Affirmative Action Plan

2015 – 2017 Biennium

Mitch Swecker, Director

3040 25th Street SE,
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Oregon

August 29, 2014

Mr. Frank Garcia, Senior Policy Advisor
Diversity & Inclusion/Affirmative Action
Oregon Office of the Governor
255 Capitol St. NE, Suite 126
Salem, OR 97301

Dear Mr. Garcia,

The Oregon Department of Aviation remains committed to its policy on Affirmative Action and Equal Opportunity and to a rigorous and active affirmative action program. My personal commitment to these ideas is represented throughout our agencies Affirmative Action Plan (AAP).

Likewise, the AAP represents our agencies commitment to equal opportunity and affirmative action in employment and public service consistent with all applicable federal and state laws, including, but not limited to: Executive Order 11246; Title VII of the Civil Rights Act of 1964; Sections 503 and 504 of the Rehabilitation Act of 1974; the Vietnam Era Veterans Readjustment Assistance Act; and the Americans with Disabilities Act.

This Affirmative Action Plan has my complete authorization and commitment.

Sincerely,

Mitch Swecker, Director
Oregon Department of Aviation

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Affirmative Action Plan

2015-2017 Biennium

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I. Description of the Agency

A. Mission and Objectives

The Oregon Department of Aviation's mission is to support Oregon communities by preserving and enhancing aviation. This includes promoting economy and jobs in the aviation industry and promoting safety at Oregon's 97 public use airports including the 28 airports owned or operated by Department of Aviation.

Oregon Department of Aviation is committed to the development and realization of a 21st century modern statewide system of airports. In addition we will continue to assist airport sponsors with infrastructure development and expertise on aviation issues. In 10 years, ODA's goal is to have a 21st century system of airports that meets the air transportation needs of Oregon communities:

Oregon Department of Aviation will do this by:

- Addressing and resolving statewide aviation issues in coordination with other federal, state and local agencies, governments and stakeholders.
- Participating in multi-modal coordination.
- Providing expertise and assistance on aviation-related legislation.
- Providing Citizen Centric assistance to aviation constituents, airport owners/sponsors and aviation system users throughout Oregon.
- Assisting with maintaining and improving commercial air service to and from Portland and the rest of the state.

B. Agency Director

Mitch Swecker
Director, Oregon Department of Aviation
3040 25th Street SE, Salem, OR 97302-1125
Tel.: 503-378-2340

C. Governor's Policy Advisor

Karmen Fore
Transportation Policy Advisor, Oregon Office of the Governor
255 Capitol Street NE, Suite 126, Salem, OR 97301
Tel.: 503-986-6528

