

**AFFIRMATIVE ACTION PLAN**



# **Oregon Physical Therapist Licensing Board**

Jim Heider, Executive Director  
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Portland, OR 97232  
971-673-0203

Affirmative Action Plan (Amended)  
July 1, 2011 – June 30, 2013

*"We hold these truths to be self-evident, that all People\* are created equal,  
that they are endowed by their Creator with certain unalienable Rights,  
that among these are Life, Liberty, and the Pursuit of Happiness."*

*-- U.S. Declaration of Independence*



# Oregon

John A. Kitzhaber, MD, Governor

Physical Therapist Licensing Board

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## COVER LETTER/STATEMENT

Mr. Frank Garcia, Jr., M.A.  
Governor's Office- Senior Policy Advisor  
Director, Diversity & Inclusion  
Affirmative Action  
254 State Capitol  
Salem, OR 97301-4047

Dear Mr. Garcia:

As the Executive Director of the Oregon Physical Therapist Licensing Board (Board), I recognize and appreciate the importance and the benefit of Affirmative Action. I have always been committed to the promotion of best practices in support of equal employment opportunity and to achieve the full and fair contribution of minorities, women, and people with disabilities, older persons, and all protected classes found to be underutilized in the workforce.

Although the Board is very small, with only three staff members and no projected turnover or adds to staff during the 2011-2013 biennium, the Board realizes that affirmative action; diversity and inclusion go beyond just the employment realm. The Board consciously considers these elements of affirmative action when slating new board members, and in dealings with vendors and contract workers.

To meet the objectives of the Board's Affirmative Action and Equal Employment Opportunity initiative, the Board has prepared an Affirmative Action Plan and policy statement that will serve to eliminate and prevent discrimination of all protected classes.

As Board Director and Affirmative Action Officer, I pledge to uphold and support compliance with the Board's Affirmative Action Plan and Policy, to ensure equality, to avoid discrimination, and to promote a workforce that is representative of the population as a whole.

Thank you for your continued direction and support.

Regards,

James D. Heider, Executive Director

08.09.2011

Date



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## I.

### DESCRIPTION OF AGENCY

#### A. Mission and Objectives

The Oregon Physical Therapist Licensing Board (Board) is accountable for only one program, physical therapy licensure and regulation. The Board's mission is to protect the public by regulating the practice of physical therapy and insuring the safe, competent and ethical delivery of physical therapy services. The Board was created in 1971 and authorized by ORS Chapter 688 to oversee its mission. The Board credentials and licenses all Physical Therapists and Physical Therapist Assistants in the state. The Board:

- Establishes education, training, examination, licensing, renewal and continuing competency criteria and requirements.
- Reviews, approves or denies initial and renewal applications.
- Reviews, approves and audits continuing education for licensees.
- Acts as a resource to licensees for scope of practice questions or concerns.
- Acts as a resource to interested parties and the public relative to the practice of physical therapy.
- Provides public outreach, providing education and information to all regions of the State.
- Promulgates administrative rules to further define, clarify and enforce statutory authority.
- Receives complaints, determines jurisdictional authority and initiates investigations, which could result in disciplinary action ranging from a civil penalty to revocation of license; or issuance of a non-disciplinary action in the form of a Confidential Advisory Letter.

#### **B. Agency Executive Director:**

James D. Heider, Oregon Physical Therapist Licensing Board  
800 NE Oregon Street, Suite 407 Portland, OR 97232 PH: 971.6763.0203 [james.heider@state.or.us](mailto:james.heider@state.or.us)

#### **C. Governor's Policy Advisor:**

Michael Bonetto, Governor's Office, Oregon Health Authority  
500 Summer Street NE E-20 Ph: 503-378-3111 [mike.bonetto@state.or.us](mailto:mike.bonetto@state.or.us)

#### **D. Agency Affirmative Action Representative:**

James D. Heider, Oregon Physical Therapist Licensing Board  
800 NE Oregon Street, Suite 407 Portland, OR 97232 PH: 971.6763.0203 [james.heider@state.or.us](mailto:james.heider@state.or.us)

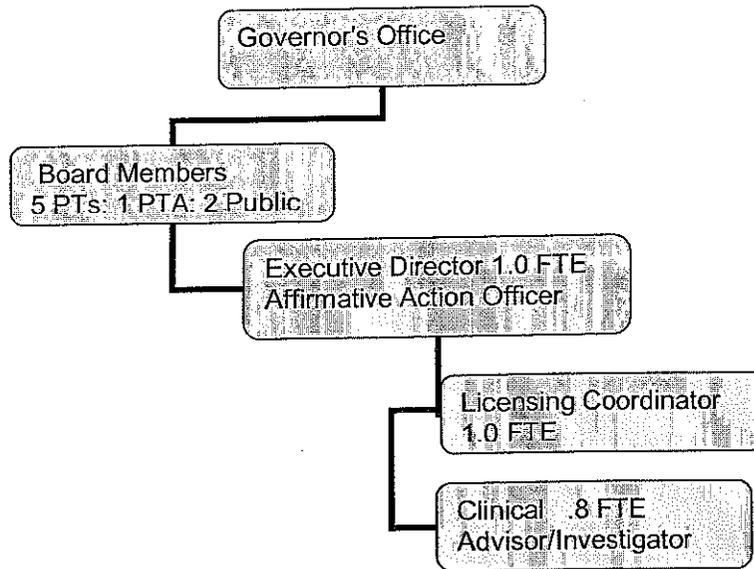
#### **Federal and State EEO job categories:**

**1.0 FTE Director:** Management, PEM F - hired and works for the Board, serves at the pleasure of the Governor. Protective classifications, age, sexual orientation.

**1.0 FTE Licensing Coordinator:** Administrative, Administrative Specialist II, hired and works for the Board, serves at the pleasure of the Board. Protective classifications; age, religion, sexual orientation.

**.8 FTE Clinical Advisor/Investigator:** Professional, Executive Service, hired and works for the Board, serves at the pleasure of the Board. Protective classifications; age, gender, religion.

## E. Organizational Chart



## II.

## AFFIRMATIVE ACTION PLAN

### A. Agency Affirmative Action Policy Statement

#### Introduction

The purpose of this plan is to update and maintain the previously initiated affirmative action program for the Oregon Physical Therapist Licensing Board (Board) in keeping with the directive of the Governor, state and federal laws and regulations, executive orders of the President of the US concerning affirmative action, discrimination/non-discrimination guidelines appropriate under the Civil Rights Acts, equal employment opportunity (EEO) policies, and the Americans with Disabilities Act.

