

OREGON
DEPARTMENT OF CORRECTIONS



Affirmative Action Plan

2011-2013 Biennium

Max Williams, Director
2575 Center Street
Salem, Oregon 97301-4667
503 945-0927

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DEPARTMENT OF CORRECTIONS

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Introduction

The Oregon Department of Corrections (DOC) is committed to equal employment opportunity and affirmative action. This Affirmative Action Plan provides a comprehensive set of chapters that address everything from the definition of affirmative action to strategies for achieving affirmative action parity goals. The Department of Corrections strives to be proactive in ensuring we are providing equal employment opportunities for citizens and employees, while addressing affirmative action policies and goals.

Overall, this document describes in detail how the Department of Corrections plans to comply with federal and state statutes, Oregon Administrative Rule 105-040-001 - Equal Employment Opportunity and Affirmative Action, the Governor's Executive Order 08-18 Affirmative Action, as well as DOC policy 20.4.1 - Equal Employment Opportunity and Affirmative Action.

This Plan implements the provisions of the State of Oregon's Affirmative Action Plan.

Affirmative action is a method of remedying the effects of past and present discrimination, intended or unintended, which become evident after analysis of present employment practices, patterns or policies. As stated in the Code of Federal Regulations (29 CFR 1608.1) "Congress enacted title VII in order to improve the economic and social conditions of minorities and women by providing equality of opportunity in the work place."

The Department of Corrections Affirmative Action Plan is organized into the following sections.

- I. DESCRIPTION OF AGENCY**
- II. AFFIRMATIVE ACTION PLAN**
- III. ROLES FOR IMPLEMENTATION OF AFFIRMATIVE ACTION PLAN**
- IV. JULY 1, 2008- JUNE 30, 2010**
- V. 2009-2011**
- VI. APPENDIX A**
- VII. APPENDIX B**

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The Department of Corrections Affirmative Action Plan (AAP) will:

- Reaffirm the department's policy regarding non-discrimination and equal employment opportunity.
- Set forth the specific goals intended to eliminate under-representation of women, people of color, and persons with disabilities.
- Demonstrate our continued good faith effort in providing equal employment opportunity.

Statistical analyses reflect the employment patterns of the department from July 1, 2008 to June 30, 2010. The standard of parity (utilization measured against availability) is determined by the Governor's Office of Affirmative Action.

This plan is effective for the period of July 1, 2011 through June 30, 2013.

Submitted by
Kim Brockamp
Assistant Director of Human Resources

Prepared by
Bob Koreski
Workforce Planning and Affirmative Action Officer
Oregon Department of Corrections
Human Resources Division
Employee Relations Unit
1793 13th Street SE
Salem, Oregon 97302

Tel: 503 934-1063

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Section I.

Description of Agency and Organizational Structure

Mission, Vision, Core Values

Mission

The mission of the Oregon Department of Corrections is to promote public safety by holding offenders accountable for their actions and reducing the risk of future criminal behavior.

Implementation of department responsibilities is guided by the following organizational vision and core values:

Vision

- We take a proactive role in the development of criminal justice policy.
- We create partnerships with Oregon communities to hold offenders accountable, engage victims, and enhance the quality of life for the citizens of Oregon.
- We are a committed, creative, and productive organization, which recognizes safety and security as an essential business practice.
- We require sound fiscal management of public resources using outcome-oriented strategies.
- We provide offender programs and resources, which support the department's mission.
- We are a diverse, skilled work force, which shares the responsibility for outcomes across organizational boundaries.

Core Values

- We value our responsibilities.
- We value integrity.
- We value teamwork.
- We value respecting others.
- We value constructive change.
- We value the participation of all.

Code of Ethics

As an employee, volunteer or contract service provider of the Oregon Department of Corrections, I will value and maintain the highest ideals of professional and compassionate public service by respecting the dignity, cultural diversity and human rights of all persons, and protecting the safety and welfare of the public.