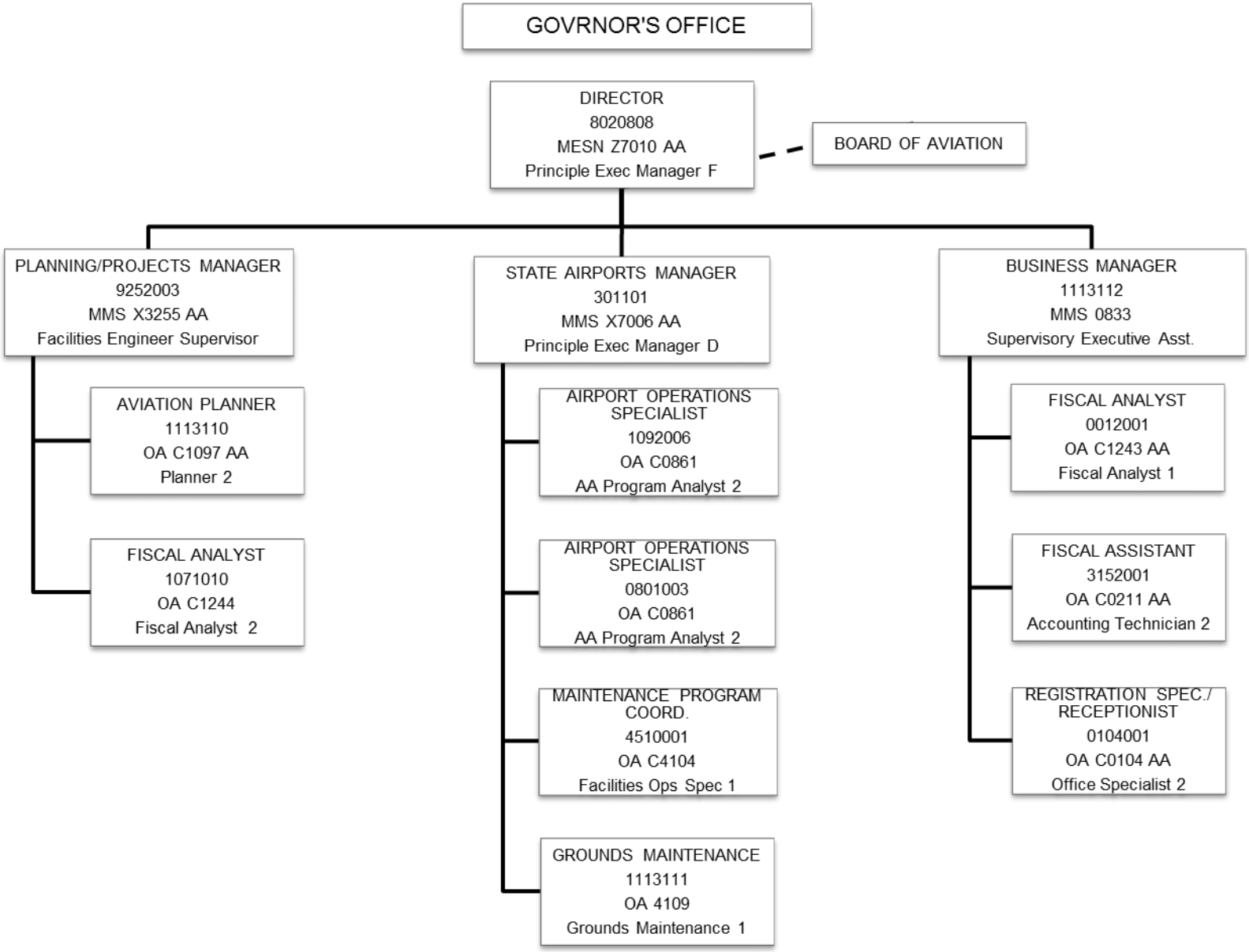
D. Affirmative Action Representative

Joy Howard
Business Manager, Oregon Department of Aviation
3040 25th Street SE, Salem, OR 97302-1125
Tel.: 503-378-2894

E. Designated FTE Diversity, Inclusion, Access, or Equity Officer

N/A

F. Organizational Chart



II. Affirmative Action Plan

A. Agency Affirmative Action Policy Statement

The Oregon Department of Aviation is committed to achieving a work force that represents the diversity of Oregon's population and to providing fair and equal employment opportunities regardless of a person's race, color, religion, sex, sexual orientation, national origin, marital status, age or disability. ODA provides a workplace environment that is free from harassment and intimidation. Employment practices are consistent with state and federal laws, which preclude discrimination.

B. Diversity and Inclusion Statement

It is the policy of the Department of Aviation to be proactive in building a well-qualified, diverse agency that represents the public. Diversity is a core value of ODA and all the management staff is committed to carrying out this Affirmative Action Plan in hiring, contracting and practicing non-discriminatory behavior in day-to-day actions.

C. Training, Education, Developmental Plan (TEDP)

1. Employees

ODA recognizes its employees are its greatest resources; hence, one of the agency's highest priorities is investing in employee development and enhancing employee knowledge, skills, and abilities in order to remain competitive. Our goal is to provide 100% of permanent employees with the opportunity for a minimum of 20 hours of education and training annually, all to be related to work skills and knowledge.

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

- Establish clear paths for acquiring the skills, knowledge, and experience that employees need for their continuing learning and career development.
- Establish developmental opportunities, such as leadership training and detail assignments, for employees interested in participating in assignments that prepare them for high-level positions.
  - Non-Technical Trainings – These in-person, webinars, or on-line trainings include diversity-related, career development, and other topics and are provided through the iLearn Oregon or non-state training programs. Course topics include (but not limited to):
    - Building Intercultural Competence For Employees and Managers- The purpose of this series of cultural competency modules is to improve our ability to interact effectively with people of different cultures.

    - Respectful Workplace - The purpose of this course is to increase awareness and importance of the need to create and maintain a respectful, positive work environment.

  - Job Rotation – ODA provides employees the opportunity to explore new assignments or jobs through career enrichment rotation, allowing employees to use existing skills in a different setting while subsequently acquiring new skills.
  - Leadership Oregon – If financial resources allow, ODA will support and provide an employee the opportunity to participate in the Leadership Oregon program. This program enhances the professional development of the State of Oregon employees through an interactive and practical curriculum that expands an awareness of self, state government, and local communities while promoting pride in public service.

- Establish individual needs and training requests during annual evaluations, followed by providing training and developmental experiences for employees (see section above for offered opportunities).

- New Employee Orientation – Effectively orienting new employees to the agency and to their positions is critical to establishing successful, productive working relationships. ODA strives to ensure the employee's first interaction with agency personnel is a positive experience. ODA provides the following information to the new employee:
  - Affirmative Action Policy and Affirmative Action Plan
  - Agency's expectation of employee
  - Agency's mission and objectives
  - Discrimination and Harassment-Free Workplace Policy
  - Employee Resources/Services
  - Performance Evaluation Process
  - Professional Workplace Policy
  - Roles and Responsibilities/Position Description
  - Safety
  - Training, Educational, and Developmental Plan

