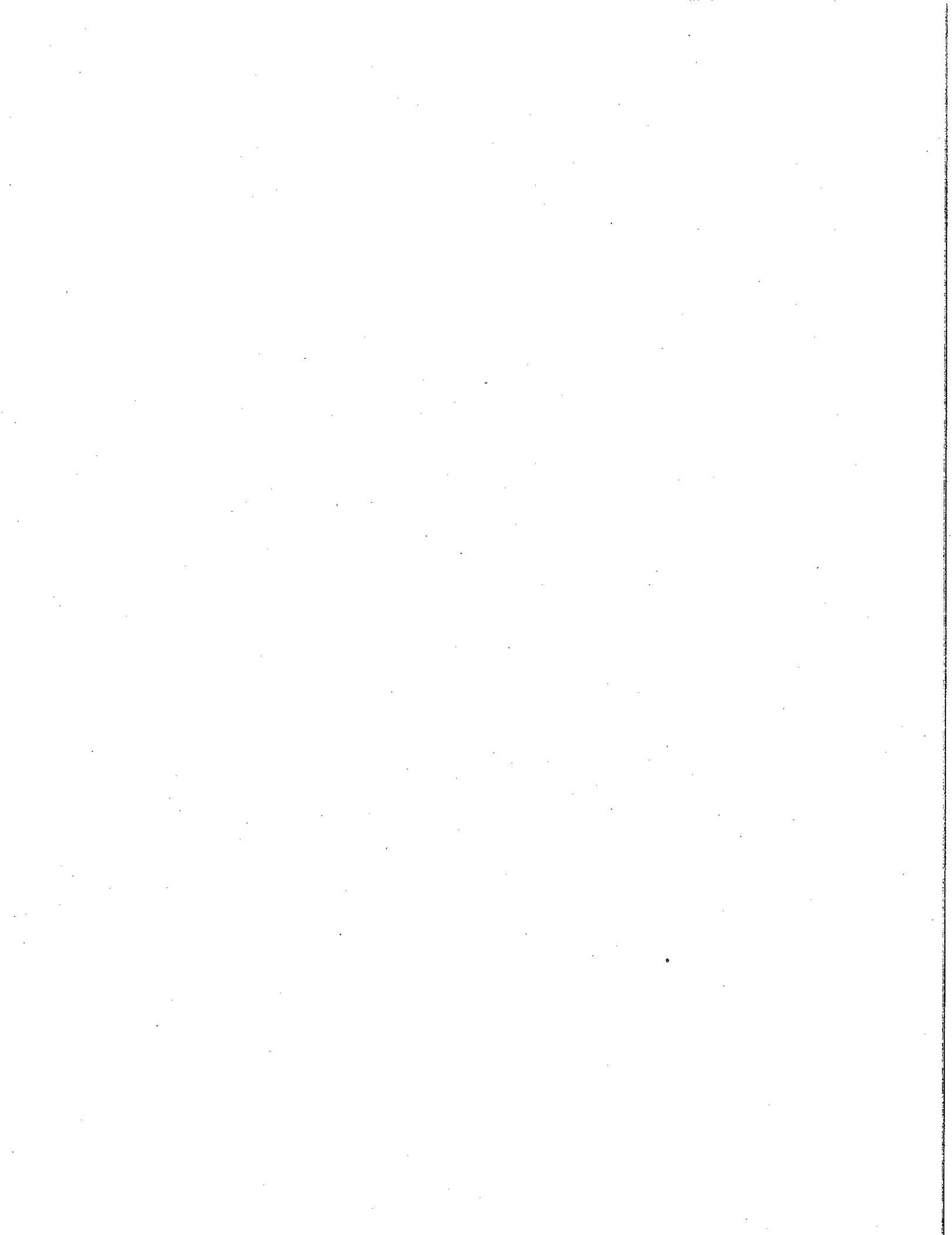


Oregon Mortuary and Cemetery Board

Michelle Gaines, Executive Director

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Affirmative Action Plan
July 1 2013 – June 30 2015





MCB

OREGON MORTUARY & CEMETERY BOARD

Regulating Death Care Facilities & Practitioners in Oregon.

Affirmative Action Plan, July 1 2013 to – June 30 2015

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I. DESCRIPTION OF AGENCY

A. Mission and Objectives

The mission of the Oregon Mortuary and Cemetery Board (Board) is to protect public health, safety and welfare by fairly and efficiently performing its licensing, inspection and enforcement duties; by promoting professional behavior and standards in all facets of the Oregon death care industry; and, by maintaining constructive relationships with licensees, those they serve and others with an interest in the Board's activities.

The Board was created to carry out the purposes and enforce the provisions of Oregon Revised Statutes (ORS) Chapter 692 and is composed of eleven members appointed by the Governor: two funeral service practitioners, one embalmer, three cemetery representatives, one crematory representative and four public members.

The Board licenses individual death care professionals and the facilities where they work.

The Board's programs affect those who have suffered a loss, those who make final arrangements and those who provide death care goods and services. It is the Board's responsibility to license and regulate the practice of individuals and facilities engaged in the care, preparation, processing, transportation and final disposition of human remains. The Board's licensees include funeral service practitioners, embalmers, apprentices, interns, preneed sales people, death care consultants, funeral establishments, immediate disposition companies, cemeteries and crematories.

The Board is self-supporting and derives its financing from licensing, examination, and death certificate filing fees.

B. Name of Agency Director/Administrator

Michelle Gaines, Executive Director, 971.673.1502

C. Name of Governor's Policy Advisor

Michael J Bonetto, 503.378-3111

D. Name of Affirmative Action Representative

Michelle Gaines, Executive Director, 971.673.1502

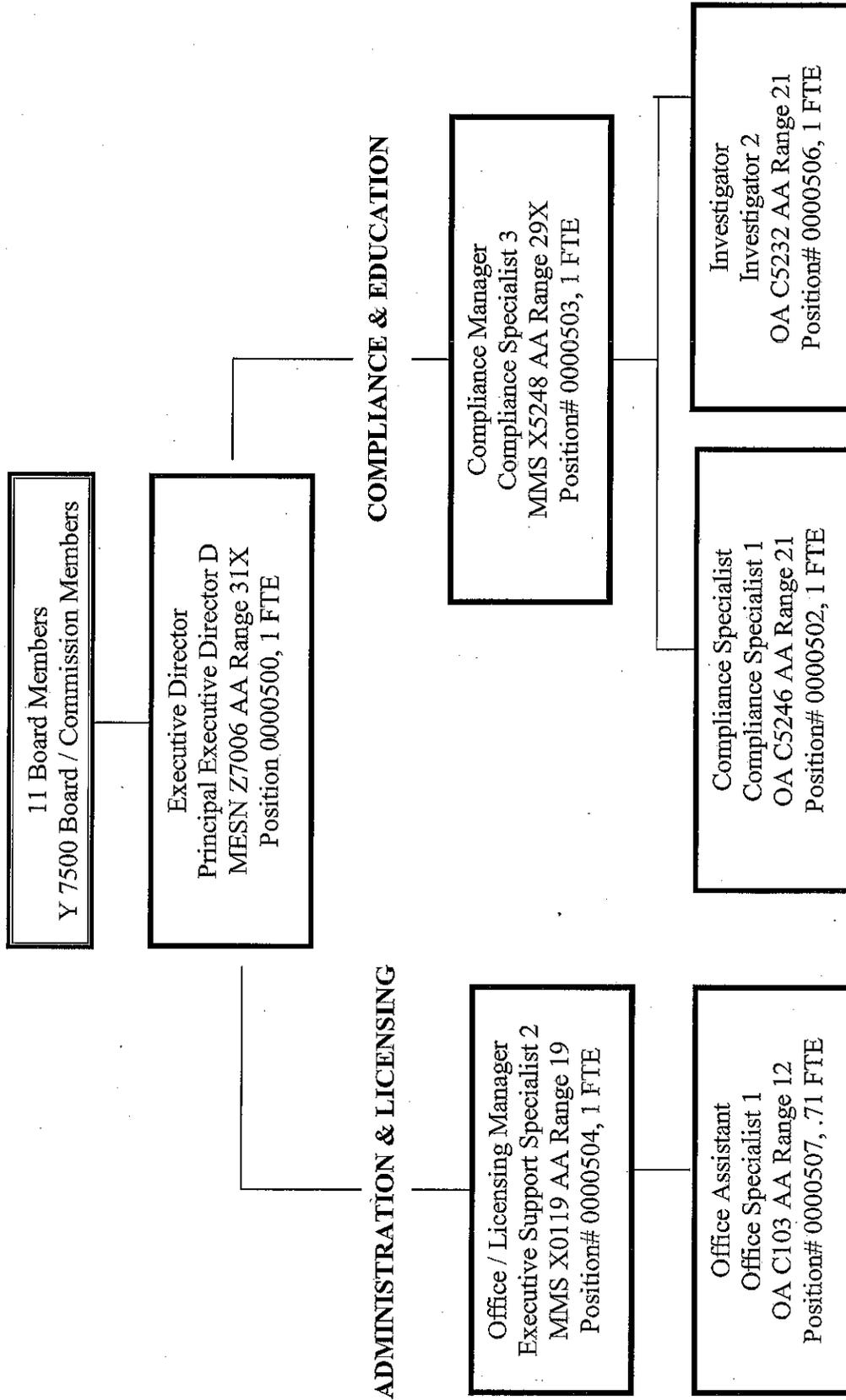
Vicki Jorgensen, State HR Management Consultant, 503.378.2105

E. Name of FTE with specific designations in title

None.

F. Organizational Chart

Oregon Mortuary and Cemetery Board Organizational Chart 2013 - 2015



II. AFFIRMATIVE ACTION PLAN

It is the policy of the State of Oregon that employment without discrimination is recognized as and declared to be a civil right. The State of Oregon is committed to achieving a workforce that represents the diversity of Oregon community and is a leader in providing its citizens fair and equal employment opportunity.

Accordingly, the Board shall:

1. Maintain a policy of equal treatment and equality of opportunity in employment for all applicants and employees in its employment decisions, which include, but are not limited to: hiring, promotion, demotion, transfer, termination, layoff, training, compensation, benefits, and performance evaluations.
2. Apply all terms, conditions, benefits, and privileges of employment with the agency to all applicants and employees regardless of race, color, religion, age, sex, sexual orientation, marital status, national origin, political affiliation, disability, or any other reason prohibited by the law or policy of the state or federal government.
3. Adopt and disseminate the Board Affirmative Action Plan that describes the affirmative action being taken by the agency to ensure equity of employment in a work environment that is free from discrimination.