I accept that my fundamental duty is to serve the public; to safeguard lives and property, to protect Department of Corrections incarcerated persons against deception, oppression or intimidation, violence or disorder.

I will be constantly mindful of the welfare of others. To the best of my ability, I will remain calm in the face of danger and maintain self-restraint in the face of scorn or ridicule.

I will be honest and truthful. I will be exemplary in obeying the law, following the regulations of the department, and reporting dishonest or unethical conduct.

I acknowledge that I have been selected for a position of public trust and I will constantly strive to be worthy of that trust and to be true to the mission and values of the Department of Corrections.

Department of Organization and Functions

The Oregon Department of Corrections was created by the 64th Legislative Assembly in June 1987, and operates under ORS chapter 423. The department's mission originates in the Oregon Constitution, amended in November 1996, to say, "Laws for the punishment of crimes shall be founded on these principles: protection of society, personal responsibility, accountability for one's actions and reformation." The department has custody of offenders sentenced to prison for more than 12 months. Oregon houses offenders in 14 state prisons; the newest prison was opened in September, 2007.

To further focus on safe communities, safe prisons, and a safe workplace, the department created the Oregon Accountability Model. This purposeful plan is designed to change offenders' criminal behavior - during incarceration and post-prison supervision - using evaluation, education, treatment, and work. It begins at the assessment phase during intake and affects offenders throughout incarceration, reintegration, and their time on community supervision. The department's mission of public safety, offender accountability, and crime prevention inspires the model.

The Department of Corrections provides administrative oversight and funding for the community corrections activities of Oregon's 36 counties. Oregon counties manage their own offenders who are subject to jail, parole, post-prison supervision and/or probation. The department provides interstate compact administration and jail inspections as well as central information and data services regarding felons statewide. It is also responsible for evaluating the performance of community corrections.

The department's culture is driven by integrity, respect and teamwork guided by a strong vision that includes leadership, partnerships, and productivity. Department's staff is actively involved in their communities, serving on commissions, participating in volunteer organizations, coaching kids' teams and otherwise giving their time to enhance the quality of life for all Oregonians.

The Oregon Department of Corrections is responsible for the management and administration of all adult correctional institutions and other functions related to state programs for adult corrections. It has six major divisions and a strong relationship with Oregon Corrections Enterprises, a semi-independent state agency.

Central Administration

Central Administration includes the Office of the Director: Planning and Budget, Internal Audits, and the Office of Population Management. The Office of the Director provides overall leadership to the department through the executive management team composed of the five agency division assistant directors and director's office administrators that perform critical agency functions.

Internal Audit provides independent, objective assurance and consulting services through quality audits to add value by increasing efficiency and effectiveness of operations.

The Planning and Budget Unit consists of an administrator and the Budget Office. The unit is responsible for determining the resources necessary to support the existing and growing offender populations, and develops and executes the departments Long-Range Construction Plan. The Budget Office is responsible for managing and coordinating the department's resource identification, budget development, and monitoring activities.

The Office of Population Management, created in June 2006, is responsible for developing and implementing agency inmate population management strategies. The office is responsible for new prison construction, community development, capacity and resource management, inmate classification and special-needs inmates.

Agency Divisions

General Services Division

The General Services Division supports much of the day-to-day business of the Oregon Department of Corrections. Fiscal Services, Distribution Services, Facilities Services, and Information Technology Services fall under General Services.

Fiscal Services supports DOC in the following areas: Purchasing and Contracts, responsible for public procurement and contracting; Statewide Business Services, provides support to all institutions and program areas with business-related fiscal processes; Central Trust, responsible for all accounting related to inmate trust monies; Central Accounting, responsible for payroll, payables, receivables, intra-agency transactions, general ledger accounting, internal reporting and statewide financial reporting; and AFAMIS Support, provides technical support and user training for AFAMIS, the department's accounting system, and TAG, the trust accounting system.