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

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

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

2. Volunteers

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

3. Contractors/Vendors

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

D. Programs

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

1. Internship Programs
    a. Formal
        - *School-to-Work* – It is the policy of the State of Oregon that we, as the employer, recognize the importance of enhancing work-based learning opportunities through creating and maintaining relationships with public and private schools that promote an effective and efficient workforce in state government through a School-to-Work: Career-Related Learning Program. ODA is open to developing an agency plan which promotes participation in and support of work-based learning activities for College level students and educators. The plan may allow employees the flexibility to participate in Aviation activities offsite and not directly work-related.
        - *Internships/work experience* – Involves a formal training plan between the school and the agency that outlines the skills the students is expected to learn and demonstrate at the workplace. The hours to be worked, classroom goals, and worksite goals and objectives are determined by the teacher, worksite supervisor and student. ODA has partnered with Willamette University for internships in the past and will work to offer an Internship program to students of diverse backgrounds interested in Aviation management. As a small agency with a large area of expertise in airport management, construction project management, Government relations, Leasing and Land use planning, ODA has a lot to offer a potential Intern interested in Aviation.
    b. Informal
        - *Guest Speaker* – ODA can provide an opportunity for a classroom of students to hear firsthand about a particular occupation, the necessary preparation and required knowledge the occupation requires and other interesting information from current practitioner in the field.
        - *Job Shadow* – Provide an opportunity for students to spend four or more hours with one or more employees at a job site. Employees will introduce students to potential careers by allowing them to observe the jobs of individual workers while shadowing their daily routines and activities. They provide students with a look at the world or work and the range of career opportunities available to them. Employers should provide general information about their jobs, required skills, education, and training requirements.

2. Mentorship Program
   The agency encourages managers and supervisors to become mentors to their employees as well as youth interested in the aviation industry.

3. Community Outreach Programs
   ODA encourages its employees to participate and collaborate with organizations in the communities it serves. The agency is committed to fostering collaborative working relationships with our local organizations to various initiatives.
    a. Career Fairs
        - Sharing job opportunities with local ethnic organizations, local ethnic chambers, tribes, faith-based organizations, local ethnic newspapers, etc. in a timely manner.

b. Community Events/Festivals

c. Trade-specific Events

4. Diversity Awareness Program
   To achieve workforce diversity, ODA is positioning itself with a strong commitment to its agency's affirmative action program. This includes strong leadership support from our top leadership and commitment to provide necessary resources, people and funding of new program initiatives.
   a. Agency-Wide Diversity Council

   b. Employee Resource Groups (ERGs)/Affinity Groups

   c. Diversity Presentations and/or Activities
      - Continued support from leadership that creates an environment of inclusion, which values differences.
      - Continued management involvement in planning and conducting affirmative action/equal employment opportunity activities.
      - Ensure that employees are an integral part in the design of ODA efforts to plan and conduct affirmative action/equal employment opportunity and diversity activities.
      - Widely disseminate ODA Affirmative Action Plan goals throughout the agency and encouraging managers to conduct targeted recruitment in support of these goals.
      - Assign adequate resources to the affirmative action/equal employment opportunity activities. ODA will continue to revisit its budget to identify resources for its affirmative action/equal employment opportunity activities.
      - Train managers and supervisors in their affirmative action/equal employment opportunity responsibilities as well as educating them with the existing personnel and administrative tools to help them carry out their responsibilities in these areas.
      - Evaluate training resources in intercultural communication to address the communication style across cultures and generational differences within the Oregon Board of Aviation.
      - In order to bring awareness to the agency's workforce, management has a diversity bulletin board for employees to share diversity and cultural information with one another. ODA also posts the Governor's monthly diversity proclamations, diversity activities and projects, diversity calendar of events and other community activities, etc.

5. Leadership Development/Training Program(s)
   a) EEO data of trainees
   b) Results of development/training program

E. Update Executive Order 08-18

1. Cultural Competency Assessment and Implementation Services

   Cultural Competency Assessment and Implementation Services is a proactive management strategy designed to identify best practices and reduce any discriminatory behaviors that may

exist within the Commission. Through an assessment, ODA will enable itself to address: the creation of a climate of increased awareness; appropriate identifying and responding to cultural and language barriers for ODA employees and the public; a common understanding of how all members of the organization should be valued and respected; a promotion of managerial skills among diverse employees; an understanding of the roles of ODA management and employees in creating a welcoming environment and the improve of ODA employee morale.

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

2. Statewide Exit Interview Survey

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

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

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

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

3. Performance Evaluations of All Management Personnel

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

Sample affirmative action duty descriptions:

- Understand Equal Employment Opportunity (EEO), Affirmative Action (AA), Diversity and Cultural Competency principles, and the agency's AA Plan goals and objectives. Develop and implement strategies to meet goals and objectives; and report annual efforts, successes and/or accomplishments during the period.

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

Ref: 659A.012 State agencies to carry out policy against discrimination in employment; evaluation of supervisors; affirmative action reports. (1) To achieve the public policy of the State of Oregon for persons in the state to attain employment and advancement without discrimination because of race, religion, color, sex, marital status, national origin, disability or age, every state agency shall be required to include in the evaluation of all management personnel the manager's or supervisor's effectiveness in achieving affirmative action objectives as a key consideration of the manager's or supervisor's performance.
(2) To achieve the public policy of the State of Oregon for persons in the state to attain employment and advancement without discrimination because of race, religion, color, sex, marital status, national origin, age or disability, every state agency shall be required to present the affirmative action objectives and performance of that agency of the current biennium and those for the following biennium to the Governor of the State of Oregon and to the Legislative Assembly. These plans shall be reviewed as part of the budget review process.

F. Status of Contracts to Minority-owned Business (ORS 659.A015)

Using this template, please provide information regarding any contracts awarded to a certified MWESB during the reporting period of this plan.