A. Agency Affirmative Action Policy Statement

The Board is committed to achieving a work force that represents the diversity of Oregon's population and to providing fair and equal employment opportunities. The Board is committed to an affirmative action program that provides equal opportunities for all persons regardless of race, color, religion, sex, sexual orientation, national origin, marital status, age or disability. The Board provides an environment for each applicant and employee that is free from sexual harassment, as well as harassment and intimidation on account of an individual's race, color, religion, gender, sexual orientation, national origin, age, marital status or disability. The Board employment practices are consistent with the State's Affirmative Action Plan Guidelines and with state and federal laws, which preclude discrimination.

1. **Agency Affirmative Action Policy Statement for Individuals with Disabilities**

The Board will not discriminate, nor tolerate discrimination, against any applicant or employee because of physical or mental disability in regard to any position for which the known applicant for employment is qualified.

The Board to take affirmative action to employ, advance in employment, and otherwise treat known qualified individuals with disabilities without regard to their physical or mental disabilities in all human resources selection and decision

practices, such as: advertising, benefits, compensation, discipline (including probation, suspension, and/or termination for cause or layoff), employee facilities, performance evaluation, recruitment, social/recreational programs, and training. The Board also continues to administer these practices without regard to race, color, religion, gender, sexual orientation, national origin, age, marital status or disability. Additionally, all applicants and employees are protected from coercion, intimidation, interference, or discrimination for filing a complaint or assisting in an investigation under this policy.

2. Agency Affirmative Action Policy Affirmative Action Policy for Members Uniform Services (ORS 659A.082)

The Board will not discriminate or tolerate discrimination, against any employee because they are a member of, apply to be a member of, perform, has performed, applied to perform or have an obligation to perform service in a uniformed service.

It is also the policy of the Board to provide an environment for each applicant and employee that is free from sexual harassment, as well as harassment and intimidation on account of individual's race, color, religion, gender, sex, sexual orientation, marital status, national origin, age, familial status or disability.

3. Dissemination of the Affirmative Action Policy and Affirmation Action Plan

The impact of the Affirmative Action Plan can be fully realized only to the extent that its provisions are known by those who must apply it and those who benefit from it. With this in mind, the following describes methods used to disseminate the information both internally and externally.

The responsibility for dissemination of the agency's Affirmative Action Policy Statement and Affirmative Action Plan has been delegated to the Affirmative Action Representative/Officer. Such communication is both internal and external, and will include, but is not limited to:

a. Internal Dissemination

A statement from the Director/Administrator to all employees communicating the existence of the plan in order to:

- i. Be aware of the plan and can avail themselves of its benefit; and
- ii. Be aware of individual responsibility for effective implementation of the plan.
- iii. Conduct special meetings with management and supervisory personnel in which the Director/Administrator shall explain the intent of the Affirmative Action Plan and clearly communicate the

Director's/Administrator's personal commitment to and support of equal employment opportunity;

- iv. Distribute the plan to all managerial and/or supervisory staff who have the authority to recruit, hire, train, and/or promote;
- v. Review with each manager and/or supervisor their responsibility for achieving the agency's affirmative action goals and objectives and provide other relevant affirmative action information throughout the year.
- vi. Include the Affirmative Action Policy Statement, Affirmative Action Plan and Grievance Procedure as part of each new employee's orientation;
- vii. Post the agency's Affirmative Action Policy Statement and Grievance Procedure on the employee's bulletin board; and
- viii. Post the agency's Affirmative Action Policy Statement, Affirmative Action Plan, and Grievance Procedure on agency's website.
- ix. Distribute the agency's Affirmative Action Policy Statement, Affirmative Action Plan and Grievance Procedure to any employee upon request.

b. External Dissemination

- i. All recruitment announcements, applications for employment, and newspaper will contain the phrase, "An Equal Opportunity Employer;"
- ii. The Board Affirmative Action Plan is posted on the agency's Internet site and made available to the public upon request.
- iii. Provide copies of the agency's Affirmative Action Policy Statement, Affirmative Action Plan and Grievance Procedure to any person, including job applicants, upon request;
- iv. Notify all bidders, contractors, subcontractors and suppliers of the agency's affirmative action policy. Notices shall include a statement that the agency will not knowingly do business with any bidder, contractor, subcontractor, or supplier of materials that discriminates against members of any protected class.

4. Monitoring and Reporting System

The Affirmative Action Representative will monitor the Affirmative Action Plan on a continual basis. Monitoring will include, but not be limited to:

- a. Monitoring the auditing and reporting system. Reporting and auditing includes:
 - i. The maintenance of accurate and up-to-date records on all applicants, hires, promotions, transfers, and terminations by sex, race, and EEO-4 categories;
 - ii. The review of all promotions, transfers, and terminations to be certain that all employees are treated fairly and equitably; and
 - iii. The review of all selection, promotional, and training procedures to ensure non-discriminations in practice
- b. Report annually to the Director/Administrator/Board on the effectiveness of the affirmative action program, progress and efforts made toward accomplishing affirmative action goals, and planned action and recommendations for improvement, if necessary.
- c. Review the effectiveness of managers and supervisor's efforts in achieving affirmative action goals and objectives as a key consideration in the performance appraisal system as required by ORS Ch. 240.
- d. Prepare updates and evaluations of the Affirmative Action Plan to be submitted to the Governor's Affirmative Action Office as required. An Affirmative Action progress report will also be prepared and submitted as part of the agency's budget submission.

5. Complaint Process regarding Discrimination or Harassment

The complaint procedure provides a method of resolving complaints involving violation of the Board nondiscrimination policy within the agency. Employees, applicants and eligibles are encouraged to use the complaint process. Retaliation, coercion, reprisal, or intimidation against a person who has filed a complaint either internally or through an outside enforcement agency or other legal channels or serving as a witness is prohibited.

a. Informal Complaint Process

An employee may notify the Affirmative Action Representative/Officer of an issue or concern regarding discrimination in order to raise awareness or put the agency on alert without filing a formal complaint. In these situations:

- i. The employee may ask the Affirmative Action Representative/Officer to keep the matter and identify of the employee confidential. (The agency will comply with the request, if possible.)
- ii. The employee will sign documentation stating that he/she wishes his/her identity to remain confidential.
- iii. The discussion will be documented.
- iv. The Affirmative Action Representative/Officer will review the information and notify management at the level sufficient to maintain confidentially of the employee's identity when it is determined that action is necessary to correct the problem or to prevent a reoccurrence in similar situations.
- v. The Affirmative Action Representative/Officer will offer suggestions to management on preventable actions such as training and changes in environment.

b. Internal Complaint Process

- i. Any individual who believes he/she has been subjected to unlawful discriminatory actions may file a complaint within 30 calendar days of the alleged incident.
- ii. Represented employees may file a complaint either through the Collective Bargaining Agreement grievance procedure or by using the procedures provided by the agency.
- iii. An employee may submit a written complaint to Affirmative Action Representative/Officer that explains the basis for the complaint, identifies the alleged discriminating party or parties, the date the discriminatory action(s) occurred, and specifies the relief requested.
- iv. Affirmative Action Representative/Officer will review/investigate the complaint and provide the complaint written notification of the findings within 30 days or upon completion. If additional time is needed for investigating the allegations or to issue a report of the findings, the agency will notify the employee in writing of the need for additional time.
- v. If the investigation substantiates the complaint, appropriate corrective action will be initiated, include discipline if warranted.

c. External Complaint Process

If an employee is not satisfied with the complaint process within the agency and wishes to appeal to an agency decisions may contact one of the organization listed below. Nothing in this policy prevents any person from filing a grievance in accordance with the Collective Bargaining Agreement or a formal complaint with the Bureau of Labor and Industries (BOLI) or Equal Employment Opportunity Commission (EEOC). However, some collective bargaining agreements may require an employee to choose between the complaint procedure outline in the agency's guideline for filing a BOLI or EEOC complaint.

Oregon Bureau of Labor and Industries - Civil Rights Division

State Office Building
800 NE Oregon Street, MS# 32, Suite 1070
Portland, OR 97232
Phone Number: 503.731.4874
Fax Number: 503.731.4069

The Oregon Bureau of Labor and Industries - Civil Rights Division is the Oregon state equivalent of the federal EEOC. As a designated Fair Employment Practices Agency (FEPA), the Oregon Bureau of Labor and Industries - Civil Rights Division may coordinate operations with the EEOC under a work-share agreement. Furthermore, the Oregon Bureau of Labor and Industries - Civil Rights Division investigates state claims that are not covered by federal law or exceed the basic protections of federal law. Individuals filing a charge of discrimination with the EEOC should also file a copy of the charge with the Oregon Bureau of Labor and Industries - Civil Rights Division.

Eugene Oregon Bureau of Labor and Industries 1400 Executive Parkway, Suite 200 Eugene, OR 97401 Phone Number: 541.686.7623	Portland Oregon Bureau of Labor and Industries 800 NE Oregon Street, Suite 1045 Portland, OR 97232 Phone Number: 971.673.0761
Pendleton Oregon Bureau of Labor and Industries 1327 SE 3rd Street Pendleton, OR 97801 Phone Number: 541.276.7884	Salem Oregon Bureau of Labor and Industries 3865 Wolverine Street NE; E-1 Salem, OR 97305 Phone Number: 503.378.3292

Governor's Affirmative Action Office

155 Cottage Street, NE

Salem, OR97301

Director: 503.378.3544

Program Manager: 503.378.6518

Website: <http://governor.oregon.gov/Gov/GovAA/index.shtml>

U.S. Equal Employment Opportunity Commission

Seattle Field office EEOC Office/ Federal Office Building

909 First Avenue, Suite 400

Seattle, WA 98104

Phone Number: 206.220.6883

Phone Number: 206.220.6882

(TDD)

The EEOC does not maintain an office in Oregon. The Seattle Field Office is open Monday –

File a Charge of Discrimination: <http://www.eeocomplaint.com/>

Department of Labor, Office of Federal Contract Compliance (OFCC)

1315 SW Fifth Avenue, Suite 1030

Portland, OR 97201

Phone Number: 503.326.4112

The U.S. Department of Labor

Pacific Regional Office 71 Stevenson Street, Suite 1700

San Francisco, CA94105

Phone Number: 503.848.6969

The Civil Rights Office of Health & Human Services

Office of Civil Rights, Region D

2201 Six Avenue, Mail Stop RX-11

Seattle, WA 98121

Phone Number: 206.615.2290

Phone Number: 206.615.2296

(TDD)

The Board remains committed to its policy on Affirmative Action and Equal Opportunity and to a rigorous and active affirmative action program. My personal commitment to these ideas is represented in the Affirmative Action Plan. Likewise, the Plan represents the Board commitment to equal opportunity and affirmative action in employment and public service consistent with all applicable federal and state laws, including, but not limited to: Executive Order 11246; Title VII of the Civil Rights Act of 1964; Sections 503 and 504 of the Rehabilitation Act of 1974; the Vietnam Era Veterans Readjustment Assistance Act; and the Americans with Disabilities Act. This Affirmative Action Plan has my complete authorization and commitment.