Distribution Services is the primary logistics support operation for the department. Distribution Services manages statewide inventory, monitors and disposes of non-expendable assets, develops statewide food service standards and operational oversight related to feeding inmates, and manages the inmate commissary program for all institutions. The Distribution Center, Food Service Administration, Central Canteen, Transportation and Property Management units are located in Salem. Distribution Services also has out stationed operations located at Snake River Correctional Institution in Ontario, Two Rivers Correctional Institution in Umatilla, and Coffee Creek Correctional Facility in Wilsonville.

Facilities Services is responsible for planning, construction, upgrading, and maintaining correctional facilities, developing policies regarding code compliance and other facility issues for existing institutions. They also are responsible for advising Department managers on pertinent land use and governmental joint powers issues and managing the portfolio of leased facilities for the department.

Information Technology Services supports and maintains DOC computer technologies and automation systems during acquisition, development, and implementation. To accomplish this, the unit is divided into four sections: Development, responsible for

creating and/or maintaining all software in the statewide system; Operations, responsible for operating all servers and the network that comprise the statewide system; Technical Support, responsible for maintaining the desktop devices used on the network; and Business Support, responsible for business analysis, project management and customer relationships.

Human Resources Division

The Human Resources Division, headed by an assistant director, comprises Employee Relations (includes Workforce Planning and Affirmative Action, OFLA/FMLA, and Safety and Risk Management), Labor Relations, Human Resource Operations (includes Recruitment and Background Investigations, Classification and Compensation, and Personnel Records), and Professional Development.

The Human Resources Division manages the personnel-related services of recruitment, affirmative action plan development, employee development and training, employee safety and risk management, organization and leadership development, and consultation and assistance in administering the department's classification, compensation, human resources policies, and labor contracts.

To meet the department mission and fulfill the objectives of the Oregon Accountability Model, the division develops and implements a comprehensive, full-service human resources program that enables the department to effectively recruit, develop, and retain a highly qualified and rapidly growing workforce of over four thousand employees, volunteers, and contractors.

Public Services Division

The Public Services Division (PSD) was created in June 2006. PSD is comprised of the Office of Research and Evaluation, the Office of Public Affairs and Central Services, the Office of Project Management, and Rules Coordination. PSD is led by an Assistant Director who promotes collaboration among the division's units to develop strong partnerships within the agency and between DOC and its external stakeholders.

The Office of Project Management was created during the 2003-05 biennium. This office manages implementation of agency-wide and interagency projects and is responsible for providing project direction and support to ensure that critical Department-wide and interagency projects meet established timelines and outcomes.

The Office of Public Affairs is responsible for the overall strategy and high profile Department-wide efforts about government relations, public information and education and community outreach. The staff educates and provides information to the public, the Legislature, employees and the news media about Department plans, activities, and policies. In addition, this division coordinates the public record requests and tracks inmate tort activity for the department.

The Office of Research and Evaluation provides mission-critical information on offender populations, program performance, and policy impact, which is essential for planning, evaluating, and directing the operations of the Department of Corrections.

Transitional Services Division

Transitional Services Division includes the operation of transition programs, release planning, community corrections, interstate compact, jail inspections, religious services, sentence computation, offender records, victim services, and institution programs such as: workforce development, education, cognitive programs, and addictions treatment programs.

The Transition and Release Services Unit provides release planning services to inmates housed in the Department of Corrections' Institutions, Oregon Youth Authority, Oregon inmates housed out of state, and inmates under the custody of another state serving a concurrent Oregon sentence. This unit also provides Road to Success, a transition program, to inmates housed in institutions designated as releasing institutions. The unit is responsible for partnering with department staff, other state and local agencies, and community organizations to improve transition from incarceration to the community.

Community Corrections Administration provides funding for the management and supervision of more than 34,000 felony offenders sentenced to probation, parole, or post prison supervision, and offenders sentenced to 12 months or less of incarceration. Community corrections supervision and programs are provided directly by the state in two counties (Douglas and Linn), or by the counties through intergovernmental agreement with the Department of Corrections. Community Corrections Administration is responsible for the statewide coordination and oversight of community corrections activities at the county level, including monitoring compliance with applicable laws and administrative rules. The program has the statutory responsibility to evaluate community corrections policies, to annually review counties' compliance with the intergovernmental agreement, and to offer technical assistance when needed to gain compliance. In addition, Community Corrections Administration provides consultation and technical assistance to local agencies regarding community corrections options and effectiveness, facilitates communication among counties and problem solving between counties, and organizes training activities specific to community corrections work.