Name of organization	Type of Contract	Length of the contract	Dollar amount awarded

III. ROLES FOR IMPLEMENTATION OF AFFIRMATIVE ACTION PLAN

A. Responsibilities and Accountabilities

1. Director

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

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

2. Managers and Supervisors

3. Affirmative Action Representative

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

   - Develop and disseminate the Affirmative Action Plan, including the agency's Affirmative Action Policy Statement, and monitor progress and prepare annual updates and modifications, as needed;
   - Develop and monitor internal and external communication of the agency's Affirmative Action Policy and Affirmative Action Plan to keep staff informed.
   - Develop and advise employees and job applicants of discrimination grievance procedures. Accept and investigate all sexual harassment and/or discrimination grievances or complaints filed either internally or externally and make recommendations for appropriate actions;

- Serve as the agency's liaison with governmental agencies responsible for the enforcement of civil rights and fair employment laws and regulations;
- Assist in implementation and review of the internal monitoring and review system, using standardized reports and statistical data to measure the effectiveness of the agency's affirmative action program, and indicate the need for remedial action;
- Contact community organizations and persons representing minorities, women and persons with disabilities and share information on available agency recruitments;
- Identify the need for, assist in the development of, and in some instances, conduct affirmative action information session for managers, supervisors and employees;
- Share information to management staff on the latest developments on affirmative action issues, including legal decision and their possible impact;
- Report to the Director and the Board any policies or practices that have adverse impact on minorities, women and persons with disability, and any other protected or underrepresented group, or present barriers to equal employment opportunity;
- Periodically review personnel policies and procedures to ensure they reflect the agency's affirmative action commitment;
- Periodically audit minimum job requirements, training programs, and promotion and transfer actions to assure non-discriminatory practices;
- Conduct periodic reviews to assure EEO posters, the Affirmative Action Policy Statement, and Alternate Format poster are properly displayed; and
- Assist in conducting "exit interviews" of employees leaving the agency's concerning work climate and affirmative action issues.

III. JULY 1, 2012 – JUNE 30, 2014

A. Accomplishments

B. Progress made or lost since previous biennium

V. JULY 1, 2015 – JUNE 30, 2017

A. Affirmative Action Plan Goals

B. Strategies and Timelines for Achieving Goals

VI. APPENDIX A

A. Agency's Policy Documentation

1. ADA and Reasonable Accommodation Policy

   ODA follows Statewide Policy 50.020.10 for ADA and Reasonable Accommodation In Employment at: http://www.oregon.gov/DAS/CHRO/docs/advice/p5002010.pdf and is referenced below:

   – AUTHORITY: ORS 240.145; 240.240; 240.250; ORS 659A.103 -145; 243.305; 243.315; The Americans With Disabilities Act (ADA) of 1990 as amended by the Americans with Disabilities Act Amendments Act (ADAAA) of 2008; Civil Rights Act of 1991; and 42 U.S.C. §12101 *et seq.* APPLICABILITY: This policy applies to all state employees, including state temporary employees, according to provisions of federal and state law.

Harassment-Free Workplace Inappropriate Behavior Policy

EFFECTIVE DATE	NUMBER
11-1- 2012	ODA-010
SUPERCEDES	PAGE NUMBER
10-11-07	1 of 4
APPROVED SIGNATURE	
Signature on File at ODA	

PURPOSE: To reaffirm that it is the policy of the Oregon Department of Aviation (ODA) to prohibit discrimination and workplace harassment; to clarify conduct that constitutes workplace harassment and to provide an effective complaint procedure for employees who believe they have been the victims of prohibited conduct. This policy is intended to protect employees of whatever stature, customers or clients of the agency, contractors and visitors to the worksite.

POLICY:

A. Discrimination. It is the policy of ODA to provide a work environment free from unlawful discrimination on the basis of race, color, religion, sex, marital status, national origin, disability, age, union membership and activity, or any other factor that an employer is prohibited by law from considering when making employment decisions. For purpose of this policy, prohibited discrimination includes discrimination on the basis of sexual orientation. This policy applies to all matters relating to hiring, firing, transfer, promotion, benefits, compensation and other terms and conditions of employment.

B. Workplace Harassment. It is also the policy of ODA that all employees, customers, clients, contractors and visitors to the worksite enjoy a work environment that is free from harassing behavior. Employees at all levels of the organization are expected to conduct themselves in a business-like and professional manner at all times and refrain from sexual and other harassment.

C. Penalties. Conduct in violation of this policy will not be tolerated and may result in disciplinary action up to and including dismissal. Managers and supervisors who know or should know of conduct in violation of this policy and fail to report such behavior, or fail to take prompt, appropriate, corrective action, are subject to disciplinary action up to and including dismissal.

GUIDELINES:

A. Workplace harassment is a form of offensive treatment or behavior, which to a reasonable person creates an intimidating, hostile or abusive work environment. This policy prohibits

discrimination or harassing behavior based on or because of a person's national origin, age, sex, race, color, disability, religion, a person's sexual orientation or protected activity.

B. Sexual harassment is a form of workplace harassment. Sexual harassment is defined as unwelcome sexual advances, requests for sexual favors and other verbal or physical behavior of a sexual nature when:

   1) Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment or is used as a basis for any employment decision (granting leave request, promotion, favorable performance appraisal, etc.); or

   2) Such conduct is unwelcome and has the purpose of effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile or offensive working environment.