Director Signature on file

Date

If you have any questions regarding the agency's Affirmative Action Plan please contact the Affirmative Action Representative listed below.

Michelle Gaines, Affirmative Action
Representative
Oregon Mortuary & Cemetery Board
971-673-1503
Michelle.gaines@state.or.us

B. Agency Diversity & Inclusion Statement

The Oregon Mortuary & Cemetery Board provides a leadership culture that fosters and embeds Diversity and Inclusion throughout its operations, both internally with staff and externally with public members, stakeholders and/or partners by increasing diverse and multi-cultural perspectives, improving business and service delivery outcomes, increasing certified firm contracting inclusion, improving individual and organizational cultural competences, improving organizational accountability, maximizing taxpayer dollars, and improving public confidence and community relations.

C. Training, Education, Developmental Plan (TEDP)

1. Employees

The Board recognizes that its employees are its greatest resources. Investing in employee development and enhancing employee knowledge, skills and abilities is one of the agency's highest priorities.

Continued professional development and training opportunities ensures that employees are provided with the skills needed to excel in their work, and therefore be retained in the agency. The Board uses a variety of approaches to establish a climate that supports continuous learning and development through the following:

- a. Establish clear paths for acquiring the skills, knowledge, and experience that employees need for their continuing learning and career development.
- b. Establish developmental opportunities for employees, such as detail assignments and leadership training, to give everyone interested in a chance to participate in assignments that prepare them for high-level positions.
- c. Use a variety of ways to provide training and developmental experience for employees such as:
 - i. Using webinars and other interactive and on-line training technologies,
 - ii. Using internal and external training course,
 - iii. Establishing individual needs and training requests during year evaluations, and
 - iv. Career development programs.

Provide training opportunities for all employees. Through investments in training, the Board reflects the value we place on our employees and support employee interest in keeping their skills updated in order to remain competitive.

- d. Mentoring Program – The Board is encouraging managers and supervisors to become mentors. The Board is strongly encouraging senior managers to mentor employees especially those from different cultural, racial, or academic background.
- e. Job Rotation – Provide the employee the opportunity to explore new assignments or jobs and to provide agencies the opportunity to enhance employee development to make more effective use of staff:
 - i. Developmental rotation provides the employee the opportunity to acquire new skills.
 - ii. Career enrichment rotation provides the employee the opportunity to use existing skills in a different setting.
- f. “Discrimination and Harassment-Free Workplace” and “Maintaining a Professional Workplace” Training – Each biennium **all** staff attends a mandatory training on respectful workplace. This training focuses on statewide and agency policies regarding discrimination and harassment free workplace. It emphasizes the prohibited conduct, the complaint or reporting procedure, and where staff can readily access this information for future reference.
- g. New Employee Orientation – Effectively orienting new employees to the agency and to their positions is critical to establishing successful, productive working relationship. The Board strives to ensure the employee’s first interaction with agency personnel is a positive experience. The Board provides the following information to the new employee:
 - i. Affirmative Action Policy and Affirmative Action Plan
 - ii. Agency’s expectation of employee
 - iii. Agency’s mission and objectives
 - iv. Discrimination and Harassment-Free Workplace Policy;
 - v. Employee Services
 - vi. Performance Evaluation Process
 - vii. Professional Workplace Policy;
 - viii. Roles and Responsibilities/Position Description
 - ix. Safety
 - x. Training, Educational, and Developmental Plan

- h. Leadership Oregon – If financial resources allow The Board will support and provide an employee the opportunity to participate in Leadership Oregon program. This program enhances the professional development of the State of Oregon employees through an interactive and practical curriculum that expands an awareness of self, state government and local communities while promoting pride in public service.

No Cost Trainings

Due to limited financial resources available, the Board will be utilizing some of these training courses that are available through Department of Administrative Services' iLearnOregon system. These training courses from items "K" thru "O" are available to state agencies and their employees free of charge. iLearnOregon Website:

<https://ilearn.oregon.gov/Kview/CustomCodeBehind/Base/Login/Login.aspx>

- i. OSHA Safety and Health Management Basics – The Oregon OSHA online training discusses seven critical areas of a successful occupational safety and health program. The Board employees will learn to develop proactive program using methods that do work.
 - Subjects include: top management commitment, accountability, employee involvement, safety committees, hazard identification and control, accident investigation, and continuous safety improvement.
- j. SAIF – Crisis Intervention: "Managing Conflict in the Workplace" – Conflict exists in every organization. While it is not possible to avoid all employee conflicts, there are ways to effectively manage situations. During this training, discussion on prevention strategies, the crisis cycle, and appropriate interventions. (This is a classroom course)
- k. Sustainability in the Workplace – The principle of sustainability is the heart of what makes and keeps Oregon such a special place to live. It is also an integral part of the Governor's efforts to revitalize Oregon's economy and improve state government. This training will take our knowledge of sustainability beyond an introduction. It provides an overview of the principles and concepts of sustainability and a framework for additional learning and decision-making.
- l. Information Security Training (DAS)

- Acceptable Use of Information Assets Policy: The purpose of the Acceptable Use Policy is to inform users of DAS technology assets of the appropriate and acceptable use of information, computer systems and devices, telecommunications devices, and other office technology.

Other Learning Opportunity

Diversity in the workplace education is quickly becoming more valuable to the Board. It is more than just “inclusion”, a commitment to workplace diversity awareness helps the Board create a satisfactory, safe and meaningful work environment in which employees thrive. Through diversity awareness program inclusive of human characteristics such as race, spirituality, gender, sexual orientation or status as a person with disability, the Board demonstrate to its employees that they are seen, recognize and valued. By incorporating these types of strategies into our training and developmental curriculum it allows the Board to attract and retain skilled and talented workforce.

- a) “Addressing the Generational Differences in the Workplace” – To heighten awareness and understanding of the generalized differences among generations, in order to decrease misunderstandings, conflicts, stress, discomfort, frustration, and miscommunication, and to increase effectiveness in the workplace without reinforcing stereotypes.
- b) “Conversation on Race Relations” – The training topic will provide an opportunity for employees to discuss issues in the area of gender, race, socio economic, disability and others issues of diversity. The Board will be contacting the trainer (Mr. Johnny Lake) to discuss this training topic. Mr. Lake is a trainer in programs focused on leadership, diversity, community-building, and cultural competency. The Board will also be researching other resources to support and share with its employees.
- c) Cultural Competency Video – StirFry video is so unique to its approach in how we value and observe each other’s communication. The ‘mindfully listening’, which means being attentive to the subtleties in each communication, such as intent and impact. The Board will facilitate the viewing of these video with a trained facilitator. Employees will have an opportunity to view the video, discuss the video and its impact to them and facilitate another discussion six months after the initial viewing to ensure that employees are not left with unanswered questions regarding communication and cultural issues.

- “Color of Fear,” by Lee Mun Wuh - is an insightful, groundbreaking film about the state of race relations in America as seen through the eyes of eight North American men of Asian, European, Latino and African descent. In a series of intelligent, emotional and dramatic confrontations the men reveal the pain and scars that racism has caused them. What emerges is a deeper sense of understanding and trust. This is the dialogue most of us fear, but hope will happen sometime in our lifetime. (1995, 90 minutes)
 - “*Last Chance for Eden*,” by Lee Mun Wuh - is a documentary about nine men and women discussing the issues of racism and sexism in the workplace. They examine the impact of society's stereotypes on their lives in the workplace, in their personal relationships and within their families and in their communities. In the course of their dialogue, they also explore the differences and similarities between racism and sexism - an area that has seldom been researched, but has heatedly become a very important issue needing to be understood and dealt with.
- d) “Preventing and Minimizing Exposure to Lawsuits”: training for key employees to minimize and avoid the actions that cause, and may even encourage, expensive employee lawsuits. Most lawsuits are caused by the unknowing or careless actions of managers and supervisors. This training will provide information in how to avoid and prevent lawsuits in the workplace.

Continuing Learning Opportunity

To continue learning about diversity and cultures within our workforce the following are some of the recommended books from several speakers that have participated in state government sponsored trainings.

1. Angelou, Maya. *I Know Why the Caged Bird Sings*. Bantam Books, 1983.
2. Dickerson, Debra. *An American Story*. New York, NY: Pantheon Books, 2000
3. Fanon, Frantz. *Black Skins, White Masks*. Grove Press, 1991.
4. Kochman, Thomas. *Black and White Styles in Conflict*. Chicago: University of Chicago Press, 1983.
5. McBride, James. *The Color of Water*. Riverhead Books, 1997.
6. McCall, Nathan. *Makes Me Wanna Holler: A Young Black Man in America*. Vintage Books, 1995.

7. Meeks, Kenneth. *Driving While Black*. Broadway Books, 2000.
8. Reed, Cecil and Donovan Priscilla. *Fly in the Buttermilk*. Iowa City, IA: University of Iowa Press, 1993.
9. Robinson, Randall N. *The Debt: What America Owes to Blacks*. Plume, 2001.
10. Santiago, Esmeralda. *When I Was Puerto Rican*. Vintage Books, 1994.
11. Tatum, Beverly D. *Why Are All the Black Kids Sitting Together in the Cafeteria?* Basic Books, 1999.
12. West, Cornell. *Race Matters*. Vintage Books, 1994.
13. Wilson, M. and Russel, K. *Divided Sisters: Bridging the Gap Between Black Women and White Women*. New York, NY: Anchor/Doubleday, 1996.
14. Amsterdam, Boston, *The Diversity Scorecard: Evaluating the Impact of Diversity on Organizational Performance*, Elsevier Science/Butterworth-Heinemann; 2003.
15. Rikleen, Lauren, *Ending the Gauntlet: Removing Barriers to Women's Success in the Law - by Managing Differently* – James O. Rodgers,
16. Aguilar, Leslie *Multicultural Customer Service: Providing Outstanding Service Across Cultures*, Linda Stokes McGraw-Hill, Inc, Times Mirror Press -
17. Phil Rubio, *A History of Affirmative Action, 1619-2000*
18. Poverty & Race Research Action Council: <http://www.prrac.org/>
19. Civil Rights Coalition for the 21st Century: <http://www.civilrights.org/>
20. Americans for a Fair Chance: <http://fairchance.civilrights.org/>
21. National Center for Fair and Open Testing: <http://www.fairtest.org/>
22. Journal of Blacks in Higher Education: <http://www.jbhe.com/>

2. Volunteers

The Board provides a copy of the agency's Affirmative Action Policy and Affirmative Action Plan to all Volunteers. Agency also reviews the statewide policies on "Discrimination and Harassment-Free Workplace" and "Maintaining a Professional Workplace" policies with Volunteers.

