization required to register as a Communist-action or Communist-front organization by final order of the Subversive Activities Control Board pursuant to the Subversive Activities Control Act of 1950 [50 U.S.C. 781 et seq.].

(g) National security

Notwithstanding any other provision of this subchapter, it shall not be an unlawful employment practice for an employer to fail or refuse to hire and employ any individual for any position, for an employer to discharge any individual from any position, or for an employment agency to fail or refuse to refer any individual for employment in any position, or for a labor organization to fail or refuse to refer any individual for employment in any position, if-

(1) the occupancy of such position, or access to the premises in or upon which any part of the duties of such position is performed or is to be performed, is subject to any requirement imposed in the interest of the national security of the United States under any security program in effect pursuant to or administered under any statute of the United States or any Executive order of the President; and

(2) such individual has not fulfilled or has ceased to fulfill that requirement.

(h) Seniority or merit system; quantity or quality of production; ability tests; compensation based on sex and authorized by minimum wage provisions

Notwithstanding any other provision of this subchapter, it shall not be an unlawful employment practice for an employer to apply different standards of compensation, or different terms, conditions, or privileges of employment pursuant to a bona fide seniority or merit system, or a system which measures earnings by quantity or quality of production or to employees who work in different locations, provided that such differences are not the result of an intention to discriminate because of race, color, religion, sex, or national origin, nor shall it be an unlawful employment practice for an employer to give and to act upon the results of any professionally developed ability test provided that such test, its administration or action upon the results is not designed, intended or used to discriminate because of race, color, religion, sex or national origin. It shall not be an unlawful employment practice under this subchapter for any employer to differentiate upon the basis of sex in determining the amount of the wages or compensation paid or to be paid to employees of such employer if such differentiation is authorized by the provisions of section 206(d) of Title 29 [section 6(d) of the Labor Standards Act of 1938, as amended].

(i) Businesses or enterprises extending preferential treatment to Indians

Nothing contained in this subchapter shall apply to any business or enterprise on or near an Indian reservation with respect to any publicly announced employment practice of such business or enterprise under which a preferential treatment is given to any individual because he is an Indian living on or near a reservation.

(j) Preferential treatment not to be granted on account of existing number or percentage imbalance

Nothing contained in this subchapter shall be interpreted to require any employer, employment agency, labor organization, or joint labor-management committee subject to this subchapter to grant preferential treatment to any individual or to any group because of the race, color, religion, sex, or national origin of such individual or group on account of an imbalance which may exist with respect to the total number or percentage of persons of any race, color, religion, sex, or national origin employed by any employer, referred or classified for employment by any employment agency or labor organization, admitted to membership or classified by any labor organization, or admitted to, or employed in, any apprenticeship or other training program, in comparison with the total number or percentage of persons of such race, color, religion, sex, or national origin in any community, State, section, or other area, or in the available work force in any community, State, section, or other area.

(k) Burden of proof in disparate impact cases

(1) (A) An unlawful employment practice based on disparate impact is established under this subchapter only if-

(i) a complaining party demonstrates that a respondent uses a particular employment practice that causes a

disparate impact on the basis of race, color, religion, sex, or national origin and the respondent fails to demonstrate that the challenged practice is job related for the position in question and consistent with business necessity; or

(ii) the complaining party makes the demonstration described in subparagraph (C) with respect to an alternative employment practice and the respondent refuses to adopt such alternative employment practice.

(B) (i) With respect to demonstrating that a particular employment practice causes a disparate impact as described in subparagraph (A)(i), the complaining party shall demonstrate that each particular challenged employment practice causes a disparate impact, except that if the complaining party can demonstrate to the court that the elements of a respondent's decisionmaking process are not capable of separation for analysis, the decisionmaking process may be analyzed as one employment practice.

(ii) If the respondent demonstrates that a specific employment practice does not cause the disparate impact, the respondent shall not be required to demonstrate that such practice is required by business necessity.

(C) The demonstration referred to by subparagraph (A)(ii) shall be in accordance with the law as it existed on June 4, 1989, with respect to the concept of "alternative employment practice".

(2) A demonstration that an employment practice is required by business necessity may not be used as a defense against a claim of intentional discrimination under this subchapter.

(3) Notwithstanding any other provision of this subchapter, a rule barring the employment of an individual who currently and knowingly uses or possesses a controlled substance, as defined in schedules I and II of section 102(6) of the Controlled Substances Act (21 U.S.C. 802(6)), other than the use or possession of a drug taken under the supervision of a licensed health care professional, or any other use or possession authorized by the Controlled Substances Act [21 U.S.C. 801 *et seq.*] or any other provision of Federal law, shall be considered an unlawful employment practice under this subchapter only if such rule is adopted or applied with an intent to discriminate because of race, color, religion, sex, or national origin.

(l) Prohibition of discriminatory use of test scores

It shall be an unlawful employment practice for a respondent, in connection with the selection or referral of applicants or candidates for employment or promotion, to adjust the scores of, use different cutoff scores for, or otherwise alter the results of, employment related tests on the basis of race, color, religion, sex, or national origin.

(m) Impermissible consideration of race, color, religion, sex, or national origin in employment practices

Except as otherwise provided in this subchapter, an unlawful employment practice is established when the complaining party demonstrates that race, color, religion, sex, or national origin was a motivating factor for any employment practice, even though other factors also motivated the practice.

(n) Resolution of challenges to employment practices implementing litigated or consent judgments or orders

(1) (A) Notwithstanding any other provision of law, and except as provided in paragraph (2), an employment practice that implements and is within the scope of a litigated or consent judgment or order that resolves a claim of employment discrimination under the Constitution or Federal civil rights laws may not be challenged under the circumstances described in subparagraph (B).

(B) A practice described in subparagraph (A) may not be challenged in a claim under the Constitution or Federal civil rights laws-

(i) by a person who, prior to the entry of the judgment or order described in subparagraph (A), had-

(I) actual notice of the proposed judgment or order sufficient to apprise such person that such judgment or order might adversely affect the interests and legal rights of such person and that an opportunity was available to present objections to such judgment or order by a future date certain; and

(II) a reasonable opportunity to present objections to such judgment or order;
or

(ii) by a person whose interests were adequately represented by another person who had previously challenged the judgment or order on the same legal grounds and with a similar factual situation, unless there has been an intervening change in law or fact.

(2) Nothing in this subsection shall be construed to-

(A) alter the standards for intervention under rule 24 of the Federal Rules of Civil Procedure or apply to the rights of parties who have successfully intervened pursuant to such rule in the proceeding in which the parties intervened;

(B) apply to the rights of parties to the action in which a litigated or consent judgment or order was entered,

or of members of a class represented or sought to be represented in such action, or of members of a group on whose behalf relief was sought in such action by the Federal Government;

(C) prevent challenges to a litigated or consent judgment or order on the ground that such judgment or order was obtained through collusion or fraud, or is transparently invalid or was entered by a court lacking subject matter jurisdiction; or

(D) authorize or permit the denial to any person of the due process of law required by the Constitution.

(3) Any action not precluded under this subsection that challenges an employment consent judgment or order described in paragraph (1) shall be brought in the court, and if possible before the judge, that entered such judgment or order. Nothing in this subsection shall preclude a transfer of such action pursuant to section 1404 of Title 28 [United States Code].

OTHER UNLAWFUL EMPLOYMENT PRACTICES

SEC. 2000e-3. [Section 704]

(a) Discrimination for making charges, testifying, assisting, or participating in enforcement proceedings

It shall be an unlawful employment practice for an employer to discriminate against any of his employees or applicants for employment, for an employment agency, or joint labor-management committee controlling apprenticeship or other training or retraining, including on—the-job training programs, to discriminate against any individual, or for a labor organization to discriminate against any member thereof or applicant for membership, because he has opposed any practice made an unlawful employment practice by this subchapter, or because he has made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this subchapter.

(b) Printing or publication of notices or advertisements indicating prohibited preference, limitation, specification, or discrimination; occupational qualification exception

It shall be an unlawful employment practice for an employer, labor organization, employment agency, or joint labor-management committee controlling apprenticeship or other training or retraining, including on-the-job training programs, to print or publish or cause to be printed or published any notice or advertisement relating to employment by such an employer or membership in or any classification or referral for employment by such a labor organization, or relating to any classification or referral for employment by such an employment agency, or relating to admission to, or employment in, any program established to provide apprenticeship or other training by such a joint labor-management committee, indicating any preference, limitation, specification, or discrimination, based on race, color, religion, sex, or national origin, except that such a notice or advertisement may indicate a preference, limitation, specification, or discrimination based on religion, sex, or national origin when religion, sex, or national origin is a bona fide occupational qualification for employment.

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

SEC. 2000e-4. [Section 705]

(a) Creation; composition; political representation; appointment; term; vacancies; Chairman and Vice Chairman; duties of Chairman; appointment of personnel; compensation of personnel

There is hereby created a Commission to be known as the Equal Employment Opportunity Commission, which shall be composed of five members, not more than three of whom shall be members of the same political party. Members of the Commission shall be appointed by the President by and with the advice and consent of the Senate for a term of five years. Any individual chosen to fill a vacancy shall be appointed only for the unexpired term of the member whom he shall succeed, and all members of the Commission shall continue to serve until their successors are appointed and qualified, except that no such member of the Commission shall continue to serve (1) for more than sixty days when the Congress is in session unless a nomination to fill such vacancy shall have been submitted to the Senate, or (2) after the adjournment sine die of the session of the Senate in which such nomination was submitted. The President shall designate one member to serve as Chairman of the Commission, and one member to serve as Vice Chairman. The Chairman shall be responsible on behalf of the Commission for the administrative operations of the Commission, and, except as provided in subsection (b) of this section, shall appoint, in accordance with the provisions of Title 5 [United States Code] governing appointments in the competitive service, such officers, agents, attorneys, administrative law judges [originally, hearing examiners], and employees as he deems necessary to assist it in the performance of its functions and to fix their compensation in accordance with the provisions of chapter 51 and subchapter III of chapter 53 of Title 5 [United States Code], relating to classification and General Schedule pay rates: Provided, That assignment, removal, and compensation of administrative law judges [originally, hearing examiners] shall be in accordance with sections 3105, 3344, 5372, and 7521 of Title 5 [United States Code].

(b) General Counsel; appointment; term; duties; representation by attorneys and Attorney General

(1) There shall be a General Counsel of the Commission appointed by the President, by and with the advice and consent of the Senate, for a term of four years. The General Counsel shall have responsibility for the conduct of litigation as provided in sections 2000e-5 and 2000e-6 of this title [sections 706 and 707]. The General Counsel shall have such other duties as the Commission may prescribe or as may be provided by law and shall concur with the Chairman of the Commission on the appointment and supervision of regional attorneys. The General Counsel of the Commission on the effective date of this Act shall continue in such position and perform the functions specified in this subsection until a successor is appointed and qualified.

(2) Attorneys appointed under this section may, at the direction of the Commission, appear for and represent the Commission in any case in court, provided that the Attorney General shall conduct all litigation to which the Commission is a party in the Supreme Court pursuant to this subchapter.

(c) Exercise of powers during vacancy; quorum

A vacancy in the Commission shall not impair the right of the remaining members to exercise all the powers of the Commission and three members thereof shall constitute a quorum.

(d) Seal; judicial notice

The Commission shall have an official seal which shall be judicially noticed.

(e) Reports to Congress and the President

The Commission shall at the close of each fiscal year report to the Congress and to the President concerning the action it has taken *[originally, the names, salaries, and duties of all individuals in its employ]* and the moneys it has disbursed. It shall make such further reports on the cause of and means of eliminating discrimination and such recommendations for further legislation as may appear desirable.

(f) Principal and other offices

The principal office of the Commission shall be in or near the District of Columbia, but it may meet or exercise any or all its powers at any other place. The Commission may establish such regional or State offices as it deems necessary to accomplish the purpose of this subchapter.

(g) Powers of Commission

The Commission shall have power-

- (1) to cooperate with and, with their consent, utilize regional, State, local, and other agencies, both public and private, and individuals;
- (2) to pay to witnesses whose depositions are taken or who are summoned before the Commission or any of its agents the same witness and mileage fees as are paid to witnesses in the courts of the United States;
- (3) to furnish to persons subject to this subchapter such technical assistance as they may request to further their compliance with this subchapter or an order issued thereunder;
- (4) upon the request of (i) any employer, whose employees or some of them, or (ii) any labor organization, whose members or some of them, refuse or threaten to refuse to cooperate in effectuating the provisions of this subchapter, to assist in such effectuation by conciliation or such other remedial action as is provided by this subchapter;
- (5) to make such technical studies as are appropriate to effectuate the purposes and policies of this subchapter and to make the results of such studies available to the public;
- (6) to intervene in a civil action brought under section 2000e-5 of this title *[section 706]* by an aggrieved party against a respondent other than a government, governmental agency or political subdivision.