#### Policy Statement

The Oregon Physical Therapist Licensing Board will not tolerate discrimination or harassment on the basis of age, color, marital status, mental or physical disability, national origin, race, religion, sex, sexual orientation, or any reason prohibited by state or federal statute. Nor shall the Board do business with any vendor/provider for the State of Oregon who discriminates or harasses in the above-described manner. All employment and personnel actions of the Board, all licensing and disciplinary actions, all outsourcing and contracts shall be administered according to this policy.

All staff of the Board shall adhere to the Affirmative Action Policy and Plan. Management staff, in particular, shall assure that the intent as well as the requirements are implemented in all employee relationships and personnel practices. In addition, it is the duty of every employee of the Board to create a job environment atmosphere which is conducive to non-discrimination policies and free of any form of discrimination or harassment. The application of this policy is the individual responsibility of all administrative and professional staff, and each shall be evaluated on his/her performance in achieving this affirmative action policy as well as in other job performance criteria. The Affirmative Action Plan is posted on the Board's website and a hard copy is available at the Board office. The Affirmative Action Policy Statement is posted on the bulletin board where all other required posters are located. Failure to meet Affirmative Action standards is subject to disciplinary action.

All employees shall be advised of the procedure for lodging a discrimination/harassment complaint, and all employees with concerns of any kind related to affirmative action shall be encouraged to bring them to the attention of the Executive Director. Internal procedures supporting the statewide policy is located in this plan.

It is further the policy of the Board to establish and maintain this program of affirmative action to provide for a method of eliminating any effects of past or present discrimination, intended or unintended, which may be indicated by analysis of present employment patterns, practices, or policies.

#### Duration of Plan

This revision of the Board's Affirmative Action Plan is effective July 1, 2011 and shall be evaluated annually or as needed when statewide changes occur.

The Board's Affirmative Action Representative is James D. Heider, Executive Director, 971.673.0203, [james.heidert@state.or.us](mailto:james.heidert@state.or.us).

## **B. Training, Education and Development Plan and Schedule of:**

### **1. Employees Staff**

- a. Train and inform current employees upon acceptance of, and changes to, the existing AAP at a scheduled staff meeting. Share copy of plan at New Employee Orientation highlighting their rights and responsibilities under the Board's affirmative action plan and other Board policies to eliminate discrimination or harassment on the basis of age, color, marital status, mental or physical disability, national origin, race, religion, sex, sexual orientation, or any reason prohibited by state or federal statute.
- b. Managers and employees will attend trainings in the areas of AA/EEO, Valuing Diversity and Harassment. Training may be in the form of formal classes, sharing of information from the Governor's Affirmative Action Office, attending Affirmative Action meetings and/or one-on-one discussions. All employees will be evaluated annually for their adherence to this Affirmative Action Plan.
- c. The Board has no short term or long range plans for staff changes over the next five to seven plan years. However emergency succession plans and training are outlined in the Boards Business Continuity Plan.
- d. 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. 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. Staff shall be eligible for mandated and required training. Suggested training opportunities will be considered by management.
- e. The training plan is designed to reinforce the mission and values of the Board. Employees are given an opportunity to participate in the following training:
  - a. Developing Job Skills – opportunities to developing proficiency, enhancing skills and encouraging development in areas for potential advancement.
  - b. Increase staff and board member knowledge and awareness of affirmative action through review and discussion of the Affirmative Action Plan.
- f. Train and inform managers and employees of their rights and responsibilities under the policy.
- g. Make the complete Affirmative Action Plan available and accessible to all board members, employees, vendors and contractors.
- h. New employees are provided the Board's Affirmative Action and Equal Employment Opportunity policy and plan and encouraged to review and discuss questions or concerns.
- i. The Board will continue to educate managers and staff and focus on developing a work environment that is attractive to a diverse pool of applicants, retain employees and is accepting and respectful of employee's differences.
- j. In selection of new Board members, the Board will partner with the Governor's Office of Executive Appoints and promote increase diversity in the slate of candidates to fill vacant Board positions.
- k. The Board posts a copy of the Affirmative Action and Equal Employment Opportunity policy and plan on its web site and a copy is available to each new employee as part of their orientation.
- l. The Board's recruitment announcements and advertisements identify the Agency as an Equal Opportunity/Affirmative Action employer and include: "The Oregon Physical Therapist Licensing Board as an equal opportunity, affirmative action employer committed to work force diversity".

2. **Board Members:** Provide new Board Members with a copy of the Affirmative Action Plan or direct them to the Board's website where the Plan is available for public viewing and invite them to participate in the Board's cultural diversity training sessions.
3. **Providers and Volunteers:** The Board does not have any Providers or Volunteers.
4. **Contractors/Vendors:** When contracts are established or renewed, the Board provides vendors with a copy of the Affirmative Action Plan or directs them to the Board's website where the Plan is available.

### C. Programs

The Board uses a number of approaches in executing a diversity program and bringing new people into the work force, creating opportunities for existing employees, and promoting an environment that is welcoming, tolerant and supportive. Some of the initiatives and activities include:

- Communicating to all staff in a variety of ways the importance of diversity;
- Asking staff to focus on the organization and provide suggestions to improve our diversity.
- Making presentations to community organizations like the state Association meetings and conferences and higher educational facilities about the Board creating interest in our jobs;
- Drawing upon sources to advertise recruitments such as local diverse newspapers, and increase awareness of openings by contacting minority and community organizations.
- Promoting a respectful workplace by offering training on diversity awareness, improving communications, conflict management, and an open atmosphere to talk about problems and ideas;
- Creating a welcoming environment by fostering an acceptance of people's differences and treating everyone with respect and professionalism whether they are staff or customer;
- Posting notices and forwarding e-mails that talk about cultural activities and other information that supports diversity and tolerance;
- Displaying the agency's commitment to the Affirmative Action Plan by publicizing it on their website and having hard copies available at the Board office. Note: There is No Internship program

### D. Update: Executive Order 08-18

#### 1. Cultural Competency Assessment and Implementation Services

As part of the Board's 2011-2013 Affirmative Action Plan, the agency will increase multicultural training through staff meetings and strive to seek diversity and cultural competency within our staff and Board Members. We will seek additional training occur in the 2011-13 biennium.