C. The following are examples of prohibited behavior (it should be understood that the examples are not meant to be all-inclusive and even one instance of such conduct may constitute harassment):

   1) Unwelcome touching or closeness of a personal nature, which can encompass leaning over, cornering or pinching;

   2) Sexual innuendos, teasing and other sexual talk such as jokes, intimate inquiries, persistent unwanted courting and sexist put-downs or insults.

   3) Derogatory remarks, slurs and jokes about a person's national origin, race, color, religion, accent, disability or sexual orientation;

   4) Displays of explicit or offensive calendars, posters, pictures, drawings or cartoons which reflect disparagingly upon a class of persons or a particular person;

   5) Intimidation or bullying tactics employed against subordinate employees. This may include deliberate and repeated instances of ostracizing or prejudicial treatment amongst peers in work teams.

NON-RETALIATION:

A. This policy prohibits retaliation against employees who bring charges of conduct in violation of this policy or assist in investigating charges, or who report harassing behavior directed at persons other than the employee. Any employee found to have engaged in retaliatory action or behavior will be subject to discipline, up to and including dismissal.

GRIEVANCE/COMPLAINT PROCEDURE:

A. For Discrimination. Anyone who is subject to, or aware of, what he or she believes to be employment-related discrimination may file a complaint with his or her immediate supervisor or another manager. The complaint should be written unless the complainant, due to a disability, is unable to file written complaint. The complaint should be filed with the agency within 30 calendar days of the alleged act.

Complaints should include the name of the complainant, the name of the persons alleged to have engaged in the prohibited conduct, a specific and detailed description of the conduct that the employee believes is discriminatory, and a description of the remedy the employee desires.

B. For Harassment. Anyone who is subject to or is aware of harassing behavior should report that information immediately to agency management. If at all possible, the report should be made before the behavior becomes severe. The report may be made orally or in writing to the employee's immediate supervisor or to any other management staff member. If the employee prefers, the report may be given to a manager outside the complainant's work unit. Represented employees may have a union steward accompany the employee during this process during regular work hours.

   All supervisors and managers will report complaints and incidents immediately to the appropriate officials.

C. Investigation. The recipient of a discrimination or harassment complaint shall promptly forward it to the agency Director, who will coordinate, or delegate responsibility for coordinating, the agency's investigation in consultation with the affected employee's supervisors, excluding any supervisor who is potentially part of the problem. The complaint will be given prompt and thorough attention with an impartial investigation. If the complaint is substantiated, immediate and appropriate corrective action will be taken. The affected parties shall be informed that the investigation has concluded and that immediate appropriate corrective action will be taken. All personnel can be assured that complaints will be taken seriously and will be investigated as necessary. They will be dealt with in a discrete and confidential manner to the extent possible.

   1. Nothing in this process precludes any person from filing a formal grievance in accordance with collective bargaining agreement or with the Bureau of Labor and Industries (BOLI) or the Equal Employment Opportunity Commission (EEOC). Timelines for filing complaints with BOLI and EEOC are different from those established in this policy. Contact them directly for specific guidance on filing a formal grievance with them.

B. Employee and Training Policy:

ODA recognizes that its employees are its greatest resources. Investing in employee development and enhancing employee knowledge, skills and abilities is one of the agency's highest priorities. Continued professional development and training opportunities ensures that employees are provided with the skills needed to excel in their work, and therefore be retained in the agency.

C. Veteran Preference in Employment:

ODA complies with Oregon's policy on Veteran's preference in Public employment. See link below.

- http://www.oregon.gov/DAS/stjobs/Pages/vetpoints.aspx (Reference: OAR 105-040-0015)

VII. APPENDIX B

A. Age Discrimination in employment Act of 1967 (ADEA)

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

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

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

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

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

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

- **Benefits**
  The Older Workers Benefit Protection Act of 1990 (OWBPA) amended the ADEA to specifically prohibit employers from denying benefits to older employees. Congress recognized that the cost of providing certain benefits to older workers is greater than the cost of providing those same benefits to younger workers, and that those greater costs might create a disincentive to hire older workers. Therefore, in limited circumstances, an employer may be permitted to

reduce benefits based on age, as long as the cost of providing the reduced benefits to older workers is no less than the cost of providing benefits to younger workers.
Employers are permitted to coordinate retiree health benefit plans with eligibility for Medicare or a comparable state-sponsored health benefit.

- **Waivers of ADEA Rights**
  An employer may ask an employee to waive his/her rights or claims under the ADEA. Such waivers are common in settling ADEA discrimination claims or in connection with exit incentive or other employment termination programs. However, the ADEA, as amended by OWBPA, sets out specific minimum standards that must be met in order for a waiver to be considered knowing and voluntary and, therefore, valid. Among other requirements, a valid ADEA waiver must:
    - be in writing and be understandable;
    - specifically refer to ADEA rights or claims;
    - not waive rights or claims that may arise in the future;
    - be in exchange for valuable consideration in addition to anything of value to which the individual already is entitled;
    - advise the individual in writing to consult an attorney before signing the waiver; and
    - provide the individual at least 21 days to consider the agreement and at least seven days to revoke the agreement after signing it.