(h) Cooperation with other departments and agencies in performance of educational or promotional activities; outreach activities

- (1) The Commission shall, in any of its educational or promotional activities, cooperate with other departments and agencies in the performance of such educational and promotional activities.
- (2) In exercising its powers under this subchapter, the Commission shall carry out educational and outreach activities (including dissemination of information in languages other than English) targeted to-
 - (A) individuals who historically have been victims of employment discrimination and have not been equitably served by the Commission; and
 - (B) individuals on whose behalf the Commission has authority to enforce any other law prohibiting employment discrimination, concerning rights and obligations under this subchapter or such law, as the case may be.

(i) Personnel subject to political activity restrictions

All officers, agents, attorneys, and employees of the Commission shall be subject to the provisions of section 7324 of Title 5 *[originally, section 9 of the Act of August 2, 1939, as amended (the Hatch Act)]*, notwithstanding any exemption contained in such section.

(j) Technical Assistance Training Institute

- (1) The Commission shall establish a Technical Assistance Training Institute, through which the Commission shall provide technical assistance and training regarding the laws and regulations enforced by the

Commission.

(2) An employer or other entity covered under this subchapter shall not be excused from compliance with the requirements of this subchapter because of any failure to receive technical assistance under this subsection.

(3) There are authorized to be appropriated to carry out this subsection such sums as may be necessary for fiscal year 1992.

(k) EEOC Education, Technical Assistance, and Training Revolving Fund

(1) There is hereby established in the Treasury of the United States a revolving fund to be known as the "EEOC Education, Technical Assistance, and Training Revolving Fund" (hereinafter in this subsection referred to as the "Fund") and to pay the cost (including administrative and personnel expenses) of providing education, technical assistance, and training relating to laws administered by the Commission. Monies in the Fund shall be available without fiscal year limitation to the Commission for such purposes.

(2)(A) The Commission shall charge fees in accordance with the provisions of this paragraph to offset the costs of education, technical assistance, and training provided with monies in the Fund. Such fees for any education, technical assistance, or training--

(i) shall be imposed on a uniform basis on persons and entities receiving such education, assistance, or training,

(ii) shall not exceed the cost of providing such education, assistance, and training, and

(iii) with respect to each person or entity receiving such education, assistance, or training, shall bear a reasonable relationship to the cost of providing such education, assistance, or training to such person or entity.

(B) Fees received under subparagraph (A) shall be deposited in the Fund by the Commission.

(C) The Commission shall include in each report made under subsection (e) of this section information with respect to the operation of the Fund, including information, presented in the aggregate, relating to--

(i) the number of persons and entities to which the Commission provided education, technical assistance, or training with monies in the Fund, in the fiscal year for which such report is prepared,

(ii) the cost to the Commission to provide such education, technical assistance, or training to such persons and entities, and

(iii) the amount of any fees received by the Commission from such persons and entities for such education, technical assistance, or training.

(3) The Secretary of the Treasury shall invest the portion of the Fund not required to satisfy current expenditures from the Fund, as determined by the Commission, in obligations of the United States or obligations guaranteed as to principal by the United States. Investment proceeds shall be deposited in the Fund.

(4) There is hereby transferred to the Fund \$1,000,000 from the Salaries and Expenses appropriation of the Commission.

ENFORCEMENT PROVISIONS

SEC. 2000e-5. [Section 706]

(a) Power of Commission to prevent unlawful employment practices

The Commission is empowered, as hereinafter provided, to prevent any person from engaging in any unlawful employment practice as set forth in section 2000e-2 or 2000e-3 of this title [section 703 or 704].

(b) Charges by persons aggrieved or member of Commission of unlawful employment practices by employers, etc.; filing; allegations; notice to respondent; contents of notice; investigation by Commission; contents of charges; prohibition on disclosure of charges; determination of reasonable cause; conference, conciliation, and persuasion for elimination of unlawful practices; prohibition on disclosure of informal endeavors to end unlawful practices; use of evidence in subsequent proceedings; penalties for disclosure of information; time for determination of reasonable cause

Whenever a charge is filed by or on behalf of a person claiming to be aggrieved, or by a member of the Commission, alleging that an employer, employment agency, labor organization, or joint labor-management committee controlling apprenticeship or other training or retraining, including on-the-job training programs, has engaged in an unlawful employment practice, the Commission shall serve a notice of the charge (including the date, place and circumstances of the alleged unlawful employment practice) on such employer, employment agency, labor organization, or joint labor-management committee (hereinafter referred to as the "respondent") within ten days, and shall make an investigation thereof. Charges shall be in writing under oath or affirmation and shall contain such information and be in such form as the Commission requires. Charges shall not be made public by the Commission. If the Commission determines after such investigation that there is not reasonable cause to believe that the charge is true, it shall dismiss the charge and promptly notify the person claiming to be aggrieved and the respondent of its action. In determining whether reasonable cause exists, the Commission shall accord substantial weight to final findings and orders made by State or local authorities in

proceedings commenced under State or local law pursuant to the requirements of subsections (c) and (d) of this section. If the Commission determines after such investigation that there is reasonable cause to believe that the charge is true, the Commission shall endeavor to eliminate any such alleged unlawful employment practice by informal methods of conference, conciliation, and persuasion. Nothing said or done during and as a part of such informal endeavors may be made public by the Commission, its officers or employees, or used as evidence in a subsequent proceeding without the written consent of the persons concerned. Any person who makes public information in violation of this subsection shall be fined not more than \$1,000 or imprisoned for not more than one year, or both. The Commission shall make its determination on reasonable cause as promptly as possible and, so far as practicable, not later than one hundred and twenty days from the filing of the charge or, where applicable under subsection (c) or (d) of this section, from the date upon which the Commission is authorized to take action with respect to the charge.

(c) State or local enforcement proceedings; notification of State or local authority; time for filing charges with Commission; commencement of proceedings

In the case of an alleged unlawful employment practice occurring in a State, or political subdivision of a State, which has a State or local law prohibiting the unlawful employment practice alleged and establishing or authorizing a State or local authority to grant or seek relief from such practice or to institute criminal proceedings with respect thereto upon receiving notice thereof, no charge may be filed under subsection (a) of this section by the person aggrieved before the expiration of sixty days after proceedings have been commenced under the State or local law, unless such proceedings have been earlier terminated, provided that such sixty-day period shall be extended to one hundred and twenty days during the first year after the effective date of such State or local law. If any requirement for the commencement of such proceedings is imposed by a State or local authority other than a requirement of the filing of a written and signed statement of the facts upon which the proceeding is based, the proceeding shall be deemed to have been commenced for the purposes of this subsection at the time such statement is sent by registered mail to the appropriate State or local authority.

(d) State or local enforcement proceedings; notification of State or local authority; time for action on charges by Commission

In the case of any charge filed by a member of the Commission alleging an unlawful employment practice occurring in a State or political subdivision of a State which has a State or local law prohibiting the practice alleged and establishing or authorizing a State or local authority to grant or seek relief from such practice or to institute criminal proceedings with respect thereto upon receiving notice thereof, the Commission shall, before taking any action with respect to such charge, notify the appropriate State or local officials and, upon request, afford them a reasonable time, but not less than sixty days (provided that such sixty-day period shall be extended to one hundred and twenty days during the first year after the effective day of such State or local law), unless a shorter period is requested, to act under such State or local law to remedy the practice alleged.

(e) Time for filing charges; time for service of notice of charge on respondent; filing of charge by Commission with State or local agency; seniority system

(1) A charge under this section shall be filed within one hundred and eighty days after the alleged unlawful employment practice occurred and notice of the charge (including the date, place and circumstances of the alleged unlawful employment practice) shall be served upon the person against whom such charge is made within ten days thereafter, except that in a case of an unlawful employment practice with respect to which the person aggrieved has initially instituted proceedings with a State or local agency with authority to grant or seek relief from such practice or to institute criminal proceedings with respect thereto upon receiving notice thereof, such charge shall be filed by or on behalf of the person aggrieved within three hundred days after the alleged unlawful employment practice occurred, or within thirty days after receiving notice that the State or local agency has terminated the proceedings under the State or local law, whichever is earlier, and a copy of such charge shall be filed by the Commission with the State or local agency.

(2) For purposes of this section, an unlawful employment practice occurs, with respect to a seniority system that has been adopted for an intentionally discriminatory purpose in violation of this subchapter (whether or not that discriminatory purpose is apparent on the face of the seniority provision), when the seniority system is adopted, when an individual becomes subject to the seniority system, or when a person aggrieved is injured by the application of the seniority system or provision of the system.

(3)(A) For purposes of this section, an unlawful employment practice occurs, with respect to discrimination in compensation in violation of this title, when a discriminatory compensation decision or other practice is adopted, when an individual becomes subject to a discriminatory compensation decision or other practice, or when an individual is affected by application of a discriminatory compensation decision or other practice, including each time wages, benefits, or other compensation is paid, resulting in whole or in part from such a decision or other practice.

(B) In addition to any relief authorized by section 1977A of the Revised Statutes (42 U.S.C. 1981a), liability may accrue and an aggrieved person may obtain relief as provided in subsection (g)(1), including recovery of back pay for up to two years preceding the filing of the charge, where the unlawful employment practices that have occurred during the charge filing period are similar or related to unlawful employment practices with regard to discrimination in compensation that occurred outside the time for filing a charge.

(f) Civil action by Commission, Attorney General, or person aggrieved; preconditions; procedure; appointment of attorney;

payment of fees, costs, or security; intervention; stay of Federal proceedings; action for appropriate temporary or preliminary relief pending final disposition of charge; jurisdiction and venue of United States courts; designation of judge to hear and determine case; assignment of case for hearing; expedition of case; appointment of master

(1) If within thirty days after a charge is filed with the Commission or within thirty days after expiration of any period of reference under subsection (c) or (d) of this section, the Commission has been unable to secure from the respondent a conciliation agreement acceptable to the Commission, the Commission may bring a civil action against any respondent not a government, governmental agency, or political subdivision named in the charge. In the case of a respondent which is a government, governmental agency, or political subdivision, if the Commission has been unable to secure from the respondent a conciliation agreement acceptable to the Commission, the Commission shall take no further action and shall refer the case to the Attorney General who may bring a civil action against such respondent in the appropriate United States district court. The person or persons aggrieved shall have the right to intervene in a civil action brought by the Commission or the Attorney General in a case involving a government, governmental agency, or political subdivision. If a charge filed with the Commission pursuant to subsection (b) of this section is dismissed by the Commission, or if within one hundred and eighty days from the filing of such charge or the expiration of any period of reference under subsection (c) or (d) of this section, whichever is later, the Commission has not filed a civil action under this section or the Attorney General has not filed a civil action in a case involving a government, governmental agency, or political subdivision, or the Commission has not entered into a conciliation agreement to which the person aggrieved is a party, the Commission, or the Attorney General in a case involving a government, governmental agency, or political subdivision, shall so notify the person aggrieved and within ninety days after the giving of such notice a civil action may be brought against the respondent named in the charge (A) by the person claiming to be aggrieved or (B) if such charge was filed by a member of the Commission, by any person whom the charge alleges was aggrieved by the alleged unlawful employment practice. Upon application by the complainant and in such circumstances as the court may deem just, the court may appoint an attorney for such complainant and may authorize the commencement of the action without the payment of fees, costs, or security. Upon timely application, the court may, in its discretion, permit the Commission, or the Attorney General in a case involving a government, governmental agency, or political subdivision, to intervene in such civil action upon certification that the case is of general public importance. Upon request, the court may, in its discretion, stay further proceedings for not more than sixty days pending the termination of State or local proceedings described in subsection (c) or (d) of this section or further efforts of the Commission to obtain voluntary compliance.

(2) Whenever a charge is filed with the Commission and the Commission concludes on the basis of a preliminary investigation that prompt judicial action is necessary to carry out the purposes of this Act, the Commission, or the Attorney General in a case involving a government, governmental agency, or political subdivision, may bring an action for appropriate temporary or preliminary relief pending final disposition of such charge. Any temporary restraining order or other order granting preliminary or temporary relief shall be issued in accordance with rule 65 of the Federal Rules of Civil Procedure. It shall be the duty of a court having jurisdiction over proceedings under this section to assign cases for hearing at the earliest practicable date and to cause such cases to be in every way expedited.