The Board with a staff of 2.80 does not plan implementing a Cultural Competency Assessment at this time and with existing budget limitation. We recognize that a culturally competent organization is able to use the policies, people and resources it has to systematically anticipate, recognize and respond to varying expectations of customers and employees. A culturally competent organization values individuals for their differences instead of expecting individuals to adapt to the organizations culture. The Board will continue to benefit from working toward having cultural competence.

The Board will plan to enhance cultural competence in the 2011-2013 Biennium. Implementation results in:

- People of diverse backgrounds and experience effectively working together;
- People understanding and appreciating one another's differences;

- People effectively communicating with and being respectful of those differences; and

The plan will focus on:

- Licensees understanding and appreciating the value of the Board's requirements.
- Greater awareness among the members of the Board's workforce;
- Enhance effective communication and utilizing differing strengths;
- Identifying training events that all employees will enjoy and participate in; and
- An increased respect for and understanding of diverse cultures within the workforce.

The Board will benefit by:

- Utilizing unique strengths and perspectives to solve problems and enrich the work environment;
- Creating a climate of cultural awareness and a welcoming environment that honors diversity;
- Making a stronger and more cohesive workforce rallied together by a common goal of success;
- Having a greater understanding of the world in which we work and the customers we serve; and
- Preventing and overcoming misunderstandings, lost opportunities and conflict.

**2. Statewide Exit Interview Survey:** The Board will offer exit interviews to departing staff and follow-up with the Director on any concerns or trends. The Board will ensure departing employees are directed to go to the State link for the exit interview survey monkey required by the Governor's Affirmative Action Office.

**3. Performance Evaluations of all Management Personnel:** The Board remains committed to compliance with the Governor's executive orders requiring the inclusion of diversity and affirmative action requirements in position descriptions and annual performance evaluations. Performance accountability in the areas of Affirmation Action and Diversity will be reviewed during annual evaluations.

**E. Status of contracts to Minority Businesses (ORS 659A.015):**

As a smaller Board, the Board has only one contract pending that exceeds \$5,000 and that contract is with a female owned company. The Board also uses a minority and female owned business/supplier for furniture replacement and storage needs, but seldom would purchases exceed \$5,000.

### III. ROLES FOR IMPLEMENTATION OF AFFIRMATIVE ACTION PLAN

#### A. Responsibilities and Accountabilities

##### 1. Director

- a. Foster and promote to employees the importance of a diverse and discrimination and harassment free workplace. Participate in cultural diversity trainings, orientations, and be an example of cultural sensitivity.
  - b. Review equal employment opportunities, evaluate affirmative action and diverse work environment progress, and identify problems. Approve strategies and timetables for meeting goals.
  - c. Annual performance reviews will include ratings on the Director's support and effectiveness of the agency's Affirmative Action Plan.
  - d. Hold professionals and staff accountable for participating in and promoting affirmative action activities. The effectiveness of staff in participating in affirmative action activities, goals and objectives of the Board will be included in their annual performance appraisals.
- ORS 659.025(1) states:

*"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, handicap 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. Managers and Supervisors: *The Director is the only manager/supervisor so the same information above applies here.*

- a. Foster and promote to employees the importance of a diverse and discrimination and harassment free workplace.
- b. Staff will receive an orientation on the Board's affirmative action goals, understand their own responsibilities, and evaluate how well they are achieving the Board's affirmative action goals and objectives. They will attend cultural competency training, attend orientations, and promote cultural awareness.
- c. In undertaking these evaluations, the Director will consider how well the staff member fosters and promotes a diverse workforce, how well s/he promotes the affirmative action goals and objectives, and that his/her staff are knowledgeable about the Board policies and procedures that encourage a welcoming environment.
- d. Inform applicants for vacant positions that the Board is an equal employment employer committed to workforce diversity. Have a copy of the Board's Affirmative Action Plan available for applicants to review on request.
- e. Work with the Human Resources Section to utilize State of Oregon procedures and rules in filling vacancies.
- f. Attend equal opportunity, affirmative action and other diversity-related training in order to be informed of current issues.
- g. Display the Board's Affirmative Action Policy Statement and have available a hard copy of the Affirmative Action Plan in the office. An electronic copy of the Board's Affirmative Action Policy Statement will also be maintained on the Board website.
- h. Act in a timely manner if they become aware of any Board employee engaging in any type of

- harassment.
- i. Periodically report to employees on the Board's progress in attaining its' affirmative action goals and on other affirmative action matters.
  - j. Be held accountable for promoting affirmative action on their annual performance evaluations.

### 3. Affirmative Action Representative

- a. *The Executive Director is the Affirmative Action Officer.* The Director promotes a diverse workforce environment and helps attain the AA goals of the Board; encourage the retention of existing employees and create new learning opportunities for them.
- b. The Executive Director reports on the AA plan with one-on-one staff meetings; obtains support for changes to reach goals/objectives; responds to AA issues, attends AA meetings.
- c. Emphasize the Board's support of equal employment opportunity, affirmative action and the benefits of a diverse workforce.
- d. Place the statement "The Oregon Physical Therapist Licensing Board is an equal opportunity, affirmative action employer committed to work force diversity" on every announcement and in every advertisement.
- e. If hiring using a team approach, promote the use of a diverse interview panels including, when possible, one member who works outside the hiring section/division and one member from a protected class.
- f. Research training opportunities and topics for presentation to all staff. Actively participate in those trainings.
- g. Have hard copies and/or electronic copies of the Board's Affirmative Action Policy Statement and Plan available for review by all staff. Make hard or electronic copies available to applicants for employment on request. Recommend changes to the Plan and update it as required. Compile statistics and keep management informed of the Board's AA status during management meetings. Solicit comments how to assist in promoting affirmative action activities and how best to create a more diverse workforce.
- h. Discuss the State of Board's Affirmative Action Plan and Policy in New Employee Orientation. Make the orientation as welcoming as possible. Include in the discussion:
  - Expectations surrounding a respectful workplace, what it means to agency and employee.
  - Commitment to supporting the personal and professional growth of our employees.
  - Encourage to contribute and participate in agency activities to agency to meet objectives.
  - Keep doors always open for questions and concerns.
- i. Train and inform employees at New Employee Orientation as to their rights and responsibilities under the Board's affirmative action policy and other Board policies to eliminate any harassment based on race, sex, age, religion, sexual orientation, or disability.
- j. Respond to and investigate complaints. Enforce policies and procedures.
- k. Offer the Statewide Exit Interview Survey to all terminated employees. Analyze for trends. If it appears that discrimination or harassment was a factor in employee separation, conduct an investigation and take appropriate action.
- l. Evaluate revised and new policies for possible adverse impact on the Board's commitment to affirmative action and equal employment opportunities.
- m. Serve as a liaison between the Board, the state and federal agencies that protect civil rights.