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

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

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

An individual with a disability is a person who:

- Has a physical or mental impairment that substantially limits one or more major life activities;
- Has a record of such an impairment; or
- Is regarded as having such an impairment.
- A qualified employee or applicant with a disability is an individual who, with or without reasonable accommodation, can perform the essential functions of the job in question. Reasonable accommodation may include, but is not limited to:
- Making existing facilities used by employees readily accessible to and usable by persons with disabilities.
- Job restructuring, modifying work schedules, reassignment to a vacant position;
- Acquiring or modifying equipment or devices, adjusting or modifying examinations, training materials, or policies, and providing qualified readers or interpreters.

An employer is required to make a reasonable accommodation to the known disability of a qualified applicant or employee if it would not impose an "undue hardship" on the operation of the employer's business. Reasonable accommodations are adjustments or modifications provided by an employer to enable people with disabilities to enjoy equal employment opportunities. Accommodations vary depending upon the needs of the individual applicant or employee. Not all people with disabilities (or even all people with the same disability) will require the same accommodation. For example:

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

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

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

An employer generally does not have to provide a reasonable accommodation unless an individual with a disability has asked for one. if an employer believes that a medical condition is causing a

performance or conduct problem, it may ask the employee how to solve the problem and if the employee needs a reasonable accommodation. Once a reasonable accommodation is requested, the employer and the individual should discuss the individual's needs and identify the appropriate reasonable accommodation. Where more than one accommodation would work, the employer may choose the one that is less costly or that is easier to provide.

Title I of the ADA also covers:

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

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

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

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

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

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

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

- Work Opportunity Tax Credit (Internal Revenue Code Section 51)
  Employers who hire certain targeted low-income groups, including individuals referred from vocational rehabilitation agencies and individuals receiving Supplemental Security Income (SSI) may be eligible for an annual tax credit of up to $2,400 for each qualifying employee who works at least 400 hours during the tax year. Additionally, a maximum credit of $1,200 may be available for each qualifying summer youth employee.

- Architectural/Transportation Tax Deduction (Internal Revenue Code Section 190 Barrier Removal):
  This annual deduction of up to $15,000 is available to businesses of any size for the costs of removing barriers for people with disabilities, including the following: providing accessible parking spaces, ramps, and curb cuts; providing wheelchair-accessible telephones, water fountains, and restrooms; making walkways at least 48 inches wide; and making entrances accessible.

Disability Discrimination

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

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

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

The law also protects people from discrimination based on their relationship with a person with a disability (even if they do not themselves have a disability). For example, it is illegal to discriminate against an employee because her husband has a disability.
Note: Federal employees and applicants are covered by the Rehabilitation Act of 1973, instead of the Americans with Disabilities Act. The protections are mostly the same.

Disability Discrimination & Work Situations

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

Disability Discrimination & Harassment

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

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

Disability Discrimination & Reasonable Accommodation

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

A reasonable accommodation is any change in the work environment (or in the way things are usually done) to help a person with a disability apply for a job, perform the duties of a job, or enjoy the benefits and privileges of employment.
Reasonable accommodation might include, for example, making the workplace accessible for wheelchair users or providing a reader or interpreter for someone who is blind or hearing impaired.

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

Disability Discrimination & Reasonable Accommodation & Undue Hardship

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

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

Definition Of Disability

Not everyone with a medical condition is protected by the law. In order to be protected, a person must be qualified for the job and have a disability as defined by the law.
A person can show that he or she has a disability in one of three ways:

- A person may be disabled if he or she has a physical or mental condition that substantially limits a major life activity (such as walking, talking, seeing, hearing, or learning).
- A person may be disabled if he or she has a history of a disability (such as cancer that is in remission).
- A person may be disabled if he is believed to have a physical or mental impairment that is not transitory (lasting or expected to last six months or less) and minor (even if he does not have such an impairment).

Disability & Medical Exams During Employment Application & Interview Stage

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

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

Disability & Medical Exams After A Job Offer For Employment

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

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

Once a person is hired and has started work, an employer generally can only ask medical questions or require a medical exam if the employer needs medical documentation to support an employee's request for an accommodation or if the employer believes that an employee is not able to perform a job successfully or safely because of a medical condition.
The law also requires that employers keep all medical records and information confidential and in separate medical files.

Available Resources

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

- Your Employment Rights as an Individual With a Disability
- Job Applicants and the ADA
- Understanding Your Employment Rights Under the ADA: A Guide for Veterans
- Questions and Answers: Promoting Employment of Individuals with Disabilities in the Federal Workforce
- The Family and Medical Leave Act, the ADA, and Title VII of the Civil Rights Act of 1964
- The ADA: A Primer for Small Business
- Your Responsibilities as an Employer
- Small Employers and Reasonable Accommodation
- Work At Home/Telework as a Reasonable Accommodation

- Applying Performance And Conduct Standards To Employees With Disabilities
- Obtaining and Using Employee Medical Information as Part of Emergency Evacuation Procedures
- Veterans and the ADA: A Guide for Employers
- Pandemic Preparedness in the Workplace and the Americans with Disabilities Act
- Employer Best Practices for Workers with Caregiving Responsibilities
- Reasonable Accommodations for Attorneys with Disabilities
- How to Comply with the Americans with Disabilities Act: A Guide for Restaurants and Other Food Service Employers
- Final Report on Best Practices For the Employment of People with Disabilities In State Government
- *ABCs* of Schedule A Documents

The ADA Amendments Act

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

The Questions and Answers Series

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

Mediation and the ADA

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

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

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

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

Equal Pay Act

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

Skill

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

Effort

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

Responsibility

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

Working Conditions

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

Establishment

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

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

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

Title VII, ADEA, and ADA

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

- An employer pays an employee with a disability less than similarly situated employees without disabilities and the employer's explanation (if any) does not satisfactorily account for the differential.