(3) Each United States district court and each United States court of a place subject to the jurisdiction of the United States shall have jurisdiction of actions brought under this subchapter. Such an action may be brought in any judicial district in the State in which the unlawful employment practice is alleged to have been committed, in the judicial district in which the employment records relevant to such practice are maintained and administered, or in the judicial district in which the aggrieved person would have worked but for the alleged unlawful employment practice, but if the respondent is not found within any such district, such an action may be brought within the judicial district in which the respondent has his principal office. For purposes of sections 1404 and 1406 of Title 28 [United States Code], the judicial district in which the respondent has his principal office shall in all cases be considered a district in which the action might have been brought.

(4) It shall be the duty of the chief judge of the district (or in his absence, the acting chief judge) in which the case is pending immediately to designate a judge in such district to hear and determine the case. In the event that no judge in the district is available to hear and determine the case, the chief judge of the district, or the acting chief judge, as the case may be, shall certify this fact to the chief judge of the circuit (or in his absence, the acting chief judge) who shall then designate a district or circuit judge of the circuit to hear and determine the case.

(5) It shall be the duty of the judge designated pursuant to this subsection to assign the case for hearing at the earliest practicable date and to cause the case to be in every way expedited. If such judge has not scheduled the case for trial within one hundred and twenty days after issue has been joined, that judge may appoint a master pursuant to rule 53 of the Federal Rules of Civil Procedure.

(g) Injunctions; appropriate affirmative action; equitable relief; accrual of back pay; reduction of back pay; limitations on judicial orders

(1) If the court finds that the respondent has intentionally engaged in or is intentionally engaging in an unlawful employment practice charged in the complaint, the court may enjoin the respondent from engaging in such unlawful employment practice, and order such affirmative action as may be appropriate, which may

include, but is not limited to, reinstatement or hiring of employees, with or without back pay (payable by the employer, employment agency, or labor organization, as the case may be, responsible for the unlawful employment practice), or any other equitable relief as the court deems appropriate. Back pay liability shall not accrue from a date more than two years prior to the filing of a charge with the Commission. Interim earnings or amounts earnable with reasonable diligence by the person or persons discriminated against shall operate to reduce the back pay otherwise allowable.

(2) (A) No order of the court shall require the admission or reinstatement of an individual as a member of a union, or the hiring, reinstatement, or promotion of an individual as an employee, or the payment to him of any back pay, if such individual was refused admission, suspended, or expelled, or was refused employment or advancement or was suspended or discharged for any reason other than discrimination on account of race, color, religion, sex, or national origin or in violation of section 2000e-3(a) of this Title [section 704(a)].

(B) On a claim in which an individual proves a violation under section 2000e-2(m) of this title [section 703(m)] and a respondent demonstrates that the respondent would have taken the same action in the absence of the impermissible motivating factor, the court-

(i) may grant declaratory relief, injunctive relief (except as provided in clause (ii)), and attorney's fees and costs demonstrated to be directly attributable only to the pursuit of a claim under section 2000e-2(m) of this title [section 703(m)]; and

(ii) shall not award damages or issue an order requiring any admission, reinstatement, hiring, promotion, or payment, described in subparagraph (A).

(h) Provisions of chapter 6 of Title 29 not applicable to civil actions for prevention of unlawful practices

The provisions of chapter 6 of title 29 [the Act entitled "An Act to amend the Judicial Code and to define and limit the jurisdiction of courts sitting in equity, and for other purposes," approved March 23, 1932 (29 U.S.C. 105-115)] shall not apply with respect to civil actions brought under this section.

(i) Proceedings by Commission to compel compliance with judicial orders In any case in which an employer, employment agency, or labor organization fails to comply with an order of a court issued in a civil action brought under this section, the Commission may commence proceedings to compel compliance with such order.

(j) Appeals

Any civil action brought under this section and any proceedings brought under subsection (i) of this section shall be subject to appeal as provided in sections 1291 and 1292, Title 28 [United States Code].

(k) Attorney's fee; liability of Commission and United States for costs

In any action or proceeding under this subchapter the court, in its discretion, may allow the prevailing party, other than the Commission or the United States, a reasonable attorney's fee (including expert fees) as part of the costs, and the Commission and the United States shall be liable for costs the same as a private person.

CIVIL ACTIONS BY THE ATTORNEY GENERAL

SEC. 2000e-6. [Section 707]

(a) Complaint

Whenever the Attorney General has reasonable cause to believe that any person or group of persons is engaged in a pattern or practice of resistance to the full enjoyment of any of the rights secured by this subchapter, and that the pattern or practice is of such a nature and is intended to deny the full exercise of the rights herein described, the Attorney General may bring a civil action in the appropriate district court of the United States by filing with it a complaint (1) signed by him (or in his absence the Acting Attorney General), (2) setting forth facts pertaining to such pattern or practice, and (3) requesting such relief, including an application for a permanent or temporary injunction, restraining order or other order against the person or persons responsible for such pattern or practice, as he deems necessary to insure the full enjoyment of the rights herein described.

(b) Jurisdiction; three-judge district court for cases of general public importance: hearing, determination, expedition of action, review by Supreme Court; single judge district court: hearing, determination, expedition of action

The district courts of the United States shall have and shall exercise jurisdiction of proceedings instituted pursuant to this section, and in any such proceeding the Attorney General may file with the clerk of such court a request that a court of three judges be convened to hear and determine the case. Such request by the Attorney General shall be accompanied by a certificate that, in his opinion, the case is of general public importance. A copy of the certificate and request for a three-judge court shall be immediately furnished by such clerk to the chief judge of the circuit (or in his absence, the presiding circuit judge of the circuit) in which the case is pending. Upon receipt of such request it shall be the duty of the chief judge of the circuit or the presiding circuit judge, as the case may be, to designate immediately three judges in such circuit, of whom at least one shall be a circuit judge and another of whom shall be a district judge of the court in which the proceeding was instituted, to hear and determine such case, and it shall be the duty of the judges so designated to assign the case for hearing at the earliest practicable date, to participate in the hearing and determination thereof, and to cause

the case to be in every way expedited. An appeal from the final judgment of such court will lie to the Supreme Court.

In the event the Attorney General fails to file such a request in any such proceeding, it shall be the duty of the chief judge of the district (or in his absence, the acting chief judge) in which the case is pending immediately to designate a judge in such district to hear and determine the case. In the event that no judge in the district is available to hear and determine the case, the chief judge of the district, or the acting chief judge, as the case may be, shall certify this fact to the chief judge of the circuit (or in his absence, the acting chief judge) who shall then designate a district or circuit judge of the circuit to hear and determine the case.

It shall be the duty of the judge designated pursuant to this section to assign the case for hearing at the earliest practicable date and to cause the case to be in every way expedited.

(c) Transfer of functions, etc., to Commission; effective date; prerequisite to transfer; execution of functions by Commission

Effective two years after March 24, 1972 *[the date of enactment of the Equal Employment Opportunity Act of 1972]*, the functions of the Attorney General under this section shall be transferred to the Commission, together with such personnel, property, records, and unexpended balances of appropriations, allocations, and other funds employed, used, held, available, or to be made available in connection with such functions unless the President submits, and neither House of Congress vetoes, a reorganization plan pursuant to chapter 9 of Title 5 *[United States Code]*, inconsistent with the provisions of this subsection. The Commission shall carry out such functions in accordance with subsections (d) and (e) of this section.

(d) Transfer of functions, etc., not to affect suits commenced pursuant to this section prior to date of transfer

Upon the transfer of functions provided for in subsection (c) of this section, in all suits commenced pursuant to this section prior to the date of such transfer, proceedings shall continue without abatement, all court orders and decrees shall remain in effect, and the Commission shall be substituted as a party for the United States of America, the Attorney General, or the Acting Attorney General, as appropriate.

(e) Investigation and action by Commission pursuant to filing of charge of discrimination; procedure

Subsequent to March 24, 1972 *[the date of enactment of the Equal Employment Opportunity Act of 1972]*, the Commission shall have authority to investigate and act on a charge of a pattern or practice of discrimination, whether filed by or on behalf of a person claiming to be aggrieved or by a member of the Commission. All such actions shall be conducted in accordance with the procedures set forth in section 2000e-5 of this title *[section 706]*.

EFFECT ON STATE LAWS

SEC. 2000e-7. *[Section 708]*

Nothing in this subchapter shall be deemed to exempt or relieve any person from any liability, duty, penalty, or punishment provided by any present or future law of any State or political subdivision of a State, other than any such law which purports to require or permit the doing of any act which would be an unlawful employment practice under this subchapter.

INVESTIGATIONS

SEC. 2000e-8. *[Section 709]*

(a) Examination and copying of evidence related to unlawful employment practices

In connection with any investigation of a charge filed under section 2000e-5 of this title *[section 706]*, the Commission or its designated representative shall at all reasonable times have access to, for the purposes of examination, and the right to copy any evidence of any person being investigated or proceeded against that relates to unlawful employment practices covered by this subchapter and is relevant to the charge under investigation.

(b) Cooperation with State and local agencies administering State fair employment practices laws; participation in and contribution to research and other projects; utilization of services; payment in advance or reimbursement; agreements and rescission of agreements

The Commission may cooperate with State and local agencies charged with the administration of State fair employment practices laws and, with the consent of such agencies, may, for the purpose of carrying out its functions and duties under this subchapter and within the limitation of funds appropriated specifically for such purpose, engage in and contribute to the cost of research and other projects of mutual interest undertaken by such agencies, and utilize the services of such agencies and their employees, and, notwithstanding any other provision of law, pay by advance or reimbursement such agencies and their employees for services rendered to assist the Commission in carrying out this subchapter. In furtherance of such cooperative efforts, the Commission may enter into written agreements with such State or local agencies and such agreements may include provisions under which the Commission shall refrain from processing a charge in any cases or class of cases specified in such agreements or under which the Commission shall relieve any person or class of persons in such State or locality from requirements imposed under this section. The Commission shall rescind any such agreement whenever it determines that the agreement no longer serves the interest of effective enforcement of this subchapter.

(c) Execution, retention, and preservation of records; reports to Commission; training program records; appropriate relief from regulation or order for undue hardship; procedure for exemption; judicial action to compel compliance

Every employer, employment agency, and labor organization subject to this subchapter shall (1) make and keep such records relevant to the determinations of whether unlawful employment practices have been or are being committed, (2) preserve such records for such periods, and (3) make such reports therefrom as the Commission shall prescribe by regulation or order, after public hearing, as reasonable, necessary, or appropriate for the enforcement of this subchapter or the regulations or orders thereunder. The Commission shall, by regulation, require each employer, labor organization, and joint labor-management committee subject to this subchapter which controls an apprenticeship or other training program to maintain such records as are reasonably necessary to carry out the purposes of this subchapter, including, but not limited to, a list of applicants who wish to participate in such program, including the chronological order in which applications were received, and to furnish to the Commission upon request, a detailed description of the manner in which persons are selected to participate in the apprenticeship or other training program. Any employer, employment agency, labor organization, or joint labor-management committee which believes that the application to it of any regulation or order issued under this section would result in undue hardship may apply to the Commission for an exemption from the application of such regulation or order, and, if such application for an exemption is denied, bring a civil action in the United States district court for the district where such records are kept. If the Commission or the court, as the case may be, finds that the application of the regulation or order to the employer, employment agency, or labor organization in question would impose an undue hardship, the Commission or the court, as the case may be, may grant appropriate relief. If any person required to comply with the provisions of this subsection fails or refuses to do so, the United States district court for the district in which such person is found, resides, or transacts business, shall, upon application of the Commission, or the Attorney General in a case involving a government, governmental agency or political subdivision, have jurisdiction to issue to such person an order requiring him to comply.

(d) Consultation and coordination between Commission and interested State and Federal agencies in prescribing recordkeeping and reporting requirements; availability of information furnished pursuant to recordkeeping and reporting requirements; conditions on availability

In prescribing requirements pursuant to subsection (c) of this section, the Commission shall consult with other interested State and Federal agencies and shall endeavor to coordinate its requirements with those adopted by such agencies. The Commission shall furnish upon request and without cost to any State or local agency charged with the administration of a fair employment practice law information obtained pursuant to subsection (c) of this section from any employer, employment agency, labor organization, or joint labor-management committee subject to the jurisdiction of such agency. Such information shall be furnished on condition that it not be made public by the recipient agency prior to the institution of a proceeding under State or local law involving such information. If this condition is violated by a recipient agency, the Commission may decline to honor subsequent requests pursuant to this subsection.

(e) Prohibited disclosures; penalties

It shall be unlawful for any officer or employee of the Commission to make public in any manner whatever any information obtained by the Commission pursuant to its authority under this section prior to the institution of any proceeding under this subchapter involving such information. Any officer or employee of the Commission who shall make public in any manner whatever any information in violation of this subsection shall be guilty of a misdemeanor and upon conviction thereof, shall be fined not more than \$1,000, or imprisoned not more than one year.