3. Contractors/Vendors

The Board provides a copy of the agency's Affirmative Action Policy and Affirmative Action Plan to all Contractors/Vendors. Agency also reviews the statewide policies on "Discrimination and Harassment-Free Workplace" and "Maintaining a Professional Workplace" policies with Contractors/Vendors.

D. Programs

The following activities play a major role in moving the agency towards its affirmative action goals and objectives as well as build a foundation for future efforts to diversity the workforce.

1. Internship Program

- a. **School-to-Work** – It is the policy of the State of Oregon that we, as the an employer, recognize the importance of enhancing work-based learning opportunities through creating and maintaining relationships with public and private schools that promote an effective and efficient workforce in state government through a School-to-Work: Career-Related Learning Program. The Board will develop an agency plan which promotes participation in and support of work-based learning activities for students and educators. The plan may allow employees the flexibility to participate in associated activities offsite and not directly work-related.

The Board will update its Affirmative Action Plan in the current reporting period to provide information about its developments in this program. The Board will provide the following information:

- i. How many students participated in the program?
- ii. How many schools participated in the program?
- iii. Project information students have been involved in.

b. Willamette MBA Program

- i. Practical Application for Careers and Enterprises Consulting in Non-Profit and Public Organizations (PACE)
– The **PACE** partnerships focus on three key frameworks:
(1) provide Atkinson MBA candidates with experimental projects that apply discipline understandings, (2) add value to partnering organizations that consequential and needed, (3) provide volunteer service hours to the partnering organizations that adds value and gives relevance to the candidate.

- c. **Ready to Learn, Ready to Work** (A Salem Keizer School Districts Program: Oregon graduation requirements encompass skill sets (Career Related Learning Standards and Essential Skills) that provide a foundation for success following high school graduation. These skill sets include written and verbal

communication skills, problem solving, critical thinking, personal management and teamwork; skills that the working environment uses everyday. These requirements and skills apply across curriculum disciplines and can be demonstrated in a variety of settings.

Website: <http://workandlearnnow.com/web/employers/>

Today's students are the workforce of tomorrow. To prepare the next generation of well educated employees; connecting students to the business community is vital. Below are some of the opportunities the program provides for state agencies to participate:

- i. **Informational/Mock Interviews** – Provide an opportunity to explore a particular occupation and gather information about the necessary preparation, required knowledge, and other interesting facts. Informational interviews help students broaden their vision of career fields, gain exposure to different adult role models and understand connection between school, work, and achieving goals. During interview, the employer provides the student with a glimpse of what their career is like, the necessary training and workplace requirements. The student will be prepared with a set of questions. The employer's role is to share information and insights about their career.
- ii. **Guest Speaker** – Provide an opportunity for a classroom of students to hear firsthand about a particular occupation, the necessary preparation and required knowledge the occupation requires and other interesting information from current practitioner in the field.
- iii. **Job Shadow** – Provide an opportunity for students to spend four or more hours with one or more employees at a job site. Employers introduce students to potential careers by allowing them to observe the jobs of individual workers while shadowing their daily routines and activities. They provide students with a look at the world of work and the range of career opportunities available to them. Employers should provide general information about their jobs, required skills, education and training requirements.
- iv. **Mentorship** – Mentorship is a formal relationship between a student and a worksite role model who provides support and encouragement to the student. Mentorships may be academic, tutorial, or guidance based. Through this

relationship, a student can learn specific information about the rules and expectations of the workplace and develop useful work related and social skills. A mentorship reinforce the student's academic program at school. This kind of learning experience can vary in length of duration and frequency of contact.

- v. **Site Visit** – Provide an opportunity for students to explore career and the world of work by visiting a business where they will observe and ask questions about careers, skills, and tasks performed by the company. The site visits introduce students to potential careers by allowing them to view an organization's daily routines and activities.
- vi. **Work Experience/Internship** – Involves a formal training plan between the school and the agency that outlines the skills the students is expected to learn and demonstrate at the workplace. The hours to be worked, classroom goals, and worksite goals and objectives are determined by the teacher, worksite supervisor and student.

2. Community Outreach Programs

The Board greatest strength is the quality of and diversity of our employees who differ in age, gender, race, nationality, sexual orientation, and religious beliefs and operates across multiple cultures and languages. The Board encourages its employees to participate in various organizations with the community its serves. The Board is committed to fostering a collaborative working relationships with our local organizations to various initiatives, such as:

- a. Regular contact with local groups representing the protected classes.
- b. Affirmation to such groups that the agency is an equal employment opportunity employer.
- c. Sharing job opportunities with local ethnic organizations, local ethnic chambers, tribes, faith-based organizations, local ethnic newspapers, etc. in a timely manner.
- d. Ensure protected classes personnel are aware of promotional opportunities as they arise.

3. Diversity Awareness Program

To achieve workforce diversity, the Board is positioning itself with a strong commitment to its agency's affirmative action program. This includes strong leadership support from our top leadership and commitment to provide necessary resources, people and funding of new program initiatives.

- a. Continued support from leadership that creates an environment of inclusion, which values differences.
- b. Continued management involvement in planning and conducting affirmative action/equal employment opportunity activities.
- c. Ensure that employees are an integral part in the design of the Board efforts to plan and conduct affirmative action/equal employment opportunity and diversity activities.
- d. Widely disseminate the Board Affirmative Action Plan goals throughout the agency and encouraging managers to conduct targeted recruitment in support of these goals.
- e. Assign adequate resources to the affirmative action/equal employment opportunity activities. The Board will continue to revisit its budget to identify resources for its affirmative action/equal employment opportunity activities.
- f. Train managers and supervisors in their affirmative action/equal employment opportunity responsibilities as well as educating them with the existing personnel and administrative tools to help them carry out their responsibilities in these areas.
- g. Evaluate training resources in intercultural communication to address the communication style across cultures and generational differences within the Board.
- h. **Diversity Bulletin Board** – To bring awareness to the agency's workforce, the Board provides a diversity bulletin board for employees share diversity and cultural information with one another. The Board also post the Governor's monthly diversity proclamations, diversity activities and projects, diversity calendar of events and other community activities, etc.
- i. **Art-on-Loan Program** - The Oregon Youth Authority (OYA) youth produce paintings, masks, woodwork, metalwork, sculpture, and other works. In their own way, they are hoping to give back to Oregonians by loaning these artworks out for display. They would like to share their culture and their personal message, even for just a week weeks.

This project is part of creating a welcoming environment by using artwork in various forms that project the diverse cultures in state government as well as project to the public it serves. Using these artwork will exhibit variation of media form other than the institutionalize posters.

The Art on Loan project will allow the Board to use the artwork from this project at no cost to the agency, however the agency will have the options to purchase these artwork for their own facility use after the artwork has completed its circulation through other state agencies.

E. Update: Executive Order 08.18

1. Cultural Competency Assessment and Implementation Services

Cultural Competency Assessment and Implementation Services – is a proactive management strategy designed to identify best practices and reduce any discriminatory behaviors that may exist within the Commission. Through an assessment the Board will enable itself to address: the creation of a climate of increased awareness; appropriate identifying and responding to cultural and language barriers for the Board employees and the public; a common understanding of how all members of the organization should be valued and respected; a promotion of managerial skills among diverse employees; an understanding of the roles of the Board management and employees in creating a welcoming environment and the improve of the Board employee morale.

In lieu of funding resources the Board is implementing creative initiatives to ensure that is positioned itself with a strong commitment to its agency's affirmative action program. This includes strong leadership support from our top leadership and commitment to provide creative program initiatives.

2. Statewide Exit Interview Survey

In our goal to continue to make the Board the "Employer of Choice", the survey will allow the employee to share their honest opinions regarding their work experience with the agency. As employees change agencies or depart from state employment, the Board is interested in how employees view their tenure and what information and suggestions they can provide related to their experience. The survey covers issues such as: benefits; working conditions; opportunities for career advancement; the quality and quantity of the workload; and relationships with co-workers and supervisors.

The Board will run periodic reports to review the results collected and perform a data analysis. The data analysis will provide an understanding of how much of the voluntary turnover is preventable and how much is non-preventable. This data represents an essential piece of information that is fundamental in the data analysis. If the analysis identifies a negative opinion regarding the agency's workplace environment, the Board will use this information as an opportunity to make changes to improve the work environment for the current employees, and improve job satisfaction.

Data obtained from employees leaving the agency provides information critical to:

1. Assess workplace deficiencies;
2. Enhance the work place;
3. Improve employee retention;
4. Achieve a diverse workforce through workforce planning; and
5. Improve any negative feedback from the survey.

The result of the data analysis will be reviewed with the agency Director/Administrator for any corrective action and approve program strategies to implement that will help retention of skilled and valued employees.

3. Performance Evaluations of All Management Personnel

The Board has incorporated affirmative action objectives as a key consideration for the manager's or supervisor's performance evaluation. Specific examples of the managers and supervisors affirmative action objectives and diversity successes and achievement are described below. Management personnel will receive an annual performance evaluation to assess whether they are meeting its affirmative action objectives. Any goals or work plans for future performance will be outline in the evaluation.

Sample affirmative action duty descriptions:

- a. Understand Equal Employment Opportunity (EEO), Affirmative Action (AA), Diversity and Cultural Competency principles, and the agency's AA Plan goals and objectives. Develop and implement strategies to meet goals and objectives; and report annual efforts, successes and/or accomplishments during the period.
- b. Review hiring, transfers, promotional, developmental/rotational or training practices and procedures to identify and remove barriers in the attainment of the agency's affirmative action goals and objectives.

- c. Make hiring, transfer and promotional decisions in support of agency's affirmative action goals and objectives. Engage in appropriate recruitment efforts designed to reach agency's affirmative action goals and objectives.
- d. Promote and foster a positive work environment within the agency programs concerning EEO, AA, Diversity and Cultural Competencies by ensuring employees are aware and follow agency policies and procedures, and address work-related issues and/or concerns immediately and take appropriate action if necessary.
- e. Attend EEO, AA, and other diversity-related training to provide leadership to staff by being aware of diversity and cultural issues. This also includes supporting employees to attend such programs for further professional development.
- f. Ensure information regarding EEO, AA and Americans with Disabilities (ADA) information is properly displayed on the appropriate boards at the worksites(s).

Ref: 659A.012 State agencies to carry out policy against discrimination in employment; evaluation of supervisors; affirmative action reports. (1) To achieve the public policy of the State of Oregon for persons in the state to attain employment and advancement without discrimination because of race, religion, color, sex, marital status, national origin, disability or age, every state agency shall be 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.

(2) To achieve the public policy of the State of Oregon for persons in the state to attain employment and advancement without discrimination because of race, religion, color, sex, marital status, national origin, age or disability, every state agency shall be required to present the affirmative action objectives and performance of that agency of the current biennium and those for the following biennium to the Governor of the State of Oregon and to the Legislative Assembly. These plans shall be reviewed as part of the budget review process.