#### IV.

JULY 1, 2008 - JUNE 30, 2010

##### A. Accomplishments

- a. There has been no hiring, recruitment or promotions. If there are any they will be conducted in a way that will provide the most diverse candidate pool possible. Every candidate that met the qualifications and rated highest on the scoring criteria would be offered an interview. If interviews are conducted by panels when possible the Board will use one panel member from outside the hiring unit and one person from a protected classification.
- b. The Director periodically attended 2010 AA meetings when possible, or was represented by fellow Directors from the group of PSOB Suite 407 health program directors, the Director prepared policies and plans and reports to the Board. The Director also attended several trainings in 2010 and plans to in 2011.
- c. If there are any announcements we will attempt to reach a diverse audience by placing them on the state's job page, and on the Board's website.
- d. The Board would make prospective employees feel welcome at the Board by placing emphasis on creating a comfortable interview atmosphere. The interview team would introduce themselves, have water, paper and pencils available, give plenty of time to the candidate for organizing their thoughts, etc.
- e. Management staff is proactive in communicating the importance of diversity with the staff, and includes diversity discussions in periodic one to one meetings. Note: With such a small staff our meetings are informal and staff talks daily. The Affirmative Action Representative is the Director who attends training to learn more about fostering cultural competency and multi-cultural organizational development. Management staff makes an effort to communicate cultural events throughout the area.
- f. Even though there are only two clearly defined generations represented by Board staff, the Director attended the Generations in the Workplace which provided insights and tips that increased awareness of how different people can work toward common goals. Other insight will aid the Director in the interaction with new graduates and licensees and the public.
- g. The Director served on a national healthcare committee for the Federation of State Boards of Physical Therapy and was instrumental in the development of a national ADA model for all physical therapist jurisdictions to consider for adoption. This model assures equitable access to the National Physical Therapist Examination, by those with qualifying disabilities. This exam that is the gateway to licensure in all States.
- h. The Director currently serves on a national healthcare committee title Foreign Education Standards Committee. The mission of this group is to design and maintain model standards and practices by which foreign educated therapists can be accessed and made eligible for licensure in the United States.

##### B. Progress

Although small, cross-training and career developmental opportunities are encouraged. In fact because the staff is small each staff members know the basics of each other's jobs. The goal is to retain employees by keeping them challenged and giving them room for growth.

The Board continues to strive to create a culturally diverse staff though there is only 2.8 FTE and no changes in staff. Since April 1, 2003, there has been no recruitment. There has been no turnover.

The Boards strategy for retaining our employees is simple:

- Value and empower employees and urge them to participate in decisions that affect their work;

- Treat employees with respect and dignity;
- Show employees the benefits of working for the State of Oregon from pay to health and welfare benefits to location.
- Support 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;
- Communicate well and often. Let people know what is happening in the organization;
- Make wise hiring decisions and continually evaluate our hiring practices;
- Hold people accountable for adhering to our respectful workplace and harassment-free policy;
- Lead by example; and,
- Modify work schedules to accommodate religious holidays.

The agency's strength lies in its Board and Management leadership, its dedicated employees and its professional licensees. We are a professional organization that lives with high expectations every day. Some challenges faced:

- Learn to communicate better.
- Keep positive attitudes – the pay cuts and furloughs have had a negative effect on our employees. Helping employees feel valued is difficult.
- Lead by example.

V.

JULY 1, 2011 - JUNE 30, 2013

**A. Goals for Affirmative Action Plan / Programs**

1. The Board will continue to provide information and opportunities for staff to participate in diversity training and multi-cultural events. The Board will continue to develop strategies to recruit, retain and promote a diverse staff. The Board recognizes the value of individual and cultural difference and creates a work environment where talents and abilities are valued.
2. Management staff is proactive in communicating the importance of diversity in staff meetings, and includes diversity discussions in communications with staff. The Board utilizes diversity within the workforce by incorporating diverse perspectives into business decisions. Management will also continue to attend required training to participate in the development and implementation of a program that fosters cultural competency and multi-cultural organizational development. Management staff will continue to make greater effort to communicate cultural events throughout the area.
3. HR is incorporated in the role of the Director and supported by the Board, will continue to educate and guide Managers in creating applicant pools and interviewing processes that are welcoming to all people, and helping them understand the benefits of a diverse workforce and supporting the Affirmative Action Plan. The Director and Board will actively participating in recruitment and selection activities and include AA performance measures on evaluations.
4. All managers will support activities that develop a work environment that is attractive to a diverse pool of applicants, retains employees, and is accepting and respectful of employees' differences. A welcoming environment will be created a number of ways - by sharing e-mail activity notices from the Governor's Affirmative Action Office, posting posters and flyers in the office common area, encouraging employees to share their thoughts and ideas, responding to issues quickly and efficiently, etc. Respectful workplace behaviors will be expected and enforced. Expectations will be presented using formal training, written policies and procedures, and/or one-on-one counseling.
5. 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.

**B. Strategies and time lines for achieving our goals**

Summer 2011: The Director will present the 2011-2013 Amended Affirmative Action Plan to the two employees one to one and to the Board at its August 2011 Board meeting for review and ratification.

Winter 2011: The Director, in the role as HR Manager will request employee's assistance in identifying ways to be more welcoming and meet the goals of this plan.

Spring 2012: The Director as HR Manager will update the Board on the Board's affirmative action and recruitment statistics and discuss how to increase diversity.

Ongoing: The Director will post recruitments on the state's E-recruit system and other diversity websites and publications and continually monitor the welcoming environment.

Ongoing: The director will listen and take action on our employee's feedback for creating a more welcoming environment; continue to keep cultural diversity in the forefront of all employees by sending out information sent to us by the Governor's Affirmative Action Office and showing management's commitment to cultural diversity by example of patience, tolerance and respect.

Ongoing: The Director will encourage staff to sign up for the Cultural-Health E-Newsletter. The E-Newsletter is designed to update members on various local multicultural health issues.

Ongoing: The Director will continue to meet with staff to discuss effective options for outreach to students and those interested in Physical Therapy as a profession.

Ongoing: The Director will continue his participation in the national healthcare committee on setting standards for foreign educated therapists interested in seeking licensure in the United States.