- An employer sets the compensation for jobs predominately held by, for example, women or African-Americans below that suggested by the employer's job evaluation study, while the pay for jobs predominately held by men or whites is consistent with the level suggested by the job evaluation study.

- An employer maintains a neutral compensation policy or practice that has an adverse impact on employees in a protected class and cannot be justified as job-related and consistent with business necessity. For example, if an employer provides extra compensation to employees who are the "head of household," i.e., married with dependents and the primary financial contributor to the household, the practice may have an unlawful disparate impact on women.

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

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

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

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

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

Definition of "Genetic Information"

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

Discrimination Because of Genetic Information

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

Harassment Because of Genetic Information

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

Retaliation

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

Rules Against Acquiring Genetic Information

- It will usually be unlawful for a covered entity to get genetic information. There are six narrow exceptions to this prohibition:

- Inadvertent acquisitions of genetic information do not violate GINA, such as in situations where a manager or supervisor overhears someone talking about a family member's illness.

- Genetic information (such as family medical history) may be obtained as part of health or genetic services, including wellness programs, offered by the employer on a voluntary basis, if certain specific requirements are met.

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

- Genetic information may be acquired through commercially and publicly available documents like newspapers, as long as the employer is not searching those sources with the intent of finding genetic information or accessing sources from which they are likely to acquire genetic information (such as websites and on-line discussion groups that focus on issues such as genetic testing of individuals and genetic discrimination).

- Genetic information may be acquired through a genetic monitoring program that monitors the biological effects of toxic substances in the workplace where the monitoring is required by law or, under carefully defined conditions, where the program is voluntary.

- Acquisition of genetic information of employees by employers who engage in DNA testing for law enforcement purposes as a forensic lab or for purposes of human remains identification is permitted, but

the genetic information may only be used for analysis of DNA markers for quality control to detect sample contamination.

Confidentiality of Genetic Information

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

E. National Origin Discrimination Title VII of the Civil Rights Act of 1964

National origin discrimination involves treating people (applicants or employees) unfavorably because they are from a particular country or part of the world, because of ethnicity or accent, or because they appear to be of a certain ethnic background (even if they are not).
National origin discrimination also can involve treating people unfavorably because they are married to (or associated with) a person of a certain national origin or because of their connection with an ethnic organization or group.

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

National Origin Discrimination & Work Situations

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

National Origin & Harassment

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

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

National Origin & Employment Policies/Practices

The law makes it illegal for an employer or other covered entity to use an employment policy or practice that applies to everyone, regardless of national origin, if it has a negative impact on people of a certain national origin and is not job-related or necessary to the operation of the business.
An employer can only require an employee to speak fluent English if fluency in English is necessary to perform the job effectively. An "English-only rule", which requires employees to speak only English on the job, is only allowed if it is needed to ensure the safe or efficient operation of the employer's business and is put in place for nondiscriminatory reasons.
An employer may not base an employment decision on an employee's foreign accent, unless the accent seriously interferes with the employee's job performance.

Citizenship Discrimination & Workplace Laws

The Immigration Reform and Control Act of 1986 (IRCA) makes it illegal for an employer to discriminate with respect to hiring, firing, or recruitment or referral for a fee, based upon an individual's citizenship or immigration status. The law prohibits employers from hiring only U.S. citizens or lawful permanent residents unless required to do so by law, regulation or government contract. Employers may not refuse to accept lawful documentation that establishes the employment eligibility of an employee, or demand additional documentation beyond what is legally required, when verifying employment eligibility (i.e., completing the Department of Homeland Security (DHS) Form
I-9), based on the employee's national origin or citizenship status. It is the employee's choice which of the acceptable Form I-9 documents to show to verify employment eligibility.

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

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

1-800-255-7688 (voice for employees/applicants),
1-800-237-2515 (TTY for employees/applicants),
1-800-255-8155 (voice for employers), or
1-800-362-2735 (TTY for employers), or
http://www.usdoj.gov/crt/osc.

F. Pregnancy Discrimination Title VII of the Civil Rights Act of 1964

Pregnancy Discrimination

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

Pregnancy Discrimination & Work Situations

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

Pregnancy Discrimination & Temporary Disability

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

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

Pregnancy Discrimination & Harassment

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

Pregnancy, Maternity & Parental Leave

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

An employer may not single out pregnancy-related conditions for special procedures to determine an employee's ability to work. However, if an employer requires its employees to submit a doctor's statement concerning their ability to work before granting leave or paying sick benefits, the employer may require employees affected by pregnancy-related conditions to submit such statements.
Further, under the Family and Medical Leave Act (FMLA) of 1993, a new parent (including foster and adoptive parents) may be eligible for 12 weeks of leave (unpaid or paid if the employee has earned or accrued it) that may be used for care of the new child. To be eligible, the employee must have worked for the employer for 12 months prior to taking the leave and the employer must have a specified number of employees. See http://www.dol.gov/whd/regs/compliance/whdfs28.htm.