F. Status of Contracts to Minority Businesses (ORS 659A.015)

The Board did not award any construction, service, or personal service contracts to minority businesses during the 2009-2011 biennium. The Board posts all competitive contracts on the state's ORPIN system to ensure that the pool of responders is as varied as possible and all qualified responders are given fair and equal consideration. The Board does not have any contracts that exceed \$5,000 with minority businesses.

III. ROLES FOR IMPLEMENTATION OF AFFIRMATIVE ACTION PLAN

A. Responsibilities and Accountabilities

The Board is committed to equal employment opportunity and maintains an active interest in the attainment of affirmative action goals and objectives. The Board strategy is to create a work environment and employment opportunities that attract and retain diverse and skilled workforce. The success of the affirmative action program depends upon the commitment and leadership of employees at all levels in the organization. As such, affirmative action goals and objectives are contained in all management position description.

The Board provides overall direction and resources to support the Affirmative Action Plan. The Board will foster-- and promote to employees-- the importance of a diverse workplace free from discrimination and harassment. The Board is committed to the use of Affirmative Action precepts in hiring employees and in making appointments to its membership. The Board will continue its implementation of the Affirmative Action Plan by exercising impartial and unbiased evaluations of future employment applications and interviews.

1. Director/Administrator

The Director/Administrator plays a leadership role in dedicating the agency to a policy of equal employment opportunity and conveying a sense of that commitment both within and outside of the organization. The Director/Administrator has overall responsibility for implementing and monitoring the Affirmative Action Plan and for ensuring compliance with all applicable federal and state laws, rules and regulations.

- a. Foster and promote the importance of a diverse and respectful workplace.
- b. Periodically review the Affirmative Action Plan and progress toward meeting the agency's affirmative action objectives; and
- c. Meet with the Affirmative Action Representative to review equal employment opportunity and affirmative action objectives. Provide guidance to the Affirmative Action Representative to ensure the agency's effectiveness in meeting its affirmative action program, and approve strategies for meeting objectives;
- d. Recognize policy needs and initiate necessary changes.
- e. Ensure managers and supervisors understand they are responsible for participating in and promoting affirmative action activities and for communicating this same responsibilities to their subordinates managers and supervisors. The effectiveness of managers and

supervisors in promoting affirmative action activities, goals, and objectives for the Board will be included in the annual performance appraisal.

2. Managers and Supervisors

“To achieve the public policy of the State of Oregon for persons in the state to attain employment and advancement without discrimination because of race, religion, color, sex, marital status, national origin, disability or age, every state agency shall be required 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 and supervisor’s performance.”

- a. Foster and promote to employees the importance of a diverse, and discrimination and harassment free workplace through day-to-day interaction with employees and through discussion with staff about the agency’s Affirmative Action Plan, activities, goals and objectives.
- b. Assure assigned managers and employees understand their rights and responsibilities in achieving a welcoming work environment free from discrimination and harassment.
- c. Promote the State of Oregon as an equal employment opportunity, affirmative action employer committed to a workforce diversity in speeches and conversations with businesses and communities regarding employment with the State.
- d. Review the Board affirmative action goals and objectives on a regularly basis to be aware of and consider ways to contribute toward achieving the goals and objectives. Review and consider the agency’s affirmative action hiring goals in filling job vacancies.
- e. Ensure that implementation of affirmative action activities are carried out as they apply to their unit, including the non-discriminatory administration of client services.
- f. Ensure that individuals involved in agency processes needing materials in alternate format (large print, computer disc, Braille, audio tape, and/or oral presentation) receive material in the appropriate format;
- g. Attend and encourage employees to attend diversity, cultural awareness, and affirmative action information session;

- h. Assure that all staff are aware of the Affirmative Action Policy Statement and Affirmative Action Plan, particularly as it applies to their unit, and maintain and maintain a copy of the Plan readily available for employees to review; and
- i. Ensure that all employees, including minorities, women, persons with disability, and other protected persons, are provided an opportunity to participate in agency-sponsored education, training, and social activities.

3. Affirmative Action Representative/Officer:

The Affirmative Action Representative/Officer is responsible for implementing and maintaining the agency's affirmative action program and is accountable to the Director/Administrator.

- i. Develop and disseminate the Affirmative Action Plan, including the agency's Affirmative Action Policy Statement, and monitor progress and prepare annual updates and modifications, as needed;
- ii. Develop and monitor internal and external communication of the agency's Affirmative Action Policy and Affirmative Action Plan to keep staff informed.
- iii. Develop and advise employees and job applicants of discrimination grievance procedures. Accept and investigate all sexual harassment and/or discrimination grievances or complaints filed either internally or externally and make recommendations for appropriate actions;
- iv. Serve as the agency's liaison with governmental agencies responsible for the enforcement of civil rights and fair employment laws and regulations;
- v. Assist in implementation and review of the internal monitoring and review system, using standardized reports and statistical data to measure the effectiveness of the agency's affirmative action program, and indicate the need for remedial action;
- vi. Contact community organizations and persons representing minorities, women and persons with disabilities and share information on available agency recruitments;
- vii. Identify the need for, assist in the development of, and in some instances; conduct affirmative action information session for managers, supervisors and employees;

- viii. Share information to management staff on the latest developments on affirmative action issues, including legal decision and their possible impact;
- ix. Report to the Director/Administrator/Board any policies or practices that have adverse impact on minorities, women and persons with disability, and any other protected or underrepresented group, or present barriers to equal employment opportunity;
- x. Periodically review personnel policies and procedures to ensure they reflect the agency's affirmative action commitment;
- xi. Periodically audit minimum job requirements, training programs, and promotion and transfer actions to assure non-discriminatory practices;
- xii. Conduct periodic reviews to assure EEO posters, the Affirmative Action Policy Statement, and Alternate Format poster are properly displayed; and
- xiii. Assist in conducting "exit interviews" of employees leaving the agency's concerning work climate and affirmative action issues.

IV. July 1 2010 – June 30 2012

A. Accomplishment & Progress Made or Lost Since Previous Biennium

Category	2009 - 2011	2011 - 2013	Explanation
People of Color	0 lost 0 gained 2 retained	1 lost 1 gained 2 retained	Board Member term limits applied. Active support for keeping our diverse workforce and Board representation intact.
Women	1 lost 3 gained 8 retained	3 lost 1 gained 8 retained	
Disabled	0 lost 0 gained 0 retained	0 lost 0 gained 0 retained	

The Board continued to strive to create a culturally diverse staff through the employee recruitment process, and through celebration of existing employees via staff meetings and other office activities.

- All job announcements were posted on the Oregon.jobs page, through DAS Recruitment Services.
- The Board has established management practices, sufficient staff support, and regularly reviews strategic and policy questions establishing clear direction. Board staff will regularly review processes and forms with an eye toward regulatory streamlining and improved service to the consumer and licensees.
- Our staffing spans several generations, from the 1950s to the 1980s.

The Board's strategy for retaining our employees is simple:

- Value our employees and urge them to participate in decisions that affect their work;
- Treat our employees with respect and dignity;
- Show our employees the benefits of working for the State of Oregon from pay to health insurance to location;
- Support our employees in their learning and personal development plans;
- Carefully maintain the Board's reputation for professionalism by making it a business people are proud to work for;
- Keep our processes as lean as possible so work makes sense even to our youngest employees;
- Communicate well and often. Let people know what is happening in the organization;
- Make wise hiring decisions and continually evaluate our hiring practices; and
- Hold people accountable for adhering to our respectful workplace and harassment-free policy.

1. Maintain the Board's commitment to affirmative action through the continued development and adherence to its Affirmative Action Plan.

Strategy

- Evaluate and revise policies and procedures as needed to promote the Board's commitment to affirmative action and equal employment opportunity.
- Assertively recruit qualified persons with disabilities, minorities, women, and other protected classes for position/volunteer vacancies.

Actions Taken

- *Agency staff and board members worked closely with the Governor's office to ensure consideration of affirmative action goals in review and selection of open board member appointments.*

2. Continue dialogue among staff and board members to foster understanding and support for the Board's commitment to affirmative action.

Strategy

- Increase staff and board member knowledge and awareness of affirmative action through review and discussion of the Affirmative Action Plan.

- Train and inform managers and employees as to their rights and responsibilities under the Board's Affirmative Action policy.
- Make the complete Affirmative Action Plan available and accessible to all board members, employees, and contractors.
- Increase the knowledge and skills of employees and managers to create a welcoming environment for, and work effectively with, coworkers and patrons with diverse backgrounds or disabilities through training and employee development activities.

Actions Taken

- *The affirmative action plan is available to all staff via a shared drive.*
- *The plan was included in board packets.*
- *Communications from the affirmative action office were forwarded to staff and discussed in staff meetings as appropriate.*

3. Support and promote diversity within the Board.

Strategy

- Increase awareness within the Board to promote affirmative action and equal employment opportunities.
- Engage in outreach efforts to recruit persons in protected classes.
- Promote celebration of events important to diverse cultures throughout the year.

Challenges

Our agency's strength lies in our employees and our customers. We are a very professional organization that lives with high expectations every day. The challenges we face are few, except for the budget process for other funds.

Actions Taken

- *Affirmative action was discussed in detail at the Board level.*

4. Improve recruitment methods in order to increase ethnic diversity among staff and Board members.

Strategy

- Apply recruitment methods that include outreach to sources representing a variety of backgrounds and protected and underrepresented classes.
- Insure that advertisements and employment/volunteer recruitment announcements contain the statement "Equal Opportunity/Affirmative Action Employer".
- Recommend qualified and diverse candidates to the Governor's Office for board member vacancies.
- Provide career development and training opportunities which support the career advancement and success of our diverse workforce through personal planning and mentoring.
- Will work with higher education and local ethnic groups.

- Send job announcements to the Governor's Affirmative Action Office for distribution.
- Continue to use job fairs and trade shows to promote job opportunities within our agency.

Actions Taken

- *As noted under above goals.*

5. Retention and Promotion

Strategy

- To provide resources for employees to encourage their career development in state services. The Board will provide opportunities for training to employees for developing proficiency, enhancing skills and encouraging development in areas for potential advancement. Staff shall be eligible for mandated and required training and these suggestions are frequently discussed during performance reviews to meet individual goals for upcoming year. Suggested training opportunities will be considered by management for approval.

Actions Taken

- *Although training and development plans are not used, opportunities were presented to all staff and discussed via staff meetings and individual review discussions. Managers will also utilize employee retention ideas that include offering flexible schedules, having open door policies, listening respectfully and responding quickly to problems. Managers will be evaluated on their compliance with the agency's AA objectives by rating them on their annual performance evaluation.*

6. Increase knowledge and skills of the Board's management staff in applying Affirmative Action and EEO principles and in promoting a diverse workforce environment.