VI.

APPENDIX A – AGENCY’S POLICY DOCUMENTATION

<b>A. ADA and Reasonable Accommodation Employment</b>	
Approved by: <i>Oregon Physical Therapist Licensing Board</i> Policy No. 50.020.10	Date: September 2010

**Applicability:** This policy applies to all applicants, board members, employees, and contractors of the Physical Therapist Licensing Board (Board).

**Definitions:**

- Reasonable Accommodation* Is "any modification or adjustment to a job or the work environment that will enable a qualified applicant or employee with a disability to perform essential job functions. Reasonable accommodation also includes adjustments to assure that a qualified individual with a disability has the same rights and privileges in employment as non-disabled employees."
- Person With a Disability* A person who has a physical or mental impairment which substantially limits one or more major life activities, has a record of such impairment or is regarded as having such an impairment.
- Undue Hardship* Significant difficulty, expense, or impact on the agency when considered in light of a number of factors that include the nature and cost of the accommodation in relation to the size, resources, and structure of the agency.
- ADA Coordinator* The Board Executive Director is designated as the ADA Coordinator pursuant to part 35.107 of the American’s with Disabilities Act.

**Policy:** It is the policy of the Physical Therapist Licensing Board (Board) to employ and advance in employment qualified individuals with disabilities. The Board shall make reasonable accommodations to the known physical or mental limitations of a participating member of the public, a consumer of agency services, or an agency job applicant or employee, unless to do so would create an undue hardship on the agency, as provided under the Americans with Disabilities Act (ADA).

The Board will make every effort to furnish appropriate and necessary auxiliary aids to ensure that individuals with disabilities will have equal opportunities to participate in activities and to receive program services. In compliance with ADA guidelines, the Board will provide special materials, services or assistance to individuals with a disability upon sufficient notice to the board office. The Oregon Relay Service – 711 – is available to assist individuals with speech or hearing disabilities. In addition, the Speech to Speech Relay Service supplies Oregon with a toll-free number (1-877-735-7525) to assist individuals whose speech may be difficult to understand. If an individual does not request an accommodation, the Board is not obligated to provide one.

No employee of the Board nor any entity contracting with it may coerce, intimidate, threaten, or interfere with any individual who has opposed any act or practice prohibited by the ADA; participated in any investigation; or aided or encouraged others to assert rights granted under the ADA.

An individual who believes they have been discriminated due to their disability should contact the ADA Coordinator, Board Chairperson, or other board member(s). If the issue is not resolved to the individual's satisfaction, they may file a grievance with the:

- U.S. Dept of Justice Civil Rights Division – PO Box 6618, Washington, D.C., 20530
- Equal Employment Opportunity Commission – 1801 L. St. NW #9024, Washington, D.C. 20507

## B. Discrimination and Harassment Free Workplace

Statewide Policy 50.010.01

Date: September 2010

**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 who must take proactive 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.

**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.
- (j) 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%

## C. Agency Employee Training and Educational Policy

Approved by: *Oregon Physical Therapist Licensing Board  
Licensing Board*

Date: September 2010

### Applicability

This policy applies to all employees of the Oregon Physical Therapist Licensing 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.

## D. Maintaining a Professional Workplace

Approved by: *Oregon Physical Therapist Licensing Board*  
Policy No. 50.020.093

Date: Since September 2010

**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 State Policy 50.010.093

**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.

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**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 who must take proactive pro active 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.

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(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.

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- (j) Signed acknowledgements are kept on file at the agency, board or commission.
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- (2) Performance Measure: Percent of complaints where prompt, appropriate action is taken following investigation of a substantiated complaint. Performance Standard: 100%

## E. VETERANS PREFERENCE IN EMPLOYMENT

APPROVED BY: OREGON PHYSICAL THERAPIST LICENSING BOARD

SEPTEMBER 2010

### Department of Administrative Services, Human Resource Services Division

#### Division 40 Filling Positions 105-040-000: 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

## **F. Other Agency Support of its Affirmative Action Plan**

In partnership with the Federation of State Boards of Physical Therapy the Director of the Oregon Physical Therapist Board Chaired a National Committee that was responsible for the development of a national model titled "Guide to Special Accommodations" which was intended for use of all State PT licensing Boards in consideration of accommodations for therapist with disabilities when applying to sit for the national PT examination. Below is a copy of that Guide adopted as policy by the Board in September 2010.

### **OREGON PHYSICAL THERAPIST LICENSING BOARD GUIDE TO NPTE SPECIAL ACCOMODATIONS**

#### **Purpose:**

The purpose of this policy is to provide guidelines for the evaluation and granting of requests for reasonable accommodations in the administration of the National Physical Therapy Examination to qualified applicants with disabilities and to ensure that the examination is administered in a manner that does not discriminate against such applicants in violation of the Americans with Disabilities Act (ADA).

#### **Policy:**

The Oregon Physical Therapist Licensing Board (OPTLB) will grant reasonable and appropriate testing accommodations to qualified individuals with disabilities that register for the National Physical Therapy Examination. All requests for accommodations will be considered on a case-by-case basis.

The Federation of State Boards of Physical Therapy (FSBPT) will evaluate any accommodation approved by a licensing authority that is not on the standard list of accommodations to ensure that the requested accommodation does not compromise the psychometric integrity, security and/or fairness of the examination.

#### **Qualified Applicants**

The ADA defines an individual with a disability as a person who has a physical or mental impairment that substantially limits that person in one or more major life activities, has a record of such impairment, or is regarded as having such impairment. "Major life activities" include functions such as caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working. A "qualified" individual with a disability is one who meets the statutory and regulatory requirements to sit for the examination and with or without reasonable accommodation, can perform the essential functions of a physical therapist/physical therapist assistant.

**Reasonable Accommodation** means a modification in the examination administration that does not fundamentally alter the requirements for licensure or the measurement of the knowledge, skills and abilities the examination is designed to test and that does not impose an undue hardship.

## **Courtesy Accommodations**

Courtesy accommodations may be granted by the OPTLB following a review of the applicant's request and supporting documentation. A courtesy accommodation is an accommodation for a person who does not have a disability but has a circumstance that the individual believes merits an accommodation. An example would be a candidate with a broken leg who requests that his/her leg be elevated during testing. Documentation from a physician must be submitted with the licensure application stating the temporary condition warranting such accommodation, attesting to the need for such accommodation and identifying the requested accommodation.