CONDUCT OF HEARINGS AND INVESTIGATIONS PURSUANT TO SECTION 161 OF Title 29

SEC. 2000e-9. *[Section 710]*

For the purpose of all hearings and investigations conducted by the Commission or its duly authorized agents or agencies, section 161 of Title 29 *[section 11 of the National Labor Relations Act]* shall apply.

POSTING OF NOTICES; PENALTIES

SEC. 2000e-10. *[Section 711]*

(a) Every employer, employment agency, and labor organization, as the case may be, shall post and keep posted in conspicuous places upon its premises where notices to employees, applicants for employment, and members are customarily posted a notice to be prepared or approved by the Commission setting forth excerpts from or, summaries of, the pertinent provisions of this subchapter and information pertinent to the filing of a complaint.

(b) A willful violation of this section shall be punishable by a fine of not more than \$100 for each separate offense.

VETERANS' SPECIAL RIGHTS OR PREFERENCE

SEC. 2000e-11. *[Section 712]*

Nothing contained in this subchapter shall be construed to repeal or modify any Federal, State, territorial, or local law creating special rights or preference for veterans.

REGULATIONS; CONFORMITY OF REGULATIONS WITH ADMINISTRATIVE PROCEDURE PROVISIONS; RELIANCE ON INTERPRETATIONS AND INSTRUCTIONS OF COMMISSION

SEC. 2000e-12. *[Section 713]*

(a) The Commission shall have authority from time to time to issue, amend, or rescind suitable procedural regulations to carry out the provisions of this subchapter. Regulations issued under this section shall be in conformity with the standards and limitations of subchapter II of chapter 5 of Title 5 *[originally, the Administrative Procedure Act]*.

(b) In any action or proceeding based on any alleged unlawful employment practice, no person shall be subject to any liability or punishment for or on account of (1) the commission by such person of an unlawful employment practice if he pleads and proves that the act or omission complained of was in good faith, in conformity with, and in reliance on any written interpretation or opinion of the Commission, or (2) the failure of such person to publish and file any information required by any provision of this subchapter if he pleads and proves that he failed to publish and file such information in good faith, in conformity with the instructions of the Commission issued under this subchapter regarding the filing of such information. Such a defense, if established, shall be a bar to the action or proceeding, notwithstanding that (A) after such act or omission, such interpretation or opinion is modified or rescinded or is determined by judicial authority to be invalid or of no legal effect, or (B) after publishing or filing the description and annual reports, such publication or filing is determined by judicial authority not to be in conformity with the requirements of this subchapter.

APPLICATION TO PERSONNEL OF COMMISSION OF SECTIONS 111 AND 1114 OF TITLE 18; PUNISHMENT FOR VIOLATION OF SECTION 1114 OF TITLE 18

SEC. 2000e-13. *[Section 714]*

The provisions of sections 111 and 1114, Title 18 *[United States Code]*, shall apply to officers, agents, and employees of the Commission in the performance of their official duties. Notwithstanding the provisions of sections 111 and 1114 of Title 18 *[United States Code]*, whoever in violation of the provisions of section 1114 of such title kills a person while engaged in or on account of the performance of his official functions under this Act shall be punished by imprisonment for any term of years or for life.

TRANSFER OF AUTHORITY

[Administration of the duties of the Equal Employment Opportunity Coordinating Council was transferred to the Equal Employment Opportunity Commission effective July 1, 1978, under the President's Reorganization Plan of 1978.]

EQUAL EMPLOYMENT OPPORTUNITY COORDINATING COUNCIL; ESTABLISHMENT; COMPOSITION; DUTIES; REPORT TO PRESIDENT AND CONGRESS

SEC. 2000e-14. *[Section 715]*

[Original introductory text: There shall be established an Equal Employment Opportunity Coordinating Council (hereinafter referred to in this section as the Council) composed of the Secretary of Labor, the Chairman of the Equal Employment Opportunity Commission, the Attorney General, the Chairman of the United States Civil Service Commission, and the Chairman of the United States Civil Rights Commission, or their respective delegates.]

The Equal Employment Opportunity Commission *[originally, Council]* shall have the responsibility for developing and implementing agreements, policies and practices designed to maximize effort, promote efficiency, and eliminate conflict, competition, duplication and inconsistency among the operations, functions and jurisdictions of the various departments, agencies and branches of the Federal Government responsible for the implementation and enforcement of equal employment opportunity legislation, orders, and policies. On or before October 1 *[originally, July 1]* of each year, the Equal Employment Opportunity Commission *[originally, Council]* shall transmit to the President and to the Congress a report of its activities, together with such recommendations for legislative or administrative changes as it concludes are desirable to further promote the purposes of this section.

PRESIDENTIAL CONFERENCES; ACQUAINTANCE OF LEADERSHIP WITH PROVISIONS FOR EMPLOYMENT RIGHTS AND OBLIGATIONS; PLANS FOR FAIR ADMINISTRATION; MEMBERSHIP

SEC. 2000e-15. *[Section 716]*

[Original text: (a) This title shall become effective one year after the date of its enactment.

(b) Notwithstanding subsection (a), sections of this title other than sections 703, 704, 706, and 707 shall become effective immediately.

(c) The President shall, as soon as feasible after July 2, 1964 [the date of enactment of this title], convene one or more conferences for the purpose of enabling the leaders of groups whose members will be affected by this subchapter to become familiar with the rights afforded and obligations imposed by its provisions, and for the purpose of making plans which will result in the fair and effective administration of this subchapter when all of its provisions become effective. The President shall invite the participation in such conference or conferences of (1) the members of the President's Committee on Equal Employment Opportunity, (2) the members of the Commission on Civil Rights, (3) representatives of State and local agencies engaged in furthering equal employment opportunity, (4) representatives of private agencies engaged in

furthering equal employment opportunity, and (5) representatives of employers, labor organizations, and employment agencies who will be subject to this subchapter.

TRANSFER OF AUTHORITY

[Enforcement of Section 717 was transferred to the Equal Employment Opportunity Commission from the Civil Service Commission (Office of Personnel Management) effective January 1, 1979 under the President's Reorganization Plan No. 1 of 1978.]

EMPLOYMENT BY FEDERAL GOVERNMENT

SEC. 2000e-16. *[Section 717]*

(a) Discriminatory practices prohibited; employees or applicants for employment subject to coverage

All personnel actions affecting employees or applicants for employment (except with regard to aliens employed outside the limits of the United States) in military departments as defined in section 102 of Title 5 *[United States Code]*, in executive agencies *[originally, other than the General Accounting Office]* as defined in section 105 of Title 5 *[United States Code]* (including employees and applicants for employment who are paid from nonappropriated funds), in the United States Postal Service and the Postal Regulatory Commission, in those units of the Government of the District of Columbia having positions in the competitive service, and in those units of the judicial branch of the Federal Government having positions in the competitive service, in the Smithsonian Institution, and in the Government Printing Office, the Government Accountability Office, and the Library of Congress shall be made free from any discrimination based on race, color, religion, sex, or national origin.

(b) Equal Employment Opportunity Commission; enforcement powers; issuance of rules, regulations, etc.; annual review and approval of national and regional equal employment opportunity plans; review and evaluation of equal employment opportunity programs and publication of progress reports; consultations with interested parties; compliance with rules, regulations, etc.; contents of national and regional equal employment opportunity plans; authority of Librarian of Congress

Except as otherwise provided in this subsection, the Equal Employment Opportunity Commission *[originally, Civil Service Commission]* shall have authority to enforce the provisions of subsection (a) of this section through appropriate remedies, including reinstatement or hiring of employees with or without back pay, as will effectuate the policies of this section, and shall issue such rules, regulations, orders and instructions as it deems necessary and appropriate to carry out its responsibilities under this section. The Equal Employment Opportunity Commission *[originally, Civil Service Commission]* shall-

(1) be responsible for the annual review and approval of a national and regional equal employment opportunity plan which each department and agency and each appropriate unit referred to in subsection (a) of this section shall submit in order to maintain an affirmative program of equal employment opportunity for all such employees and applicants for employment;

(2) be responsible for the review and evaluation of the operation of all agency equal employment opportunity programs, periodically obtaining and publishing (on at least a semiannual basis) progress reports from each such department, agency, or unit; and

(3) consult with and solicit the recommendations of interested individuals, groups, and organizations relating to equal employment opportunity.

The head of each such department, agency, or unit shall comply with such rules, regulations, orders, and instructions which shall include a provision that an employee or applicant for employment shall be notified of any final action taken on any complaint of discrimination filed by him thereunder. The plan submitted by each department, agency, and unit shall include, but not be limited to-

(1) provision for the establishment of training and education programs designed to provide a maximum opportunity for employees to advance so as to perform at their highest potential; and

(2) a description of the qualifications in terms of training and experience relating to equal employment opportunity for the principal and operating officials of each such department, agency, or unit responsible for carrying out the equal employment opportunity program and of the allocation of personnel and resources proposed by such department, agency, or unit to carry out its equal employment opportunity program.

With respect to employment in the Library of Congress, authorities granted in this subsection to the Equal Employment Opportunity Commission *[originally, Civil Service Commission]* shall be exercised by the Librarian of Congress.

(c) Civil action by employee or applicant for employment for redress of grievances; time for bringing of action; head of department, agency, or unit as defendant

Within 90 days of receipt of notice of final action taken by a department, agency, or unit referred to in subsection (a) of this section, or by the Equal Employment Opportunity Commission *[originally, Civil Service Commission]* upon an appeal from a decision or order of such department, agency, or unit on a complaint of discrimination based on race, color, religion, sex or national origin, brought pursuant to subsection (a) of this section, Executive Order 11478 or any succeeding Executive orders, or after one hundred and eighty days from the filing of the initial charge with the department, agency, or unit or with

the Equal Employment Opportunity Commission [*originally, Civil Service Commission*] on appeal from a decision or order of such department, agency, or unit until such time as final action may be taken by a department, agency, or unit, an employee or applicant for employment, if aggrieved by the final disposition of his complaint, or by the failure to take final action on his complaint, may file a civil action as provided in section 2000e-5 of this title [*section 706*], in which civil action the head of the department, agency, or unit, as appropriate, shall be the defendant.

(d) Section 2000e-5(f) through (k) of this title applicable to civil actions

The provisions of section 2000e-5(f) through (k) of this title [*section 706(f) through (k)*], as applicable, shall govern civil actions brought hereunder, and the same interest to compensate for delay in payment shall be available as in cases involving nonpublic parties.

(e) Government agency or official not relieved of responsibility to assure nondiscrimination in employment or equal employment opportunity

Nothing contained in this Act shall relieve any Government agency or official of its or his primary responsibility to assure nondiscrimination in employment as required by the Constitution and statutes or of its or his responsibilities under Executive Order 11478 relating to equal employment opportunity in the Federal Government.

(f) Section 2000e-5(e)(3) [*Section 706(e)(3)*] shall apply to complaints of discrimination in compensation under this section.

PROCEDURE FOR DENIAL, WITHHOLDING, TERMINATION, OR SUSPENSION OF GOVERNMENT CONTRACT SUBSEQUENT TO ACCEPTANCE BY GOVERNMENT OF AFFIRMATIVE ACTION PLAN OF EMPLOYER; TIME OF ACCEPTANCE OF PLAN

SEC. 2000e-17. [*Section 718*]

No Government contract, or portion thereof, with any employer, shall be denied, withheld, terminated, or suspended, by any agency or officer of the United States under any equal employment opportunity law or order, where such employer has an affirmative action plan which has previously been accepted by the Government for the same facility within the past twelve months without first according such employer full hearing and adjudication under the provisions of section 554 of Title 5 [*United States Code*], and the following pertinent sections: Provided, That if such employer has deviated substantially from such previously agreed to affirmative action plan, this section shall not apply: Provided further, That for the purposes of this section an affirmative action plan shall be deemed to have been accepted by the Government at the time the appropriate compliance agency has accepted such plan unless within forty-five days thereafter the Office of Federal Contract Compliance has disapproved such plan.

National Origin Discrimination

National origin discrimination involves treating people (applicants or employees) unfavorably because they are from a particular country or part of the world, because of ethnicity or accent, or because they appear to be of a certain ethnic background (even if they are not).

National origin discrimination also can involve treating people unfavorably because they are married to (or associated with) a person of a certain national origin or because of their connection with an ethnic organization or group.

Discrimination can occur when the victim and the person who inflicted the discrimination are the same national origin.

National Origin Discrimination & Work Situations

The law forbids discrimination when it comes to any aspect of employment, including hiring, firing, pay, job assignments, promotions, layoff, training, fringe benefits, and any other term or condition of employment.