Strategy

- Ensure that the Executive Director understands the Board's affirmative action goals and responsibilities and assert their role in achieving these goals.
- Support managers' attendance at equal opportunity, affirmative action, and other diversity-related activities or training activities.
- Maintain management performance appraisal reviews used to evaluate managers on their effectiveness in achieving affirmative action objectives.

Actions Taken

- *The Executive Director worked with the HR Consultant to discuss content of trainings attended by Consultant.*
- *Executive Director and Manager reviewed AA Plan during recruitments.*

V. July 1 2012 – June 30 2015

A. B. Goals for Affirmative Action Program & Strategies and Timelines for Achieving Goals

Note: Some goals may be completed before start of biennium.

1. Objective: Ensure relevancy, accuracy, availability, understanding of, and achievement of Oregon Mortuary and Cemetery Board Affirmative Action Plan by staff, board members, and agency stakeholders.

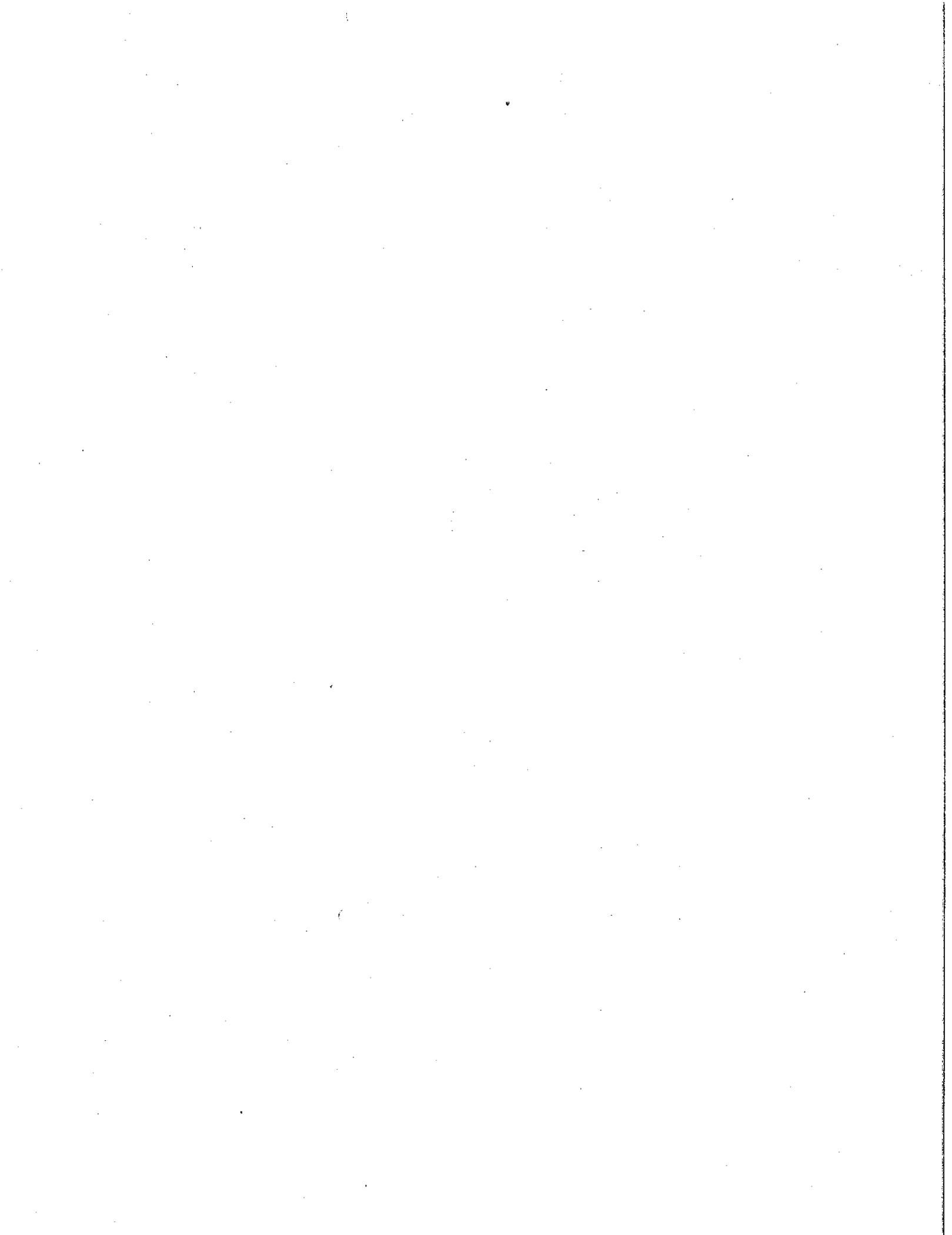
Specific Goals (to be completed by end of biennium)

- Ensure all staff members have reviewed and understand content and purpose of AA plan.
- The ED will work with HR Consultant to review green bar report for the Board and develop specific targets given agency size and current composition.
- The ED will report progress toward goals to the board as a discussion item in general session at least once per year.
- At staff meetings, there will be an ongoing agenda item to discuss as a team any differences being perceived between plan and practice, and how any learning (workshops, etc) can be best applied to both plan and practice, as appropriate.
- Work with any new hires to assess the physical work environment, standard equipment and practices for equal access. Identify potential barriers they might perceive, and develop strategies and objectives for addressing barriers.
- The affirmative action plan—or at least key components--will be made available on the Board website.
- Actively engage in outreach efforts to recruit qualified persons from diverse backgrounds and from underrepresented classes.

2. Objective: Demonstrate the value of diversity in both action and communication.

Specific Goals (to be completed by end of biennium)

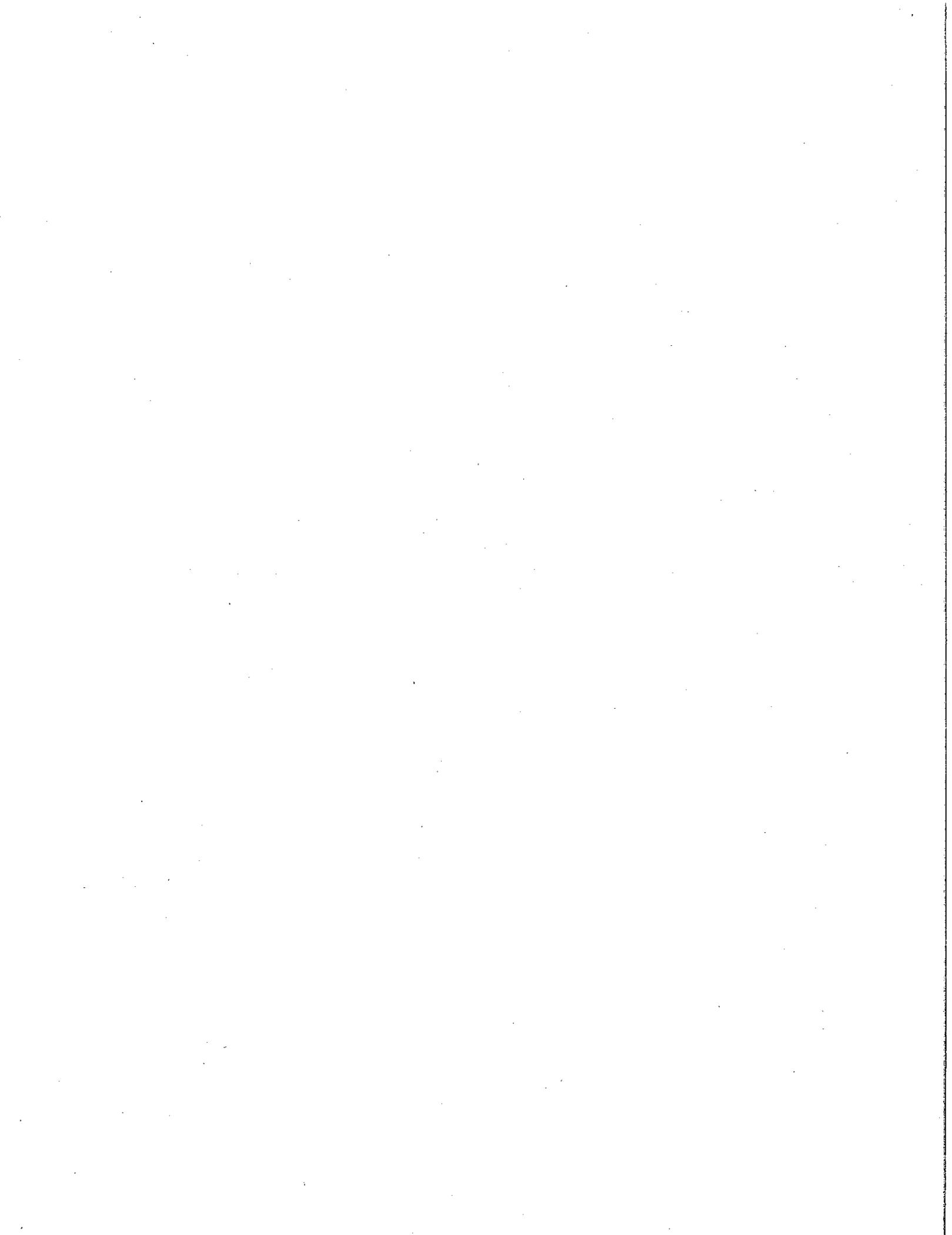
- Promote celebration of events important to diverse cultures throughout the year both at a staff operational level, as well as recognized in board meetings in general session.
- Schedule at least one training for board and staff members focused on identifying and valuing the many facets of diversity (eg, cultural, ethnic, learning style, etc).
- Schedule at least one meeting with board members and stakeholders that explores access and diversity within the industries and services regulated by the board, as well as in the overall population served by those industries.



VI. Appendix A

A. Agency's Policy Documentation

1. ADA and Reasonable Accommodation Policy
2. Discrimination and Harassment Free Workplace - (*Statewide Policy No. 50.010.01*)
3. Employee and Training Policy
4. Veterans Preference in Employment



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.