## **Applicant's Responsibilities**

The applicant has the responsibility of submitting current information in a timely manner. The required documentation shall include a diagnosis of the specific disability by a professional qualified to assess and diagnose the asserted disability. The documentation must include:

- ◆ A current, valid, professionally recognized diagnosis of the candidate's disability (e.g. pursuant to the International Statistical Classification of Diseases and Related Health Problems (ICD) or the Diagnostic and Statistical Manual of Mental Disorders (DSM IV: revised)) by an appropriately qualified expert with copies of and reported scores from professionally recognized diagnostic tests, where applicable.
- ◆ Documentation that clearly identifies the nature and extent of the functional limitations that exist as a result of the diagnosed disability.
- ◆ Sufficient evidence to demonstrate that the functional limitation substantially limits the individual in performing one or more major life activity.
- ◆ Specific information about the significance of the impact the disability has on the candidate in the testing environment.
- ◆ A history of any accommodations previously granted in any educational program or examination.
- ◆ Specific recommendations for accommodations.
- ◆ An explanation of why each accommodation is recommended and why it is necessary to alleviate the impact of the disability in taking the NPTE examination.

The OPTLB reserves the right to request additional information at any time from the candidate requesting accommodations on its examinations.

## **Procedure to Request an Accommodation**

1. The applicant must submit the required documentation with the licensure application prior to the approval of the applicant to sit for the National Physical Therapy Examination. Receipt of the licensure application and required documentation will be acknowledged by the OPTLB.
2. If the applicant's documentation is incomplete or insufficient, notice will be given to the applicant by the licensing authority.

The required documentation includes: The Applicant Special Accommodations Request Form (Appendix 1); the Professional Documentation of Disability Form (Appendix 2); and, the School

Confirmation of ADA Accommodation History Form (Appendix 3). The applicant may provide any additional documentation.

The OPTLB will review the request only after receiving all of the required documentation. Each request will be considered on its own merit relative to the documentation received regarding the disability.

If the applicant has more than one disability for which he/she is seeking accommodation, separate documentation is required for each disability.

### **Confidentiality of Required Documentation**

All documentation, including the application, will be held in a separate application file. This is not considered part of a public record. The file will be in the custody of the Board's Executive Director. The Director will keep the files in a locked cabinet in the Board office which is locked every evening at the close of business. Board members, Board Staff and the Board's Legal Counsel will be the only individuals with access and viewing rights to the file. The file will remain in the Director's possession until five years has passed from the original examination application date, or upon expiration of the initial license, whichever occurs last. Only upon Board receipt of disclosure instructions and a signed release from the applicant will the Board release any of the documentation.

### **Review by the OPTLB**

The Board has given the authority to review, approve or deny requests for special accommodation to the Board Director. The Director may, at any time, refer any requests directly to the Board for their consideration.

Once the individual is determined to be eligible for an accommodation under the ADA, then the requested accommodation will be considered in terms of whether the accommodation:

- ◆ Will fundamentally alter the knowledge, skills and abilities the examination is designed to measure,
- ◆ Is appropriate to the identified need,
- ◆ Is reasonable\*, and
- ◆ Is within the parameters of ADA's requirements.

\*An accommodation may not be reasonable if it causes the OPTLB undue hardship. ADA states that undue hardship means an action requiring significant difficulty or expense. When determining reasonableness, the OPTLB will consider the following:

1. The nature and cost of the accommodation,
2. The impact of the accommodation on operations of the testing center, and
3. The overall financial resources of the OPTLB

### **Notification of Determination**

The OPTLB will notify the applicant in writing when the review is complete. If the request is denied, the letter will state the reason for the denial and options for appeal.

## VII. APPENDIX B PROHIBITED EMPLOYMENT POLICIES AND PRACTICES

### A. Age Discrimination

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.

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.
- 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 would 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 the same as the cost of providing benefits to younger workers.
- Waivers of ADEA Rights: An employer may ask an employee to waive his/her rights or claims under the ADEA either in the settlement of an ADEA administrative or court claim or in connection with an exit incentive program or other employment termination program. 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;
  1. specifically refer to ADEA rights or claims;

2. not waive rights or claims that may arise in the future;
3. be in exchange for valuable consideration;
4. advise the individual in writing to consult an attorney before signing the waiver; and
5. 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 program or other employment termination program, the minimum requirements for a valid waiver are more extensive.

Statistics: In Fiscal Year 2007, EEOC received 19,103 charges of age discrimination. EEOC resolved 16,134 age discrimination charges in FY 2007 and recovered \$66.8 million in monetary benefits for charging parties and other aggrieved individuals (not including monetary benefits obtained through litigation).

Charge Statistics: Age Discrimination

## B. Disability Discrimination

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. 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.

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.
- **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.

#### Statistics

In Fiscal Year 2007, EEOC received 17,734 charges of disability discrimination. EEOC resolved 15,708 disability discrimination charges in FY 2006 and recovered \$54.4 million in monetary benefits for charging parties and other aggrieved individuals (not including monetary benefits obtained through litigation).

#### Americans With Disabilities Act Charges

## C. Equal Pay and Compensation Discrimination

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 (EEOC): 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 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:

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 key 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. However, in some circumstances, physically separated places of business should be treated as one establishment. For example, if a central administrative unit hires employees, sets their compensation, and assigns them to 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.

## B. 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 under Title VII, the ADEA, or the ADA 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.
- A discriminatory compensation system has been discontinued but still has lingering discriminatory effects on present salaries. For example, if an employer has a compensation policy or practice that pays Hispanics lower salaries than other employees, the employer must not only adopt a new non-discriminatory compensation policy, it also must affirmatively eradicate salary disparities that began prior to the adoption of the new policy and make the victims whole.
- 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.

**Statistics:** In Fiscal Year 2007, EEOC received 818 charges of compensation discrimination. EEOC resolved 796 compensation discrimination charges in FY 2007 and recovered \$9.3 million in monetary benefits for charging parties and other aggrieved individuals (not including monetary benefits obtained through litigation).

- Charge Statistics: Equal Pay Act
  1. **Other Resources:** Here are some links to other sources of information about compensation discrimination. Please be aware that, consistent with the EEOC's general disclaimer statement, the EEOC does not control or guarantee the accuracy or completeness of this outside information, and references to the sites below are not intended to reflect their importance or an endorsement of any views expressed or products or services offered.