National Origin & Harassment

It is unlawful to harass a person because of his or her national origin. Harassment can include, for example, offensive or derogatory remarks about a person's national origin, accent or ethnicity. Although the law doesn't prohibit simple teasing, offhand comments, or isolated incidents that are not very serious, harassment is illegal when it is so frequent or severe that it creates a hostile or offensive work environment or when it results in an adverse employment decision (such as the victim being fired or demoted).

The harasser can be the victim's supervisor, a supervisor in another area, a co-worker, or someone who is not an employee of the employer, such as a client or customer.

National Origin & Employment Policies/Practices

The law makes it illegal for an [employer or other covered entity](#) to use an employment policy or practice that applies to everyone, regardless of national origin, if it has a negative impact on people of a certain national origin and is not job-related or necessary to the operation of the business.

An employer can only require an employee to speak fluent English if fluency in English is necessary to perform the job effectively. An "English-only rule", which requires employees to speak only English on the job, is only allowed if it is needed to ensure the safe or efficient operation of the employer's business and is put in place for nondiscriminatory reasons.

An employer may not base an employment decision on an employee's foreign accent, unless the accent seriously interferes with the employee's job performance.

Citizenship Discrimination & Workplace Laws

The Immigration Reform and Control Act of 1986 (IRCA) makes it illegal for an employer to discriminate with respect to hiring, firing, or recruitment or referral for a fee, based upon an individual's citizenship or immigration status. The law prohibits employers from hiring only U.S. citizens or lawful permanent residents unless required to do so by law, regulation or government contract. Employers may not refuse to accept lawful documentation that establishes the employment eligibility of an employee, or demand additional documentation beyond what is legally required, when verifying employment eligibility (i.e., completing the Department of Homeland Security (DHS) Form

I-9), based on the employee's national origin or citizenship status. It is the employee's choice which of the acceptable Form I-9 documents to show to verify employment eligibility.

IRCA also prohibits retaliation against individuals for asserting their rights under the Act, or for filing a charge or assisting in an investigation or proceeding under IRCA.

IRCA's nondiscrimination requirements are enforced by the Department of Justice's Office of Special Counsel for Immigration-Related Unfair Employment Practices (OSC), Civil Rights Division. OSC may be reached at:

1-800-255-7688 (voice for employees/applicants),

1-800-237-2515 (TTY for employees/applicants),

1-800-255-8155 (voice for employers), or

1-800-362-2735 (TTY for employers), or

<http://www.usdoj.gov/crt/osc>.

Pregnancy Discrimination

Pregnancy Discrimination

Pregnancy discrimination involves treating a woman (an applicant or employee) unfavorably because of pregnancy, childbirth, or a medical condition related to pregnancy or childbirth.

Pregnancy Discrimination & Work Situations

The Pregnancy Discrimination Act (PDA) forbids discrimination based on pregnancy when it comes to any aspect of employment, including hiring, firing, pay, job assignments, promotions, layoff, training, fringe benefits, such as leave and health insurance, and any other term or condition of employment.

Pregnancy Discrimination & Temporary Disability

If a woman is temporarily unable to perform her job due to a medical condition related to pregnancy or childbirth, the employer or other covered entity must treat her in the same way as it treats any other temporarily disabled employee. For example, the employer may have to provide light duty, alternative assignments, disability leave, or unpaid leave to pregnant employees if it does so for other temporarily disabled employees.

Additionally, impairments resulting from pregnancy (for example, gestational diabetes or preeclampsia, a condition characterized by pregnancy-induced hypertension and protein in the urine) may be disabilities under the Americans with Disabilities Act (ADA). An employer may have to provide a reasonable accommodation (such as leave or modifications that enable an employee to perform her job) for a disability related to pregnancy, absent undue hardship (significant difficulty or expense). The ADA Amendments Act of 2008 makes it much easier to show that a medical condition is a covered disability.

For more information about the ADA, see <http://www.eeoc.gov/laws/types/disability.cfm>.

For information about the ADA Amendments Act, see http://www.eeoc.gov/laws/types/disability_regulations.cfm.

Pregnancy Discrimination & Harassment

It is unlawful to harass a woman because of pregnancy, childbirth, or a medical condition related to pregnancy or childbirth. Harassment is illegal when it is so frequent or severe that it creates a hostile or offensive work environment or when it results in an adverse employment decision (such as the victim being fired or demoted). The harasser can be the victim's supervisor, a supervisor in another area, a co-worker, or someone who is not an employee of the employer, such as a client or customer.

Pregnancy, Maternity & Parental Leave

Under the PDA, an employer that allows temporarily disabled employees to take disability leave or leave without pay, must allow an employee who is temporarily disabled due to pregnancy to do the same.

An employer may not single out pregnancy-related conditions for special procedures to determine an employee's ability to work. However, if an employer requires its employees to submit a doctor's statement concerning their ability to work before granting leave or paying sick benefits, the employer may require employees affected by pregnancy-related conditions to submit such statements. Further, under the Family and Medical Leave Act (FMLA) of 1993, a new parent (including foster and adoptive parents) may be eligible for 12 weeks of leave (unpaid or paid if the employee has earned or

accrued it) that may be used for care of the new child. To be eligible, the employee must have worked for the employer for 12 months prior to taking the leave and the employer must have a specified number of employees. See <http://www.dol.gov/whd/regs/compliance/whdfs28.htm>.

Pregnancy & Workplace Laws

Pregnant employees may have additional rights under the Family and Medical Leave Act (FMLA), which is enforced by the U.S. Department of Labor. Nursing mothers may also have the right to express milk in the workplace under a provision of the Fair Labor Standards Act enforced by the U.S. Department of Labor's Wage and Hour Division.

See <http://www.dol.gov/whd/regs/compliance/whdfs73.htm>.

For more information about the Family Medical Leave Act or break time for nursing mothers, go to <http://www.dol.gov/whd>, or call 202-693-0051 or 1-866-487-9243 (voice), 202-693-7755 (TTY).

Race/Color Discrimination

Race discrimination involves treating someone (an applicant or employee) unfavorably because he/she is of a certain race or because of personal characteristics associated with race (such as hair texture, skin color, or certain facial features). Color discrimination involves treating someone unfavorably because of skin color complexion.

Race/color discrimination also can involve treating someone unfavorably because the person is married to (or associated with) a person of a certain race or color or because of a person's connection with a race-based organization or group, or an organization or group that is generally associated with people of a certain color.

Discrimination can occur when the victim and the person who inflicted the discrimination are the same race or color.

Race/Color Discrimination & Work Situations

The law forbids discrimination when it comes to any aspect of employment, including hiring, firing, pay, job assignments, promotions, layoff, training, fringe benefits, and any other term or condition of employment.

Race/Color Discrimination & Harassment

It is unlawful to harass a person because of that person's race or color.

Harassment can include, for example, racial slurs, offensive or derogatory remarks about a person's race or color, or the display of racially-offensive symbols. Although the law doesn't prohibit simple teasing, offhand comments, or isolated incidents that are not very serious, harassment is illegal when it is so frequent or severe that it creates a hostile or offensive work environment or when it results in an adverse employment decision (such as the victim being fired or demoted).

The harasser can be the victim's supervisor, a supervisor in another area, a co-worker, or someone who is not an employee of the employer, such as a client or customer.

Race/Color Discrimination & Employment Policies/Practices

An employment policy or practice that applies to everyone, regardless of race or color, can be illegal if it has a negative impact on the employment of people of a particular race or color and is not job-related and necessary to the operation of the business. For example, a "no-beard" employment policy that applies to all workers without regard to race may still be unlawful if it is not job-related and has a negative impact on the employment of African-American men (who have a predisposition to a skin condition that causes severe shaving bumps).

Facts About Race/Color Discrimination

[Title VII of the Civil Rights Act of 1964](#) protects individuals against employment discrimination on the basis of race and color as well as national origin, sex, or religion.

It is unlawful to discriminate against any employee or applicant for employment because of race or color in regard to hiring, termination, promotion, compensation, job training, or any other term, condition, or privilege of employment. Title VII also prohibits employment decisions based on

stereotypes and assumptions about abilities, traits, or the performance of individuals of certain racial groups.

Title VII prohibits both intentional discrimination and neutral job policies that disproportionately exclude minorities and that are not job related.

Equal employment opportunity cannot be denied because of marriage to or association with an individual of a different race; membership in or association with ethnic based organizations or groups; attendance or participation in schools or places of worship generally associated with certain minority groups; or other cultural practices or characteristics often linked to race or ethnicity, such as cultural dress or manner of speech, as long as the cultural practice or characteristic does not materially interfere with the ability to perform job duties.

Race-Related Characteristics and Conditions

Discrimination on the basis of an immutable characteristic associated with race, such as skin color, hair texture, or certain facial features violates Title VII, even though not all members of the race share the same characteristic.

Title VII also prohibits discrimination on the basis of a condition which predominantly affects one race unless the practice is job related and consistent with business necessity. For example, since sickle cell anemia predominantly occurs in African-Americans, a policy which excludes individuals with sickle cell anemia is discriminatory unless the policy is job related and consistent with business necessity. Similarly, a “no-beard” employment policy may discriminate against African-American men who have a predisposition to pseudofolliculitis barbae (severe shaving bumps) unless the policy is job-related and consistent with business necessity.

Color Discrimination

Even though race and color clearly overlap, they are not synonymous. Thus, color discrimination can occur between persons of different races or ethnicities, or between persons of the same race or ethnicity. Although Title VII does not define “color,” the courts and the Commission read “color” to have its commonly understood meaning – pigmentation, complexion, or skin shade or tone. Thus, color discrimination occurs when a person is discriminated against based on the lightness, darkness, or other color characteristic of the person. Title VII prohibits race/color discrimination against all persons, including Caucasians.

Although a plaintiff may prove a claim of discrimination through direct or circumstantial evidence, some courts take the position that if a white person relies on circumstantial evidence to establish a reverse discrimination claim, he or she must meet a heightened standard of proof. The Commission, in contrast, applies the same standard of proof to all race discrimination claims, regardless of the victim’s race or the type of evidence used. In either case, the ultimate burden of persuasion remains always on the plaintiff.

Employers should adopt "best practices" to reduce the likelihood of discrimination and to address impediments to equal employment opportunity.

Title VII's protections include:

- **Recruiting, Hiring, and Advancement**

Job requirements must be uniformly and consistently applied to persons of all races and colors. Even if a job requirement is applied consistently, if it is not important for job performance or business needs, the requirement may be found unlawful if it excludes persons of a certain racial group or color significantly more than others. Examples of potentially unlawful practices include: (1) soliciting applications only from sources in which all or most potential workers are of the same race or color; (2) requiring applicants to have a certain educational background that is not important for job performance or business needs; (3) testing applicants for knowledge, skills or abilities that are not important for job performance or business needs.

Employers may legitimately need information about their employees or applicants race for affirmative action purposes and/or to track applicant flow. One way to obtain racial information and simultaneously guard against discriminatory selection is for employers to use separate forms or otherwise keep the information about an applicant's race separate from the application. In that way, the employer can capture the information it needs but ensure that it is not used in the selection decision.

Unless the information is for such a legitimate purpose, pre-employment questions about race can suggest that race will be used as a basis for making selection decisions. If the information is used in the selection decision and members of particular racial groups are excluded from employment, the inquiries can constitute evidence of discrimination.

- **Compensation and Other Employment Terms, Conditions, and Privileges**

Title VII prohibits discrimination in compensation and other terms, conditions, and privileges of employment. Thus, race or color discrimination may not be the basis for differences in pay or benefits, work assignments, performance evaluations, training, discipline or discharge, or any other area of employment.

- **Harassment**

Harassment on the basis of race and/or color violates Title VII. Ethnic slurs, racial "jokes," offensive or derogatory comments, or other verbal or physical conduct based on an individual's race/color constitutes unlawful harassment if the conduct creates an intimidating, hostile, or offensive working environment, or interferes with the individual's work performance.

- **Retaliation**

Employees have a right to be free from retaliation for their opposition to discrimination or their participation in an EEOC proceeding by filing a charge, testifying, assisting, or otherwise participating in an agency proceeding.

- **Segregation and Classification of Employees**

Title VII is violated where minority employees are segregated by physically isolating them from other employees or from customer contact. Title VII also prohibits assigning primarily minorities to predominantly minority establishments or geographic areas. It is also illegal to exclude minorities from certain positions or to group or categorize employees or jobs so that certain jobs are generally held by minorities. Title VII also does not permit racially motivated decisions driven by business concerns – for example, concerns about the effect on employee relations, or the negative

reaction of clients or customers. Nor may race or color ever be a bona fide occupational qualification under Title VII.

