CHAPTER 3

3. PROTECTED CLASSES

What is a Protected Class?

A “protected class” in civil rights is simply a shared trait or characteristic among a group which cannot lawfully be targeted for discrimination or harassment. The Civil Rights Act of 1964 originally established race, religion, color, and sex as classes protected from discrimination. Federal and state laws have since expanded protected classes to include a number of different shared traits or characteristics.

SUMMARY OF PROTECTED CLASSES

The following table provides a quick overview of protected classes under federal and state law within Oregon.

Protected Classes	
TITLE VII OF CIVIL RIGHTS ACT OF 1964 Federal laws apply when an employer has 15 or more employees (except where noted)	OREGON REVISED STATUTES CHAPTER 659A State laws apply when an employer has 1 or more employees (except where noted)
Race Color National Origin Sex (includes pregnancy-related conditions) Religion Retaliation Association with Protected Class Genetic Information (under Genetic Information Nondiscrimination Act)	Race Color National Origin Sex (includes pregnancy-related conditions) Religion Retaliation Association with Protected Class Prohibition on Genetic Screening and Brain-wave Testing
Age (40 and older in companies with 20+ employees) (Age Discrimination in Employment Act of 1967)	Age (18 and older)
Veterans (companies with 1 + employees) (Uniformed Services Employment and Reemployment Rights Act of 1994 and the Vietnam Era Veterans Readjustment Assistance Act of 1974) Veterans' Preference in Hiring and Promotion (Public Employers)	Members of the Uniformed Services (ORS 659A.082) Taking leave to Serve in State-organized Militia (ORS 399.065) Taking leave prior to or during leave from deployment by spouse or same-sex domestic partner of member of the armed forces under the Oregon Military Family Leave Act (in companies with 25+ employees) Veterans' Preference in Hiring and Promotion (Public Employers)
Physical or Mental Disability (Americans with Disabilities Act of 1990)	Physical or Mental Disability (in companies with 6+ employees)
Taking leave under the Family and Medical Leave Act of 1993 (in companies with 50+ employees)	Taking leave under the Oregon Family Leave Act (in companies with 25+ employees)
Additional classes protected by state law, Chapter 659A (Except where noted, laws apply when an employer has 1 or more employees)	
Sexual Orientation and Gender Identity Marital Status Retaliation based upon Family Relationship Prohibition on Genetic Screening and Brain-wave Testing Right to Testify at Employment Division Hearings Access to Employer-owned Housing Right to Report Health Care Violations Leave to Donate Bone Marrow Victims of Domestic Violence, Sexual Assault, Stalking or Harassment including Leave Provisions Prohibition on Polygraph Exams Limits on Breathalyzer and Blood Alcohol Testing Expunged Juvenile Record Credit Records or Credit History	Injured Workers (in companies with 6+ employees) Right to File a Lawsuit, Testify in Criminal or Civil Proceedings or Report Criminal Activities Leave to Serve in the State Legislature, (ORS 171.120-125) Right to Testify Before the State Legislature Prohibition on Employer Requiring Medical Release unless Employer pays out-of-pocket costs. ORS 659A.306. Medical Release as a Condition of Continued Employment Opposition to Health or Safety Conditions ORS 654.062(5)(a) Use of Lawful Tobacco Products on off-duty hours

RACE, COLOR AND NATIONAL ORIGIN

State and Federal Coverage

State and federal laws prohibit different treatment in terms or conditions of employment based on race, color or national origin. An employer may not provide separate facilities, unequal benefits or unequal opportunities because of race, color or national origin.

Association with Persons of Another Race

An employer may not discriminate against an individual because that person associates with members of a particular race, color or national origin.

EXAMPLE: It is unlawful for an employer to scrutinize a Caucasian employee more carefully for tardiness because of his relationship with an African-American woman.

It is unlawful to discharge, to refuse to hire or otherwise to discriminate against an individual who is associated with a group that promotes racial, religious or national group interests, even if that person is not a member of that racial, religious or national group.

National Origin

The term “national origin” refers to birthplace, ancestry, culture, linguistic characteristics common to a specific ethnic group, or accent. Discrimination on the basis of national origin may be found if one is denied an employment opportunity because:

- The individual or the individual’s forebears came from a particular country,
- The individual possesses a particular ancestry, heritage or background, or
- The individual’s name or the name of the individual’s spouse reflects a certain national origin.

Fluent English as a Job Requirement

Requiring employees to speak fluent English may have an adverse impact on persons born in non English-speaking countries. For this reason, employers should impose this requirement only when there is a business necessity to do so. Similarly, an employer cannot discriminate based upon a dislike (or concern for possible customers’ dislike) of a particular accent or culture.

Employees should not be prohibited from speaking another language during break time or during work time when safety or efficiency are not affected by the use of another language.

Assignments Based on Race or National Origin

Federal law and guidelines dictate that employers may not assign an employee to particular job duties on the basis of the employee's race or national origin because:

- The clientele being serviced is of the same or a similar group.
- Customers would prefer it.
- Persons of that group have traditionally held certain jobs.

However, an employer may assign job duties on the basis of an individual's ability to perform a job function.

EXAMPLE: An employer may require that an employee speak fluent Spanish when the job requires dealing with members of the public who speak Spanish and little or no English.

National origin may be considered a bona fide occupational qualification for security purposes when persons of a particular national group would be unable to get clearance necessary to perform a particular job.

Native American Preference

State and federal law prohibit discrimination against Native Americans. However, federal law allows an employer to give preferential treatment to Native Americans when:

- The business is on or near an Indian reservation,
- The prospective employment has been publicly announced, and
- The individual being preferred is a Native American living on or near a reservation.

Immigration Reform and Control Act (IRCA)

This federal law requires employers to complete an Employment Eligibility Verification Form (I-9) for all employees hired after November 6, 1986. IRCA also prohibits discrimination based on national origin and citizenship.

The I-9 Form

The I-9 Form lists several kinds of documents (such as passports, alien registration cards, driver's licenses and social security cards) that an employee can present to show that he or she is legally authorized to work in the United States.

A common mistake employers make is assuming that they can express a preference for the types of documents an employee should present. This kind of preference is considered discrimination based upon citizenship under IRCA. For more information,