Department of Labor's Office of Federal Contract Compliance Programs

- Equal Pay and the Department of Labor
- Best Compensation Practices
- Analyzing Compensation Data: A Guide to Three Approaches

- Department of Labor's Wage and Hour Division
- Employment Litigation Section of the Civil Rights Division of the Department of Justice

## D. Genetic Information Discrimination

*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 acquisition of genetic information by employers and other entities covered by Title II, 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 any disease, disorder, or condition of an individual's family members (i.e. an individual's 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.

### 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 doesn't tell the employer anything about someone'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, 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 an employer 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.

Genetic information may be acquired as part of the certification process for FMLA leave (or leave under similar state or local laws), where an employee is asking for leave to care for a family member with a serious health condition.

Acquisition through commercially and publicly available documents like newspapers is permitted, as long as the employer is not searching those sources with the intent of finding genetic information.

Acquisition through a genetic monitoring program that monitors the biological effects of toxic substances in the workplace is permitted 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 an employer to disclose genetic information about applicants or employees. Employers 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.

## E. National Origin Discrimination

Whether an employee or job applicant's ancestry is Mexican, Ukrainian, Filipino, Arab, American Indian, or any other nationality, he or she is entitled to the same employment opportunities as anyone else. EEOC enforces the federal prohibition against national origin discrimination in employment under Title VII of the Civil Rights Act of 1964, which covers employers with fifteen (15) or more employees.

### C. About National Origin Discrimination

National origin discrimination means treating someone less favorably because he or she comes from a particular place, because of his or her ethnicity or accent, or because it is believed that he or she has a particular ethnic background. National origin discrimination also means treating someone less favorably at work because of marriage or other association with someone of a particular nationality. Examples of violations covered under Title VII include:

- Employment Decisions: Title VII prohibits any employment decision, including recruitment, hiring, and firing or layoffs, based on national origin.
- Harassment: Title VII prohibits offensive conduct, such as ethnic slurs, that creates a hostile work environment based on national origin. Employers are required to take appropriate steps to prevent and correct unlawful harassment. Likewise, employees are responsible for reporting harassment at an early stage to prevent its escalation.
- Language
- Accent discrimination: An employer may not base a decision on an employee's foreign accent unless the accent materially interferes with job performance.
- English fluency: A fluency requirement is only permissible if required for the effective performance of the position for which it is imposed.
- English-only rules: English-only rules must be adopted for nondiscriminatory reasons. An English-only rule may be used if it is needed to promote the safe or efficient operation of the employer's business.
  1. Coverage of foreign nationals: Title VII and the other antidiscrimination laws prohibit discrimination against individuals employed in the United States, regardless of citizenship. However, relief may be limited if an individual does not have work authorization.

**Statistics:** In Fiscal Year 2007, EEOC received 9,396 charges of national origin discrimination. Including charges from previous years, 7,773 charges were resolved, and monetary benefits for charging parties totaled \$22.8 million (not including monetary benefits obtained through litigation).

- Charge statistics

## F. Pregnancy Discrimination

The Pregnancy Discrimination Act is an amendment to Title VII of the Civil Rights Act of 1964. Discrimination on the basis of pregnancy, childbirth, or related medical conditions constitutes unlawful sex discrimination under Title VII, which covers employers with 15 or more employees, including state and local governments. Title VII also applies to employment agencies and to labor organizations, as well as to the federal government. Women who are pregnant or affected by related conditions must be treated in the same manner as other applicants or employees with similar abilities or limitations.

Title VII's pregnancy-related protections include:

- **Hiring:** An employer cannot refuse to hire a pregnant woman because of her pregnancy, because of a pregnancy-related condition or because of the prejudices of co-workers, clients, or customers.
- **Pregnancy and Maternity Leave:** 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 inability to work before granting leave or paying sick benefits, the employer may require employees affected by pregnancy-related conditions to submit such statements.

If an employee is temporarily unable to perform her job due to pregnancy, the employer must treat her the same as any other temporarily disabled employee. For example, if the employer allows temporarily disabled employees to modify tasks, perform alternative assignments or take disability leave or leave without pay, the employer also must allow an employee who is temporarily disabled due to pregnancy to do the same.

Pregnant employees must be permitted to work as long as they are able to perform their jobs. If an employee has been absent from work as a result of a pregnancy-related condition and recovers, her employer may not require her to remain on leave until the baby's birth. An employer also may not have a rule that prohibits an employee from returning to work for a predetermined length of time after childbirth.

Employers must hold open a job for a pregnancy-related absence the same length of time jobs are held open for employees on sick or disability leave.

- **Health Insurance:** Any health insurance provided by an employer must cover expenses for pregnancy-related conditions on the same basis as costs for other medical conditions. Health insurance for expenses arising from abortion is not required, except where the life of the mother is endangered.

Pregnancy-related expenses should be reimbursed exactly as those incurred for other medical conditions, whether payment is on a fixed basis or a percentage of reasonable-and-customary-charge basis.

The amounts payable by the insurance provider can be limited only to the same extent as amounts payable for other conditions. No additional, increased, or larger deductible can be imposed.

Employers must provide the same level of health benefits for spouses of male employees as they do for spouses of female employees.

- Fringe Benefits: Pregnancy-related benefits cannot be limited to married employees. In an all-female workforce or job classification, benefits must be provided for pregnancy-related conditions if benefits are provided for other medical conditions.

If an employer provides any benefits to workers on leave, the employer must provide the same benefits for those on leave for pregnancy-related conditions.

Employees with pregnancy-related disabilities must be treated the same as other temporarily disabled employees for accrual and crediting of seniority, vacation calculation, pay increases, and temporary disability benefits.

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

### Statistics

In Fiscal Year 2007, EEOC received 5,587 charges of pregnancy-based discrimination. EEOC resolved 4,979 pregnancy discrimination charges in FY 2007 and recovered \$30.0 million in monetary benefits for charging parties and other aggrieved individuals (not including monetary benefits obtained through litigation).

#### Charge Statistics: Pregnancy Discrimination

## G. Race/Color Discrimination

Title VII of the Civil Rights Act of 1964 protects individuals against employment discrimination on the bases of race and color, as well as national origin, sex, and religion. 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.

Equal employment opportunity cannot be denied any person because of his/her racial group or perceived racial group, his/her race-linked characteristics (e.g., hair texture, color, facial features), or because of his/her marriage to or association with someone of a particular race or color. 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's prohibitions apply regardless of whether the discrimination is directed at Whites, Blacks, Asians, Latinos, Arabs, Native Americans, Native Hawaiians and Pacific Islanders, multi-racial individuals, or persons of any other race, color, or ethnicity.