Pregnancy & Workplace Laws

Pregnant employees may have additional rights under the Family and Medical Leave Act (FMLA), which is enforced by the U.S. Department of Labor. Nursing mothers may also have the right to express milk in the workplace under a provision of the Fair Labor Standards Act enforced by the U.S. Department of Labor's Wage and Hour Division.
See http://www.dol.gov/whd/regs/compliance/whdfs73.htm.
For more information about the Family Medical Leave Act or break time for nursing mothers, go to http://www.dol.gov/whd, or call 202-693-0051 or 1-866-487-9243 (voice), 202-693-7755 (TTY).

G. Race/Color Discrimination Title VII of the Civil rights Act of 1964

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

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

Race/Color Discrimination & Work Situations

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

Race/Color Discrimination & Harassment

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

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

Race/Color Discrimination & Employment Policies/Practices

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

Facts About Race/Color Discrimination

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

It is unlawful to discriminate against any employee or applicant for employment because of race or color in regard to hiring, termination, promotion, compensation, job training, or any other term, condition, or privilege of employment. Title VII also prohibits employment decisions based on stereotypes and assumptions about abilities, traits, or the performance of individuals of certain racial groups.

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

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

Race-Related Characteristics and Conditions

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

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

Color Discrimination

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

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

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

Title VII's protections include:

Recruiting, Hiring, and Advancement

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

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

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

Compensation and Other Employment Terms, Conditions, and Privileges

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

Harassment

Harassment on the basis of race and/or color violates Title VII. Ethnic slurs, racial "jokes," offensive or derogatory comments, or other verbal or physical conduct based on an individual's race/color constitutes

unlawful harassment if the conduct creates an intimidating, hostile, or offensive working environment, or interferes with the individual's work performance.

Retaliation

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

Segregation and Classification of Employees

Title VII is violated where minority employees are segregated by physically isolating them from other employees or from customer contact. Title VII also prohibits assigning primarily minorities to predominantly minority establishments or geographic areas. It is also illegal to exclude minorities from certain positions or to group or categorize employees or jobs so that certain jobs are generally held by minorities. Title VII also does not permit racially motivated decisions driven by business concerns – for example, concerns about the effect on employee relations, or the negative reaction of clients or customers. Nor may race or color ever be a bona fide occupational qualification under Title VII.

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

Pre-Employment Inquiries and Requirements

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

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

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

employers that use criminal records to screen for employment must comply with Title VII's nondiscrimination requirements.

H. Religious Discrimination Title VII of the Civil Rights Act of 1964

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

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

Religious Discrimination & Work Situations

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

Religious Discrimination & Harassment

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

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

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

Religious Discrimination and Segregation

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

Religious Discrimination & Reasonable Accommodation

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

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

Religious Accommodation/Dress & Grooming Policies

Unless it would be an undue hardship on the employer's operation of its business, an employer must reasonably accommodate an employee's religious beliefs or practices. This applies not only to schedule changes or leave for religious observances, but also to such things as dress or grooming practices that an employee has for religious reasons. These might include, for example, wearing particular head coverings or other religious dress (such as a Jewish yarmulke or a Muslim headscarf), or wearing certain hairstyles or facial hair (such as Rastafarian dreadlocks or Sikh uncut hair and beard). It also includes an employee's observance of a religious prohibition against wearing certain garments (such as pants or miniskirts).

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

Religious Discrimination & Reasonable Accommodation & Undue Hardship

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

Religious Discrimination And Employment Policies/Practices

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

I. Retaliation Title VII of the Civil Agency Affirmative Action Policy

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

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

Retaliation & Work Situations

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

Facts About Retaliation

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

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

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

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

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

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

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

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

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

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

Protected Activity
Protected activity includes:

Opposition to a practice believed to be unlawful discrimination

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

Examples of protected opposition include:

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

Examples of activities that are NOT protected opposition include:

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

Participation in an employment discrimination proceeding.

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

Examples of participation include:

- Filing a charge of employment discrimination;
- Cooperating with an internal investigation of alleged discriminatory practices; or
- Serving as a witness in an EEO investigation or litigation.

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

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

J. Sex-Based Discrimination Title VII of the Civil Rights Act of 1964

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

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

Sex Discrimination & Work Situations

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

Sex Discrimination Harassment

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

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

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

Sex Discrimination & Employment Policies/Practices

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

K. Sexual Harassment Title VII of the Civil Rights Act of 1964

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

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

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

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

Facts About Sexual Harassment

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

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

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

It is helpful for the victim to inform the harasser directly that the conduct is unwelcome and must stop. The victim should use any employer complaint mechanism or grievance system available.
When investigating allegations of sexual harassment, EEOC looks at the whole record: the circumstances, such as the nature of the sexual advances, and the context in which the alleged incidents occurred. A determination on the allegations is made from the facts on a case-by-case basis.

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

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