Coding applications/resumes to designate an applicant's race, by either an employer or employment agency, constitutes evidence of discrimination where minorities are excluded from employment or from certain positions. Such discriminatory coding includes the use of facially benign code terms that implicate race, for example, by area codes where many racial minorities may or are presumed to live.

- **Pre-Employment Inquiries and Requirements**

Requesting pre-employment information which discloses or tends to disclose an applicant's race suggests that race will be unlawfully used as a basis for hiring. Solicitation of such pre-employment information is presumed to be used as a basis for making selection decisions. Therefore, if members of minority groups are excluded from employment, the request for such pre-employment information would likely constitute evidence of discrimination.

However, employers may legitimately need information about their employees' or applicants' race for affirmative action purposes and/or to track applicant flow. One way to obtain racial information and simultaneously guard against discriminatory selection is for employers to use "tear-off sheets" for the identification of an applicant's race. After the applicant completes the application and the tear-off portion, the employer separates the tear-off sheet from the application and does not use it in the selection process.

Other pre-employment information requests which disclose or tend to disclose an applicant's race are personal background checks, such as criminal history checks. Title VII does not categorically prohibit employers' use of criminal records as a basis for making employment decisions. Using criminal records as an employment screen may be lawful, legitimate, and even mandated in certain circumstances. However, employers that use criminal records to screen for employment must comply with Title VII's nondiscrimination requirements.

Religious Discrimination

Religious discrimination involves treating a person (an applicant or employee) unfavorably because of his or her religious beliefs. The law protects not only people who belong to traditional, organized religions, such as Buddhism, Christianity, Hinduism, Islam, and Judaism, but also others who have sincerely held religious, ethical or moral beliefs.

Religious discrimination can also involve treating someone differently because that person is married to (or associated with) an individual of a particular religion or because of his or her connection with a religious organization or group.

Religious Discrimination & Work Situations

The law forbids discrimination when it comes to any aspect of employment, including hiring, firing, pay, job assignments, promotions, layoff, training, fringe benefits, and any other term or condition of employment.

Religious Discrimination & Harassment

It is illegal to harass a person because of his or her religion.

Harassment can include, for example, offensive remarks about a person's religious beliefs or practices. Although the law doesn't prohibit simple teasing, offhand comments, or isolated incidents that aren't very serious, harassment is illegal when it is so frequent or severe that it creates a hostile or offensive work environment or when it results in an adverse employment decision (such as the victim being fired or demoted).

The harasser can be the victim's supervisor, a supervisor in another area, a co-worker, or someone who is not an employee of the employer, such as a client or customer.

Religious Discrimination and Segregation

Title VII also prohibits workplace or job segregation based on religion (including religious garb and grooming practices), such as assigning an employee to a non-customer contact position because of actual or feared customer preference.

Religious Discrimination & Reasonable Accommodation

The law requires an [employer or other covered entity](#) to reasonably accommodate an employee's religious beliefs or practices, unless doing so would cause more than a minimal burden on the operations of the employer's business. This means an employer may be required to make reasonable adjustments to the work environment that will allow an employee to practice his or her religion.

Examples of some common religious accommodations include flexible scheduling, voluntary shift substitutions or swaps, job reassignments, and modifications to workplace policies or practices.

Religious Accommodation/Dress & Grooming Policies

Unless it would be an undue hardship on the employer's operation of its business, an employer must reasonably accommodate an employee's religious beliefs or practices. This applies not only to schedule changes or leave for religious observances, but also to such things as dress or grooming practices that an employee has for religious reasons. These might include, for example,

wearing particular head coverings or other religious dress (such as a Jewish yarmulke or a Muslim headscarf), or wearing certain hairstyles or facial hair (such as Rastafarian dreadlocks or Sikh uncut hair and beard). It also includes an employee's observance of a religious prohibition against wearing certain garments (such as pants or miniskirts).

When an employee or applicant needs a dress or grooming accommodation for religious reasons, he should notify the employer that he needs such an accommodation for religious reasons. If the employer reasonably needs more information, the employer and the employee should engage in an interactive process to discuss the request. If it would not pose an undue hardship, the employer must grant the accommodation.

Religious Discrimination & Reasonable Accommodation & Undue Hardship

An employer does not have to accommodate an employee's religious beliefs or practices if doing so would cause undue hardship to the employer. An accommodation may cause undue hardship if it is costly, compromises workplace safety, decreases workplace efficiency, infringes on the rights of other employees, or requires other employees to do more than their share of potentially hazardous or burdensome work.

Religious Discrimination And Employment Policies/Practices

An employee cannot be forced to participate (or not participate) in a religious activity as a condition of employment.

Retaliation

All of the laws we enforce make it illegal to fire, demote, harass, or otherwise “retaliate” against people (applicants or employees) because they filed a charge of discrimination, because they complained to their [employer or other covered entity](#) about discrimination on the job, or because they participated in an employment discrimination proceeding (such as an investigation or lawsuit).

For example, it is illegal for an employer to refuse to promote an employee because she filed a charge of discrimination with the EEOC, even if EEOC later determined no discrimination occurred.

Retaliation & Work Situations

The law forbids retaliation when it comes to any aspect of employment, including hiring, firing, pay, job assignments, promotions, layoff, training, fringe benefits, and any other term or condition of employment.

Facts About Retaliation

An employer may not fire, demote, harass or otherwise "retaliate" against an individual for filing a charge of discrimination, participating in a discrimination proceeding, or otherwise opposing discrimination. The same laws that prohibit discrimination based on race, color, sex, religion, national origin, age, and disability, as well as wage differences between men and women performing substantially equal work, also prohibit retaliation against individuals who oppose unlawful discrimination or participate in an employment discrimination proceeding.

In addition to the protections against retaliation that are included in all of the laws enforced by EEOC, the Americans with Disabilities Act (ADA) also protects individuals from coercion, intimidation, threat, harassment, or interference in their exercise of their own rights or their encouragement of someone else's exercise of rights granted by the ADA.

There are three main terms that are used to describe retaliation. Retaliation occurs when an employer, employment agency, or labor organization takes an **adverse action** against a **covered individual** because he or she engaged in a **protected activity**. These three terms are described below.

Adverse Action

An adverse action is an action taken to try to keep someone from opposing a discriminatory practice, or from participating in an employment discrimination proceeding. Examples of adverse actions include:

- employment actions such as termination, refusal to hire, and denial of promotion,
- other actions affecting employment such as threats, unjustified negative evaluations, unjustified negative references, or increased surveillance, and
- any other action such as an assault or unfounded civil or criminal charges that are likely to deter reasonable people from pursuing their rights.

Adverse actions do not include petty slights and annoyances, such as stray negative comments in an otherwise positive or neutral evaluation, "snubbing" a colleague, or negative comments that are justified by an employee's poor work performance or history.

Even if the prior protected activity alleged wrongdoing by a different employer, retaliatory adverse actions are unlawful. For example, it is unlawful for a worker's current employer to retaliate against him for pursuing an EEO charge against a former employer.

Of course, employees are not excused from continuing to perform their jobs or follow their company's legitimate workplace rules just because they have filed a complaint with the EEOC or opposed discrimination. For more information about adverse actions, see [EEOC's Compliance Manual Section 8, Chapter II, Part D](#).

Covered Individuals

Covered individuals are people who have opposed unlawful practices, participated in proceedings, or requested accommodations related to employment discrimination based on race, color, sex, religion, national origin, age, or disability. Individuals who have a close association with someone who has engaged in such protected activity also are covered individuals. For example, it is illegal to terminate an employee because his spouse participated in employment discrimination litigation.

Individuals who have brought attention to violations of law other than employment discrimination are NOT covered individuals for purposes of anti-discrimination retaliation laws. For example, "whistleblowers" who raise ethical, financial, or other concerns unrelated to employment discrimination are not protected by the EEOC enforced laws.

Protected Activity

Protected activity includes:

Opposition to a practice believed to be unlawful discrimination

Opposition is informing an employer that you believe that he/she is engaging in prohibited discrimination. Opposition is protected from retaliation as long as it is based on a reasonable, good-faith belief that the complained of practice violates anti-discrimination law; and the manner of the opposition is reasonable.

Examples of protected opposition include:

- Complaining to anyone about alleged discrimination against oneself or others;
- Threatening to file a charge of discrimination;
- Picketing in opposition to discrimination; or
- Refusing to obey an order reasonably believed to be discriminatory.

Examples of activities that are NOT protected opposition include:

- Actions that interfere with job performance so as to render the employee ineffective; or
- Unlawful activities such as acts or threats of violence.

Participation in an employment discrimination proceeding.

Participation means taking part in an employment discrimination proceeding. Participation is protected activity even if the proceeding involved claims that ultimately were found to be invalid.

Examples of participation include:

- Filing a charge of employment discrimination;
- Cooperating with an internal investigation of alleged discriminatory practices; or

- Serving as a witness in an EEO investigation or litigation.

A protected activity can also include requesting a reasonable accommodation based on religion or disability.

For more information about Protected Activities, see EEOC's Compliance Manual, Section 8, [Chapter II, Part B - Opposition](#) and [Part C - Participation](#).

Sex-Based Discrimination

Sex discrimination involves treating someone (an applicant or employee) unfavorably because of that person's sex.

Sex discrimination also can involve treating someone less favorably because of his or her connection with an organization or group that is generally associated with people of a certain sex.

Sex Discrimination & Work Situations

The law forbids discrimination when it comes to any aspect of employment, including hiring, firing, pay, job assignments, promotions, layoff, training, fringe benefits, and any other term or condition of employment.

Sex Discrimination Harassment

It is unlawful to harass a person because of that person's sex. Harassment can include "sexual harassment" or unwelcome sexual advances, requests for sexual favors, and other verbal or physical harassment of a sexual nature. Harassment does not have to be of a sexual nature, however, and can include offensive remarks about a person's sex. For example, it is illegal to harass a woman by making offensive comments about women in general.

Both victim and the harasser can be either a woman or a man, and the victim and harasser can be the same sex.

Although the law doesn't prohibit simple teasing, offhand comments, or isolated incidents that are not very serious, harassment is illegal when it is so frequent or severe that it creates a hostile or offensive work environment or when it results in an adverse employment decision (such as the victim being fired or demoted).

The harasser can be the victim's supervisor, a supervisor in another area, a co-worker, or someone who is not an employee of the employer, such as a client or customer.

Sex Discrimination & Employment Policies/Practices

An employment policy or practice that applies to everyone, regardless of sex, can be illegal if it has a negative impact on the employment of people of a certain sex and is not job-related or necessary to the operation of the business.

Sexual Harassment

It is unlawful to harass a person (an applicant or employee) because of that person's sex. Harassment can include "sexual harassment" or unwelcome sexual advances, requests for sexual favors, and other verbal or physical harassment of a sexual nature.

Harassment does not have to be of a sexual nature, however, and can include offensive remarks about a person's sex. For example, it is illegal to harass a woman by making offensive comments about women in general.

Both victim and the harasser can be either a woman or a man, and the victim and harasser can be the same sex.

Although the law doesn't prohibit simple teasing, offhand comments, or isolated incidents that are not very serious, harassment is illegal when it is so frequent or severe that it creates a hostile or offensive work environment or when it results in an adverse employment decision (such as the victim being fired or demoted).

The harasser can be the victim's supervisor, a supervisor in another area, a co-worker, or someone who is not an employee of the employer, such as a client or customer.

Facts About Sexual Harassment

Sexual harassment is a form of sex discrimination that violates [Title VII of the Civil Rights Act of 1964](#). Title VII applies to employers with 15 or more employees, including state and local governments. It also applies to employment agencies and to labor organizations, as well as to the federal government. Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when this conduct explicitly or implicitly affects an individual's employment, unreasonably interferes with an individual's work performance, or creates an intimidating, hostile, or offensive work environment.

Sexual harassment can occur in a variety of circumstances, including but not limited to the following:

- The victim as well as the harasser may be a woman or a man. The victim does not have to be of the opposite sex.
- The harasser can be the victim's supervisor, an agent of the employer, a supervisor in another area, a co-worker, or a non-employee.
- The victim does not have to be the person harassed but could be anyone affected by the offensive conduct.
- Unlawful sexual harassment may occur without economic injury to or discharge of the victim.
- The harasser's conduct must be unwelcome.

It is helpful for the victim to inform the harasser directly that the conduct is unwelcome and must stop. The victim should use any employer complaint mechanism or grievance system available.

When investigating allegations of sexual harassment, EEOC looks at the whole record: the circumstances, such as the nature of the sexual advances, and the context in which the alleged incidents occurred. A determination on the allegations is made from the facts on a case-by-case basis.