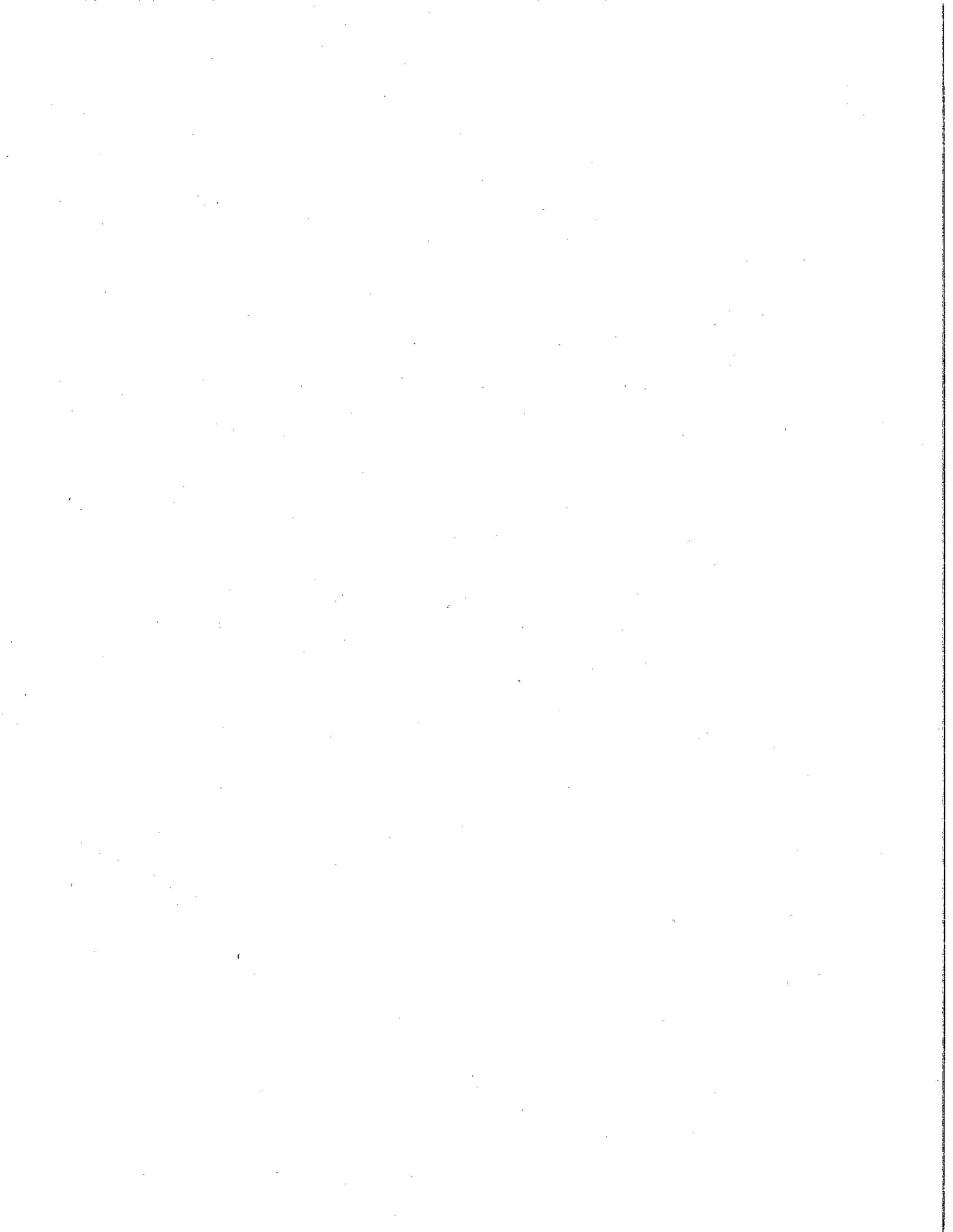
A reasonable accommodation does not include lowering production standards, promoting or assigning an employee to a higher-paying job, creating a position or reassigning essential functions to another worker.

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.



Statewide Policy

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.

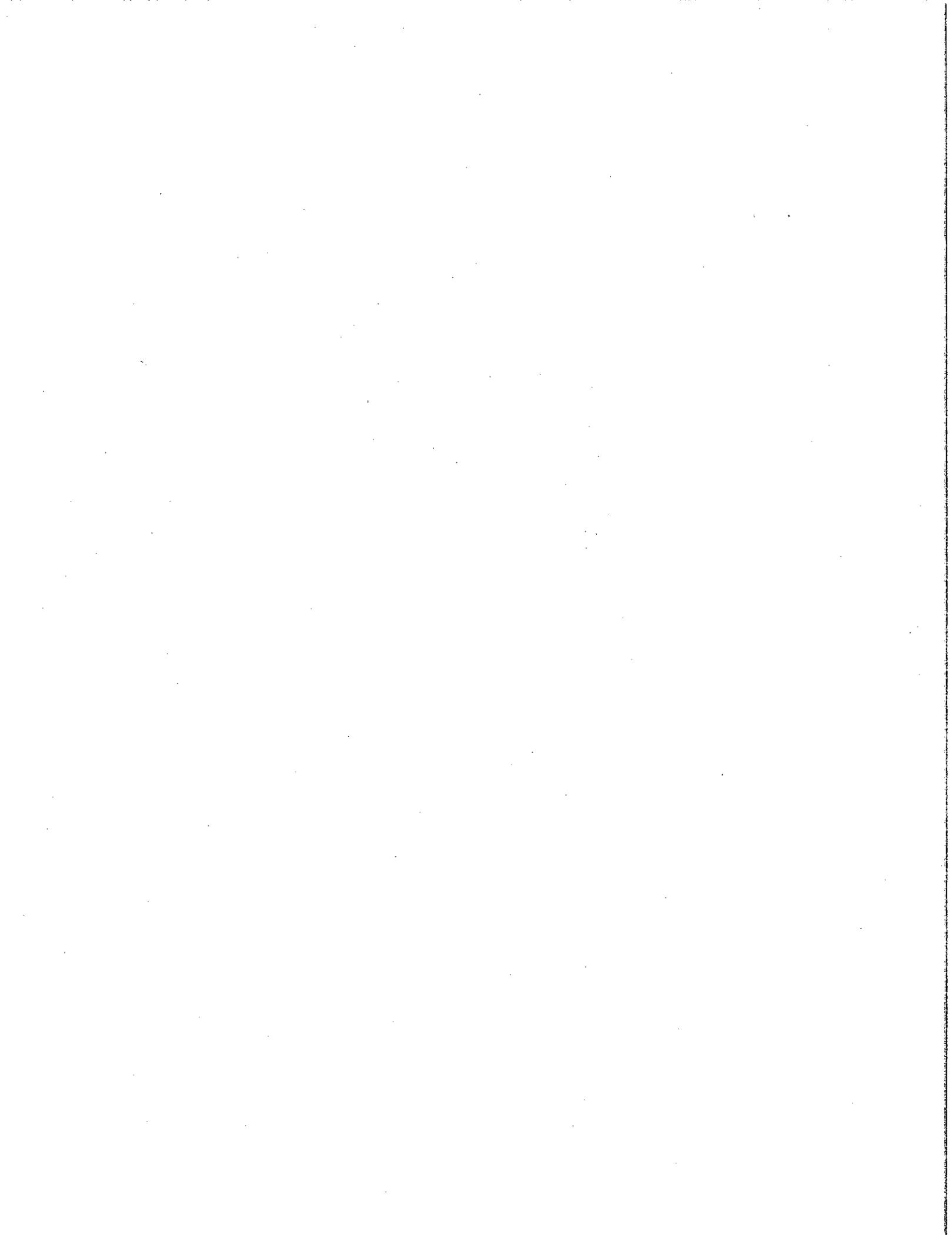
(i) Signed acknowledgements are kept on file at the agency, board or commission.

(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%



EMPLOYEE TRAINING AND EDUCATION POLICY

Approved by: *Oregon Mortuary & Cemetery Board*

Date: November 25th, 2008

Applicability

This policy applies to all employees of Oregon Mortuary & Cemetery Board (Board).

Definitions

Elective Training

Means training an employee voluntarily takes to enhance or improve the effectiveness of employee performance in the current position.

Mandated Training

Means training required by law, regulation, or to maintain a license or certificate required by the position.

Required Training

Means training required by the Board, such as new employee orientation, or to update or to add skills as the job evolves, or to increase employee awareness of legal or policy issues (e.g., ADA, sexual harassment, etc.)

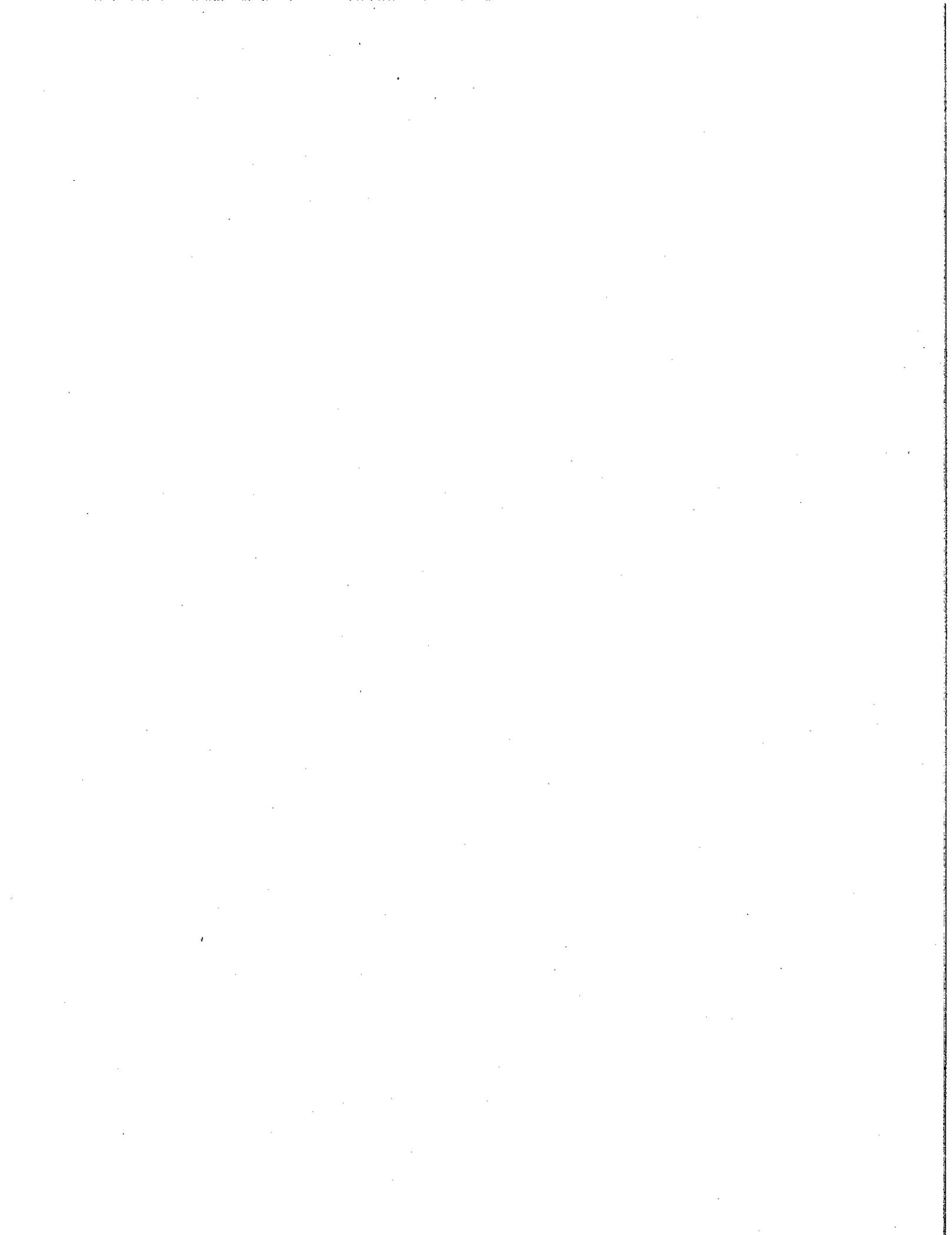
Policy

It is the policy of the Board to provide resources for employees to encourage their career development in state service, as is reasonably practicable to do. The Board remains committed to maintaining a team-based organization with a positive work environment through equitable employee training and development opportunities. To accomplish this mission, the Board may provide opportunities for training to employees for developing proficiency, enhancing skills and encouraging development in areas for potential advancement.