It is unlawful to discriminate against any individual in regard to recruiting, hiring and promotion, transfer, work assignment, performance measurements, the work environment, job training, discipline and discharge, wages and benefits, or any other term, condition, or privilege of employment. Title VII prohibits not only intentional discrimination, but also neutral job policies that disproportionately affect persons of a certain race or color and that are not related to the job and the needs of the business. Employers should adopt "best practices" to reduce the likelihood of discrimination and to address impediments to equal employment opportunity. 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.

- **Harassment/Hostile Work Environment:** Title VII prohibits offensive conduct, such as racial or ethnic slurs, racial "jokes," derogatory comments, or other verbal or physical conduct based on an individual's race/color. The conduct has to be unwelcome and offensive, and has to be severe or pervasive. Employers are required to take appropriate steps to prevent and correct unlawful harassment. Likewise, employees are responsible for reporting harassment at an early stage to prevent its escalation.
- **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.

- Segregation and Classification of Employees: Title VII is violated where employees who belong to a protected group are segregated by physically isolating them from other employees or from customer contact. In addition, employers may not assign employees according to race or color. For example, Title VII prohibits assigning primarily African-Americans to predominantly African-American establishments or geographic areas. It is also illegal to exclude members of one group from particular positions or to group or categorize employees or jobs so that certain jobs are generally held by members of a certain protected group. Coding applications/resumes to designate an applicant's race, by either an employer or employment agency, constitutes evidence of discrimination where people of a certain race or color are excluded from employment or from certain positions.
- 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. Statistics: In fiscal year 2007, EEOC received 30,510 charges of race discrimination. EEOC resolved 25,882 race charges in FY 2007, and recovered \$67.7 million in monetary benefits for charging parties and other aggrieved individuals (not including monetary benefits obtained through litigation). Charge Statistics:  
Race Discrimination

## H. Religious Discrimination

Title VII of the Civil Rights Act of 1964 prohibits employers from discriminating against individuals because of their religion in hiring, firing, and other terms and conditions of employment. Title VII covers 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.

Under Title VII: Employers may not treat employees or applicants more or less favorably because of their religious beliefs or practices - except to the extent a religious accommodation is warranted. For example, an employer may not refuse to hire individuals of a certain religion, may not impose stricter promotion requirements for persons of a certain religion, and may not impose more or different work requirements on an employee because of that employee's religious beliefs or practices.

- Employees cannot be forced to participate -- or not participate -- in a religious activity as a condition of employment.
- Employers must reasonably accommodate employees' sincerely held religious practices unless doing so would impose an undue hardship on the employer. A reasonable religious accommodation is any adjustment to the work environment that will allow the employee to practice his religion. An employer might accommodate an employee's religious beliefs or practices by allowing: flexible scheduling, voluntary substitutions or swaps, job reassignments and lateral transfers, modification of grooming requirements and other workplace practices, policies and/or procedures.
- An employer is not required to accommodate an employee's religious beliefs and practices if doing so would impose an undue hardship on the employers' legitimate business interests. An employer can show undue hardship if accommodating an employee's religious practices requires more than ordinary administrative costs, diminishes efficiency in other jobs, infringes on other employees' job rights or benefits, impairs workplace safety, causes co-workers to carry the accommodated employee's share of potentially hazardous or burdensome work, or if the proposed accommodation conflicts with another law or regulation.
- Employers must permit employees to engage in religious expression, unless the religious expression would impose an undue hardship on the employer. Generally, an employer may not place more restrictions on religious expression than on other forms of expression that have a comparable effect on workplace efficiency.
- Employers must take steps to prevent religious harassment of their employees. An employer can reduce the chance that employees will engage unlawful religious harassment by implementing an anti-harassment policy and having an effective procedure for reporting, investigating and correcting harassing conduct.

It is also unlawful to retaliate against an individual for opposing employment practices that discriminate based on religion or for filing a discrimination charge, testifying, or participating in any way in an investigation, proceeding, or litigation under Title VII. Statistics: In Fiscal Year 2007, EEOC received 2,880 charges of religious discrimination. EEOC resolved 2,525 religious discrimination charges and recovered \$6.4 million in monetary benefits for charging parties and other aggrieved individuals (not including monetary benefits obtained through litigation). Charge Statistics: Religious Discrimination

# I. Retaliation

## Title VII of the Agency Affirmative Action Policy

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.

Statistics: In Fiscal Year 2007, EEOC received 26,663 charges of retaliation discrimination based on all statutes enforced by EEOC. The EEOC resolved 22,265 retaliation charges in 2007, and recovered more than \$124 million in monetary benefits for charging parties and other aggrieved individuals (not including monetary benefits obtained through litigation).

## J. Sex-Based Discrimination

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

It is unlawful to discriminate against any employee or applicant for employment because of his/her sex 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 on the basis of sex. Title VII prohibits both intentional discrimination and neutral job policies that disproportionately exclude individuals on the basis of sex and that are not job related.

Title VII's prohibitions against sex-based discrimination also cover:

- Sexual Harassment: This includes practices ranging from direct requests for sexual favors to workplace conditions that create a hostile environment for persons of either gender, including same sex harassment.
- Pregnancy Based Discrimination: Title VII was amended by the Pregnancy Discrimination Act, which prohibits discrimination on the basis of pregnancy, childbirth and related medical conditions.

The Equal Pay Act of 1963 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. Title VII also prohibits compensation discrimination on the basis of sex. Unlike the Equal Pay Act, however, Title VII does not require that the claimant's job be substantially equal to that of a higher paid person of the opposite sex or require the claimant to work in the same establishment.

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.

Statistics: In Fiscal Year 2007, EEOC received 24,826 charges of sex-based discrimination. EEOC resolved 21,982 sex discrimination charges in FY 2007 and recovered \$135.4 million in monetary benefits for charging parties and other aggrieved individuals (not including monetary benefits obtained through litigation).

### Charge Statistics: Sex-Based Discrimination

## K. 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.

Statistics: In Fiscal Year 2007, EEOC received 12,510 charges of sexual harassment. 16.0% of those charges were filed by males. EEOC resolved 11,592 sexual harassment charges in FY 2007 and recovered \$49.9 million in monetary benefits for charging parties and other aggrieved individuals (not including monetary benefits obtained through litigation). Charge Statistics: Sexual Harassment