Prevention is the best tool to eliminate sexual harassment in the workplace. Employers are encouraged to take steps necessary to prevent sexual harassment from occurring. They should clearly communicate to employees that sexual harassment will not be tolerated. They can do so by providing sexual harassment training to their employees and by establishing an effective complaint or grievance process and taking immediate and appropriate action when an employee complains.

It is also unlawful to retaliate against an individual for opposing employment practices that discriminate based on sex or for filing a discrimination charge, testifying, or participating in any way in an investigation, proceeding, or litigation under Title VII.

VIII. Appendix C - Agency documentation in support of its Affirmative Action Plan



Policy & Procedure **Number: PER-27**

Date Issued: Feb. 1, 2013

Section: Employee Services

Subject: AFFIRMATIVE ACTION

Approved:



Applicability:

This policy applies to all Department of Consumer and Business Services (DCBS) employees, including the Workers' Compensation Board (WCB).

Policy:

The Department of Consumer and Business Services is committed to providing to citizens and employees, through a program of affirmative action, equal access to programs and services and fair and equal opportunities for employment. In administering DCBS programs, DCBS employees will not discriminate against any person who is a current or potential user of DCBS services on the basis of race, color, religion, gender, marital status, national origin, political affiliation, age, disability, or sexual orientation.

Our agency's ability to achieve its mission depends on our ability to attract individuals who are successful. Individual success depends on our collective practice of recognizing and respecting the value of human differences. To reach this level of success, every effort will be made to reach out to the broadest possible labor market, and to make all employment decisions based on an individual's relevant education, training and experience, and suitability relative to a position, without regard to race, color, religion, gender, marital status, national origin, political affiliation, age, disability, or sexual orientation.

In addition to active recruiting efforts, the work environment is an important part in maintaining a diverse workforce. DCBS is committed to a zero-tolerance level of any form of discrimination or harassment and all managers and employees are accountable for creating and promoting a work environment that is free from any kind of hostility or unwelcome behavior.

The department maintains a copy of the department Affirmative Action Plan on the DCBS web-site for managers and employees to review. Managers will participate and encourage others to participate in the agency's activities designed to promote affirmative action. As part of their annual performance evaluation, all managers and supervisors will be evaluated on their effectiveness in promoting the affirmative action goals and objectives for DCBS.

Working together, the department's workforce at all levels can create an atmosphere of respect, fairness, and cooperation that will demonstrate our commitment to the principles that represent the highest aspiration of our rich, multi-cultural society. Through this collaborative effort, we can effectively and efficiently achieve our mission of protecting consumers and workers.

Department of Consumer & Business Services

Policy Number: PER-27

Date Issued:

References:

1. ORS 243.305, 243.315, 659A.012, 659A.030
2. Executive Order, EO-05-01
3. SEIU Collective Bargaining Agreement Article 44
4. AFSCME Collective Bargaining Agreement Article 4
5. Title VII, Civil Rights Act of 1964



DCBS RECRUITING PROCESS



This is an internal Department of Consumer and Business Services (DCBS) document and is intended to be used as a process overview for hiring managers. This document is to be used in conjunction with the DCBS official recruiting guide located on the Employee Services internal website. (2/2016)

DCBS Recruiting Process

Changes to the recruiting process at DCBS include a “blind” review of applications so there is no personally identifiable information that might contribute to an unconscious bias of a candidate, and the recommendation that all interview panels are one-third ethnically diverse. These changes are described below.

1. The division submits the requisition, position description, and organization chart. If the division has the information available, it should attach the list of the interview panel members for the first and second round interviews. The recruitment will not be held up for the list of interview panel members; however, Employee Services must receive the list before the first round interview is scheduled. It is recommended that the interview panel be one-third ethnically diverse. The hiring manager may use the Rapid Response Recruitment form to determine how long the recruitment will take to complete.
2. Before the announcement is drafted, the recruitment specialist runs the required priority lists that include the DCBS injured worker and layoff lists. If any names appear on these lists, Employee Services will contact the hiring manager about steps to be taken before proceeding with the creation of the job announcement and any more steps after the announcement closes.

Employee Services discusses the recruitment strategy with the hiring manager before the announcement is drafted. These options are described in more detail on page 5 in the Recruitment Strategies section. Some of the discussion topics include requested skills, supplemental questions (scored and narrative), and proposed outreach and advertising to attract the most qualified applicants. Employee Services drafts the announcement for the hiring manager’s approval and then posts the announcement on the state and DCBS jobs pages. The day the announcement is due to close, the recruitment specialist checks with the hiring manager to see if he or she wants the announcement to close or to be extended.

3. It is a DCBS best practice to record the first round virtual interview questions before the announcement closes. The hiring manager talks with Employee Services about interview questions to ask, and Employee Services suggests questions for the interview. It is a best practice for the candidates to see the hiring manager reading the questions. However, if the hiring manager does not want to record the questions, he or she can select someone else from the division or have Employee Services record the questions.
4. After the announcement closes, Employee Services processes the applications through the E-Recruit system, which removes the candidates who do not qualify or do not attach the required materials. The recruitment specialist sends the list of candidates to the hiring manager through the Subject Matter Expert (SME) process. The list will not have any personally identifiable information, but will use the individual’s NeoGov profile number. In addition to the SME List, Employee Services sends the hiring manager an email with the following information: which candidates are veterans; how many lateral transfers, internal, and required list candidates will be considered; and the list of candidates he or she selects from the SME review.

5. The hiring manager reviews the application materials of the candidates on the SME list, and uses the Applicant Selection Log to document his or her selection of candidates to move to the first-round interview. If the announcement generated a large number of applications and has scored supplemental questions, the scores on the SME list can be used to determine a score cut to limit how many applications the hiring manager reviews. Once the hiring manager has selected candidates for the first-round interview, he or she sends that list of profile numbers to Employee Services, as well as the list of interview panel members, if he or she has not already done so.

Employee Services sends the hiring manager the referred list containing only the selected candidates. This list contains the personally identifiable information so that contact can be made. The names and email addresses of the candidates is sent to Employee Services to send out the invitations for the virtual first-round interview.

6. The hiring manager and interview panel reviews the virtual interviews, using the Applicant Selection Log to rank the candidates, document the reason for the ranking level selected, and then apply veterans' preference. Candidates are selected for the second-round, traditional (in-person) interview in which the ranking process is repeated.
7. The hiring manager selects the most qualified candidate for another round of interviews, or to conduct reference checks.

Once the hiring manager makes a selection, he or she contacts Employee Services to receive the full referred list released with all personally identifiable information so that emails can be sent out to all the candidates who were not offered an interview.

The hiring manager sends an email to Employee Services at offer.letters@oregon.gov. The senior human resource analyst creates an offer letter and sends it to the hiring manager within 24 hours.



VOLUNTARY SELF-IDENTIFICATION FORM

RACE/ETHNICITY, DISABILITY, AND VETERAN STATUS

DISCLOSURE

Completion of this data is voluntary and will not affect your terms or conditions of employment. This form will be used for reporting data to the Equal Employment Opportunity Commission. All data collected will be used for statistical reporting purposes and may be subject to disclosure under federal and state law or rule.

PLEASE PRINT

YOUR NAME		DATE
EMPLOYEE ID # (HR or Payroll can provide this number)	GENDER <input type="checkbox"/> FEMALE <input type="checkbox"/> MALE	

ANTI-DISCRIMINATION NOTICE

It is an unlawful employment practice for an employer to fail or refuse to hire or discharge any individual, or otherwise discriminate against an individual with respect to the individual's terms and conditions of employment, because of an individual's race, color, religion, sex, national origin, disability, or veteran status.

SECTION I. Race / Ethnicity*

Your employer is required to record and report certain non-discrimination and affirmative action statistics. The state invites employees to voluntarily self-identify their race/ethnicity. This information will be used according to the provisions of applicable federal laws, executive orders, and regulations, including those requiring information to be summarized and reported to the federal government for civil rights purposes. All race/ethnicity information is collected and reported in seven EEO-4 categories established by the federal government: (A) Asian; (B) Black; (H) Hispanic; (I) American Indian or Alaskan Native; (P) Native Hawaiian or Other Pacific Islander; (T) Two or More Races; or (W) White.

If you choose to voluntarily self-identify, please mark the one box describing the race/ethnicity with which you identify:

- American Indian or Alaskan Native (I)** (Non-Hispanic or Latino): A person having origins in any of the original peoples of North and South America (including central America), and who maintain a tribal affiliation or community attachment.
- Asian (A)** (Non-Hispanic or Latino): A person having origins in any of the original peoples of the Far East, Southeast Asia, or the Indian Subcontinent, including, for example, Cambodia, China, India, Japan, Korea, Malaysia, Pakistan, the Philippine Islands, Thailand and Vietnam.
- Black or African American (B)** (Non-Hispanic or Latino): A person having origins in any of the black racial groups of Africa.
- Hispanic or Latino (H)**: A person of Cuban, Mexican, Puerto Rican, South or Central American, or other Spanish Culture or origin regardless of race.
- Native Hawaiian or Other Pacific Islander (P)** (Non-Hispanic or Latino): A person having origins in any of the peoples of Hawaii, Guam, Samoa, or other Pacific Islands.
- White (W)** (Non-Hispanic or Latino): All persons having origins in any of the original peoples of Europe, North Africa, or the Middle East.
- Two or more races (T)** (Non-Hispanic or Latino): Persons who identify with two or more racial categories name above.

SECTION II. Disability (Provide this information is voluntary.)

* If you choose to not self-identify your race/ethnicity, the federal government requires the employer to determine this information by visual survey and/or other available information.

The Equal Employment Opportunity Commission (EEOC) defines a covered disability under the Americans with Disabilities Act (ADA) as a physical or mental impairment that substantially limits one or more major life activities, a history of having such an impairment, or being regarded as having such an impairment.

Major life activities include, but are not limited to, caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working. It can also include the operation of a major bodily function, including but not limited to, functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions.

Under this definition, are you a person with a disability? Yes No

Any requests for accommodation for current or future disabilities must go through your supervisor and human resources.

SECTION III. Veteran Status

Have you served in the United States Military Armed Forces? Yes No

Declaring you are a veteran on this form does not satisfy your obligation to declare veteran status in future employment applications. If you wish to receive veteran's preference points you must submit the necessary paperwork.

THIS FORM MAY BE DESTROYED AFTER THE INFORMATION IS ENTERED INTO THE PERSONNEL DATA BASE.

FOR AGENCY HR USE ONLY (VISUAL ASSESSMENT)

AV (Asian)

IV (American Indian or Alaskan)

BV (Black)

PV (Hawaiian or Other Pacific Islander)

HV (Hispanic)

WV (White)

REVISED 7/7/16, EEO-4



Policy & Procedure

Number:EMP-02

Date Issued: August 3, 2016

Section: Employee Services

Subject: Diversity and Inclusion Council

Approved:

Applicability:

This policy applies to all Department of Business and Consumer Services (DCBS) employees, including the Workers' Compensation Board.

Policy:

The Department of Consumer and Business Services Diversity and Inclusion Council is an advisory body that promotes achieving the agency's diversity and inclusion initiative and business needs through effective culture change strategies. It is a forum to share diversity information, events, and ideas; discuss diversity issues; collaborate and recommend implementation of diversity initiatives; and make recommendations regarding how to best use agency resources to achieve diversity and inclusion goals.

The council reflects an inclusive cross-section of the DCBS workforce: 15 staff, including management (classification level, ethnicity, generation, organization, function, gender, sexual orientation, physical ability, religion, and socio-economic status).

The role of the Diversity and Inclusion Council includes:

- Identifying critical diversity issues for leadership and staff
- Providing recommendations concerning diversity and inclusion initiatives
- Communicating the benefits of a diverse workforce
- Working with the diversity and inclusion outreach coordinator to develop partnerships with other external partners and community organizations
- Creating external credibility and cultivating trust with the public we serve
- Promoting an environment that is inclusive
- Serving as role models to promote a cultural change (change agents)

The following are responsibilities of the Diversity and Inclusion Council:

- A. Reviewing and providing feedback on programs, initiatives, and policies as they relate to workforce, strategic plans, and services to consumers, and making recommendations to the DCBS director and Employee Services administrator.
- B. Providing advice and consultation to the DCBS director and Employee Services administrator on opportunities and challenges associated with creating a diverse, inclusive, and equitable workplace.
- C. Supporting the state Affirmative Action Office to raise an atmosphere of acceptance, inclusion, diversity, and equity in all levels at DCBS.
- D. Functioning as a communication channel through which employees can express ideas as they relate to diversity and inclusion issues, and as a link between employees and management.
- E. Prioritizing and leading diversity and inclusion initiatives to ensure follow through.