All staff shall be eligible for mandated and required training. Only permanent staff shall be eligible for elective training. The selection of an employee to attend training shall follow equal opportunity guidelines. Any employee may request training and be considered for approval with determinations made on a case-by-case basis. Approval for training and partial or full support of training is a management decision that may be delegated to the Board.

Approval Criteria for Training and Education requests:

- Availability of budgeted funds;
- Alignment with agency and position priorities and goals;
- Ability to meet operating requirements while employee attends training;
- Training is needed to improve effectiveness in the employee's present job;
- Training is needed because of changes and/or additions to the employees job duties;
- Training is part of established career development goals that will benefit the agency.



VETERANS PREFERENCE IN EMPLOYMENT

Department of Administrative Services, Human Resource Services Division

Division 40

Filling Positions 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 Plan and state and federal laws to:
 - (i) Promote good faith efforts to achieve established affirmative action goals, which include persons with disabilities; and
 - (ii) Take proactive steps to develop diverse applicant pools for position vacancies and assess the diversity of each applicant pool prior to closing a job announcement.
 - (b) The Department of Administrative Services shall:
 - (A) Maintain an automated affirmative action tracking system which uses a uniform methodology for communicating affirmative action goals for each state agency. The system shall also communicate goals for hiring persons with disabilities as required by state and federal law;
 - (B) Produce periodic reports showing hiring opportunities and each agency's progress toward achieving established affirmative action goals 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 designated office within 30 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 steps in outreach strategies which generally include targeted newspapers, professional organizations, employee networks, community organizations, and resume banks;

- (4) The statewide automated affirmative action system establishes goals for each equal employment opportunity category and ethnic group for each state agency;
- (5) Nothing in this rule precludes 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, ORS 240.145 & ORS 240.250

Stats. Implemented: ORS 240.306 & ORS 243.305

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

VII. Appendix B

- 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

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/qanda_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.

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.

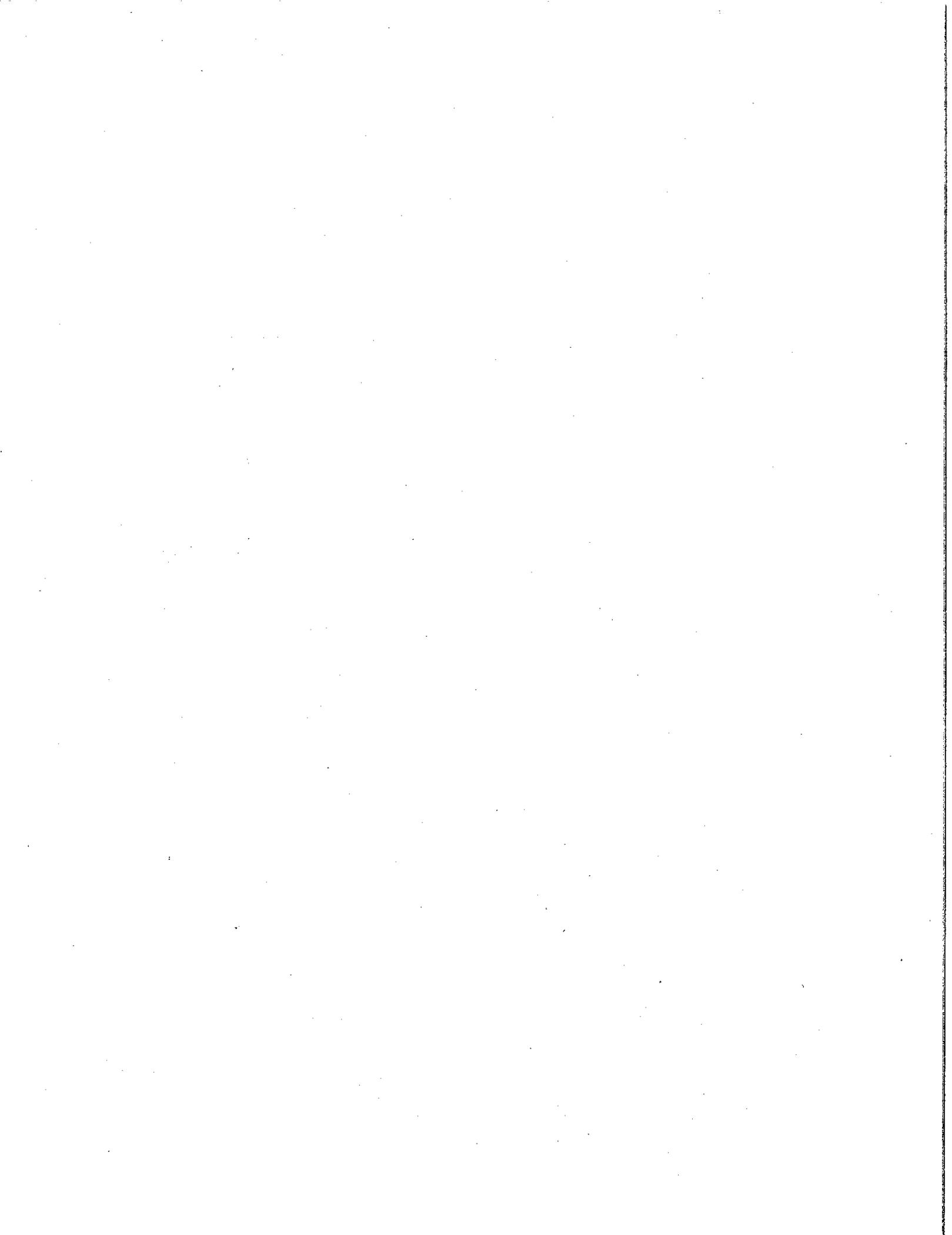
Examples of participation include:

- 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.

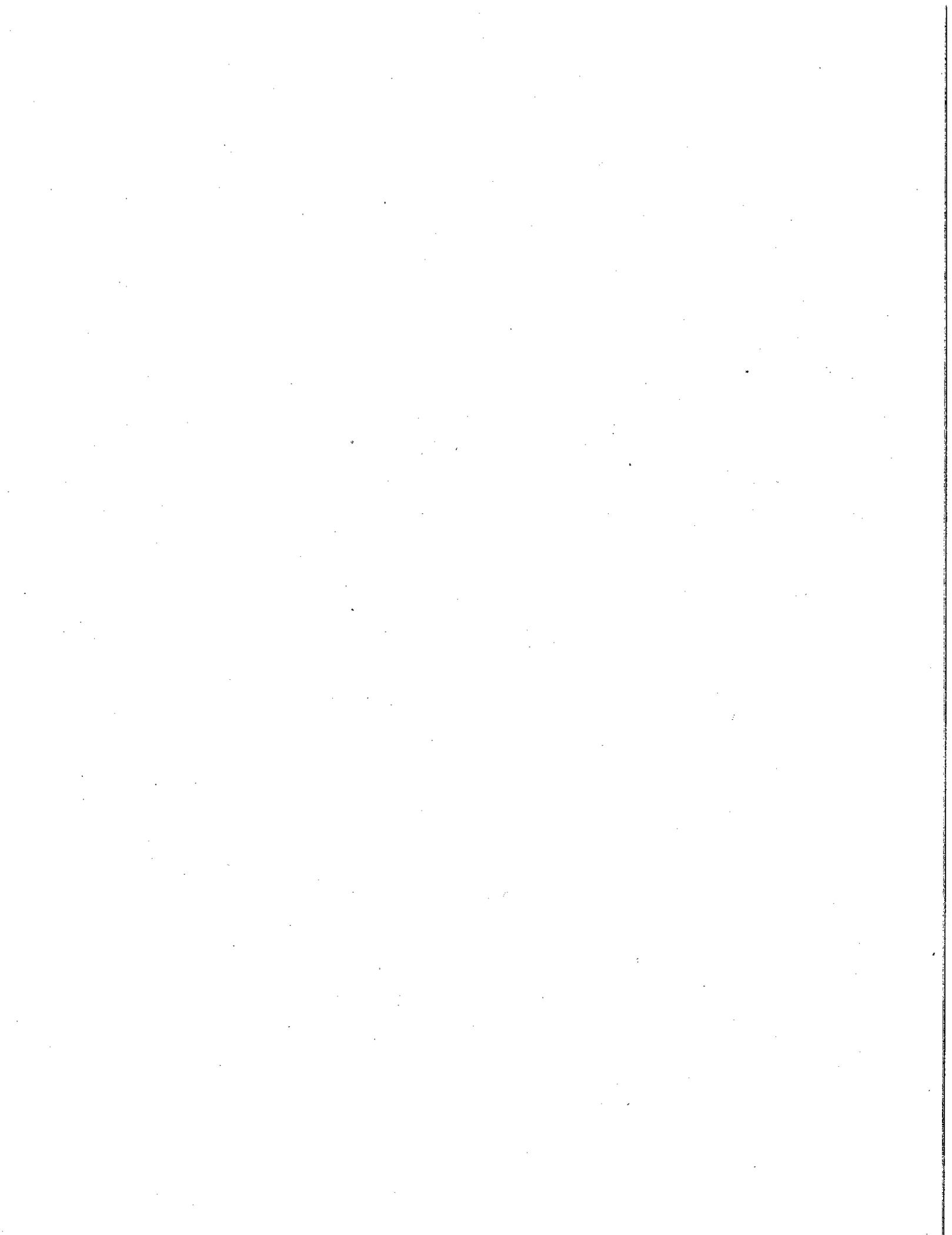
Both victim and the harasser can be either a woman or a man, and the victim and harasser can be the same sex.

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

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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.