Department of Consumer & Business Services

Policy Number: EMP-02

Date Issued: 8/3/2016

- F. Maintaining a contemporary Diversity and Inclusion Council mission/purpose.
- G. Communicating progress to staff (share successes).
- H. Partnering with diversity and inclusion coordinator to:
 - 1. Help develop and implement the diversity and inclusion strategy
 - 2. Help ensure strategic alignment across all diversity initiatives (diversity and inclusion strategy, staff, management, customers, and the Diversity and Inclusion Council).
 - 3. Facilitate council member rotation.
 - 4. Enrich diversity education through benchmarking and close work with the agency trainer.
- I. Support administrators, deputies, managers, and supervisors on their efforts to enhance and promote diversity in their divisions.
- J. Provide an annual report of its goals and progress to the DCBS director, Employee Services administrator, and employees.

The Diversity and Inclusion Council operates under the support of an appointed chairperson and vice chairperson. The council receives staff support from the Director's Office and Employee Services.

The council is also composed of voting primary council members who are self-nominated or appointed as determined by the chairperson.

The chairperson and vice chairperson serve a term of two years and members serve one year

- Members must commit to attending at least two-thirds of the meetings.
- The council meets on the first Wednesday of every other month at L&I Building. Video conferencing will be available for members who work outside of Salem.

Department of Consumer & Business
Services
Diversity and Inclusion Council Charter
2017 – 2019



DCBS management supports and encourages dialogue in advancing diversity, inclusion, and equity with integrity, respect, and personal responsibility.

Diversity and Inclusion Council

Diversity councils are popular vehicles for creating organizational change and helping provide focus to diversity and inclusion initiatives.

Diversity and inclusion initiatives are intended to increase diversity of the workplace and leverage such diversity to improve our community representation and better inform our business practices.

A diversity council, as part of a strategic diversity management plan, is an inclusive and effective mechanism for managing these changes.

A diversity council is a group of employees, both management and non-management, that acts on behalf of the agency to jumpstart and provide guidance in regard to the agency's diversity and inclusion initiatives. While not expected to solve all of the problems related to diversity and inclusion in the agency, a diversity council plays a key role in helping shape and modify organizational culture.

In order for a Diversity and Inclusion Council to succeed, the following elements must be in place:

- Support from management
- The ability to link the agency's diversity strategy with the overall business strategy and succession plan
- Emphasis on the importance of diversity in and to the agency
- Involvement from all levels of the agency
- The creation of metrics to measure progress (recruitment, retention, employee satisfaction, career development, mentoring programs, training, etc.)
- Communication of goals and efforts
- Assessment of employee/customer satisfaction (surveys)
- A long-term strategy to institutionalize the diversity and inclusion efforts undertaken

There is a growing significance placed on creating an environment in which a diversity of voices are encouraged and heard. These voices come from people who may or may not be the same gender, race, or ethnicity. Diversity in the workplace might include some or all of the following:

- Disability
- Generation
- Race
- Sexual orientation
- Ethnicity
- Gender
- Military history
- Religious affiliation
- Personality type
- Thinking style

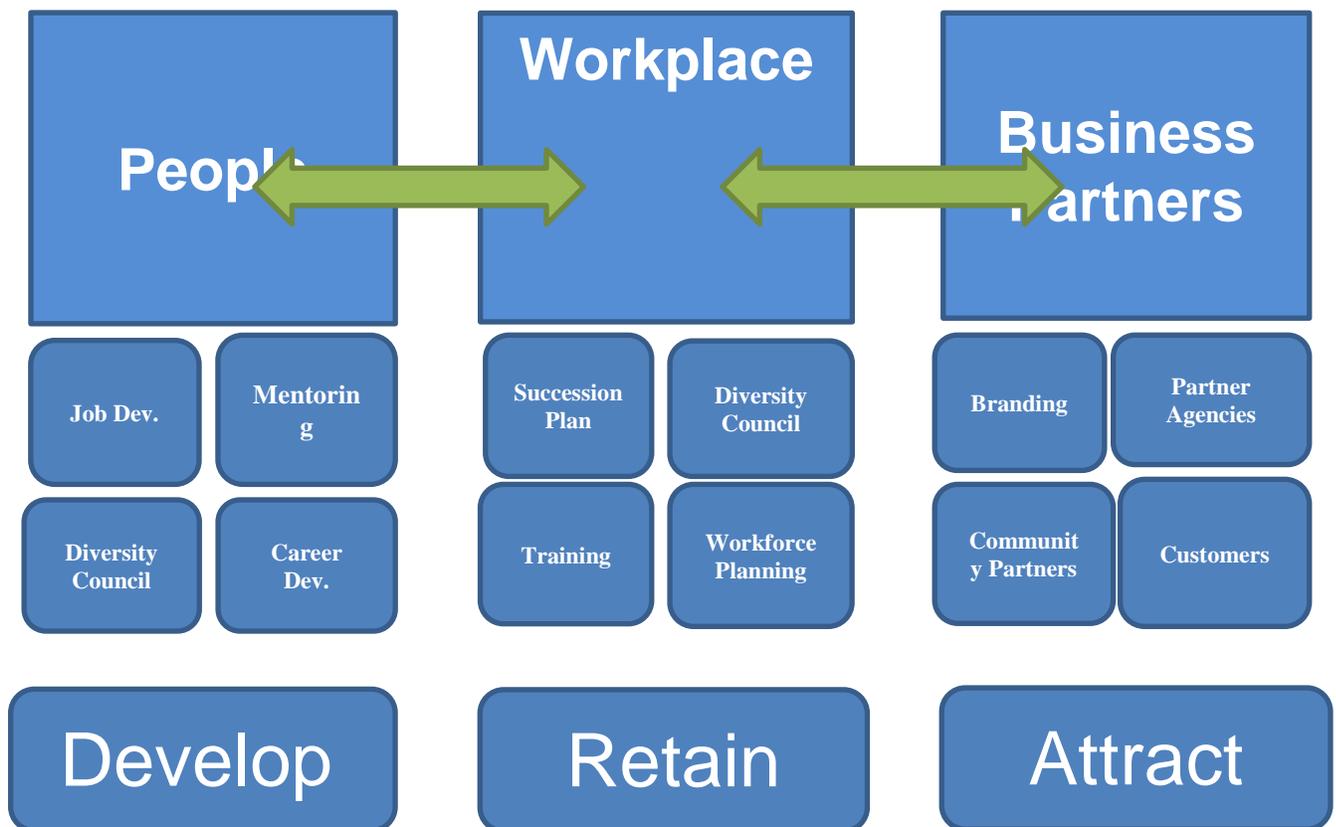
The benefits of diversity and inclusion in the workplace

Diversity and inclusion are the means by which an agency can guarantee that all employees are given the opportunity to embrace their career goals while developing their skills. Any agency that can raise the skill set and contributions of the majority of its workforce enjoys a true competitive advantage while creating an engaged workforce.

Diversity and inclusion initiatives focus on these benefits:

- Supporting employee development
- Increasing creativity
- Improving employee performance
- Avoiding high turnover
- Making the agency more attractive to potential employees

DCBS Diversity and Inclusion Approach



Mission/purpose

This charter describes the duties and responsibilities of the Department of Consumer and Business Services Diversity and Inclusion Council, the organization of its members, and functioning processes. This charter also explains the structure and its reporting to the DCBS director, Executive Team, and Employee Services administrator.

The Diversity Council is designed to serve as an advisory body. It serves as a promoter for achieving DCBS's D&I initiative and business needs through effective culture change strategies.

It is a forum to share diversity information, events, and ideas; discuss diversity issues; collaborate and recommend implementation of diversity initiatives; and make recommendations regarding how to best use agency resources to achieve diversity and inclusion goals.

Role

The role of the Diversity and Inclusion Council includes:

- Identifying critical diversity issues for leadership and staff
- Providing recommendations concerning diversity and inclusion initiatives
- Communicating the benefits of a diverse workforce
- Working with the diversity and inclusion outreach coordinator to develop partnerships with other external partners and community organizations
- Creating external credibility and cultivating trust with the public we serve
- Promoting an environment that is inclusive
- Serving as role models to promote a cultural change (change agents)

Responsibilities

The following are responsibilities of the Diversity and Inclusion Council:

- A. Reviewing and providing feedback on programs, initiatives, and policies as they relate to workforce, strategic plans, and services to consumers, and making recommendations to the DCBS director and Employee Services administrator.
- B. Providing advice and consultation to the DCBS director and Employee Services administrator on opportunities and challenges associated with creating a diverse, inclusive, and equitable workplace.
- C. Supporting the state Affirmative Action Office to raise an atmosphere of acceptance, inclusion, diversity, and equity in all levels at DCBS.
- D. Functioning as a communication channel through which employees can express ideas as they relate to diversity and inclusion issues, and as a link between employees and management.
- E. Prioritizing and leading diversity and inclusion initiatives to ensure follow through.
- F. Maintaining a contemporary Diversity and Inclusion Council mission/purpose.
- G. Communicating progress to staff (share successes).

- H. Partnering with diversity and inclusion coordinator to:
1. Help develop and implement the diversity and inclusion strategy
 2. Help ensure strategic alignment across all diversity initiatives (diversity and inclusion strategy, staff, management, customers, and Diversity and Inclusion Council).
 3. Facilitate council member rotation.
 4. Enrich diversity education through benchmarking and close work with agency trainer.
- I. Support administrators, deputies, managers, and supervisors on their efforts to enhance and promote diversity in their divisions.
- J. Provide an annual report of its goals and progress to the DCBS director, Employee Services administrator, and employees.

Structure

The Diversity and Inclusion Council operates under the support of an appointed chairperson and vice chairperson. The council receives staff support from the Director's Office and Employee Services.

The Diversity Council is also composed of voting primary council members who are self-nominated or appointed as determined by the Chairperson.

The Diversity Council will reflect an inclusive cross-section of the DCBS workforce: 15 staff including management (classification level, ethnicity, generation, organization, function, gender, sexual orientation, physical ability, religion, and socio-economic status).

Diversity & Inclusion Council Members and their responsibilities:

Chairperson:

- Appointed by DCBS director with recommendations from the vice chair and council members
- Facilitates all council meetings and has the authority and responsibility customarily conferred of presiding officers
- Leads the council and monitors council responsibilities
- Helps establish associated tasks and reasonable timelines for completion of successful activities and events
- Assists with recruiting other members to volunteer and become actively involved with the planning, scheduling, and implementation aspects of the committee and subcommittees

Vice chairperson

- Is an appointed position
- In the absence of the chairperson, the vice chairperson will assume responsibility for the operation of the Diversity Council

- Provides help to the chairperson, council members, and subcommittees upon request

Council members:

- Elected or appointed as determined by the chairperson (this may include a nomination process)
- Provide assistance to chairperson, council members, and subcommittees upon request

Duration:

Chairperson and vice chairperson serve a term of two years and members serve one year.

Meetings:

- Members must commit to attending at least two-thirds of the meetings.
- The Diversity Council will meet on the first Wednesday of every other month at Labor and Industries Building, 350 Winter St. NE in Salem. Video conferencing will be available for members who work outside of Salem.

Amendments:

This charter may be amended according to decision-making rules described in this charter and with the approval of the DCBS director.



Diversity and Inclusion Council Membership

— Application deadline for serving as a council member: **Friday, Oct. 7, 2016** —

The DCBS mission is to “protect and serve Oregon’s consumers and workers while supporting a positive business climate.” We do this by encouraging a culture of respect that promotes the benefits and values of diversity and inclusion in the workplace.

Commitment

- Willing to promote an enriching and supportive climate that allows all members of our workforce to thrive and succeed while respecting our differences.
- Membership as a volunteer council participant, agreeing to serve a one-year term.
- To attend all meetings (six per year, always held on Wednesday)

If you want to make a meaningful difference in the support of diversity and inclusion within our agency by being on the council, please complete the application below and to submit it to: **Veronica A. Murray**.

Name:

Position:

Division:

Email:

Phone number:

Please answer each of the following questions to help us have a better understanding of why you want to serve as a member of this committee:

1. Why do you want to be a part of the Diversity and Inclusion Council?

2. What role do you feel the Diversity and Inclusion Council should have in our agency?

3. What experience do you have working with issues of diversity, equity, and inclusion? What strengths, skills, or knowledge will you bring to the council?

NOTE: We appreciate your interest in offering to serve on the Diversity and Inclusion Council at DCBS. If you are not selected to serve during the first term, we may contact you in the future to see if you would be available. On behalf of DCBS Employee Services, we appreciate your contribution and desire to continue to participate in supporting an environment that shows respect for everyone, despite our differences.



440-5130 ES 9-16