Community Corrections Administration also operates the interstate compact and provides jail inspections. The Interstate Compact Unit processes applications for transfer of community supervision to and from other states, prison releases to other states, and administers the Interstate Compact for Adult Offender Supervision. Jail inspections include on-site evaluation of 95 adult jail and juvenile detention facilities in counties and municipalities.

Religious Services provides a wide continuum of religious worship services, study programs, music programs, serious illness/death notifications, and pastoral counseling opportunities to meet the constitutional and legal mandates of the U.S. Constitution, Oregon State Constitution, federal and state legislation, and case law. This unit also

provides Crime Victims Services, Community and Faith-Based Re-entry, and runs a Volunteer Program.

WFD provides a continuum of adult education, work-based education, cognitive skill training, and alcohol and other drug treatment programs in twelve adult corrections facilities in Oregon. This unit also oversees the multi-agency Children of Incarcerated Parents program aimed at reducing the risk of inter-generational criminality by promoting the well-being of the children of those incarcerated. These programs represent a balanced approach to addressing some of the most significant risk factors associated with criminal behavior as well as addressing the barriers to productive participation in work, family, and community.

The Offender Information and Sentence Calculation Unit (OISC) calculates and updates the length of all prison terms, based on information provided by the courts. OISC also is the repository for all legal files pertaining to offenders who have been, or currently are, under the custody or supervision of the department. The unit is responsible for the maintenance of the department's official offender records.

Operations Division

The Assistant Director of Operations centrally administers Oregon's adult prisons. The division's responsibilities encompass the management of state prisons, inmate physical and mental health treatment, inmate transportation, emergency preparedness, and most inmate work activities.

Health Services is comprised of an administrative unit, which sets policy and long-term direction and a series of operational units representing the health care program at each facility. The health care program at each of the correctional institutions operated by the department is responsible for delivering health care to inmates consistent with policy centrally established by the division. Health Services employs more than 200 health care personnel and manages a number of agreements with health care organizations in communities throughout Oregon and the surrounding states in order to deliver constitutionally adequate health care. Specific programs include: Medical Program, Dental Program, Health Care Records, Radiology Services, Mental Health Services, and Pharmacy Services.

STATE PRISONS

The existing correctional institutions include:



- Coffee Creek Corr Facility (CCCF), Wilsonville
- Columbia River Corr Institution (CRCI), Portland
- Deer Ridge Correctional Institution (DRCI), Madras
- Eastern Oregon Corr Institution (EOCI), Pendleton
- Mill Creek Correctional Facility (MCCF), Salem
- Oregon State Corr Institution (OSCI), Salem
- Oregon State Penitentiary – Minimum (OSPM), Salem
- Oregon State Penitentiary (OSP), Salem
- Powder River Corr Facility (PRCF), Baker City
- Santiam Correctional Institution (SCI), Salem
- Shutter Creek Corr Institution (SCCI), North Bend
- Snake River Corr Institution (SRCI), Ontario
- South Fork Forest Camp (SFFC), Tillamook
- Two Rivers Corr Institution (TRCI), Umatilla
- Warner Creek Corr Facility (WCCF), Lakeview

Coffee Creek Correctional Facility and Intake Center

Coffee Creek Correctional Facility (CCCF) is a 1,360-bed dual-mission facility in Wilsonville that comprises Oregon Corrections Intake Center for men and women as well as the states only multi-custody full-service women’s prison. Coffee Creek’s minimum facility opened on October 15, 2001. The medium facility and intake center opened on April 18, 2002.

All inmates entering Oregon’s prisons are initially housed at Coffee Creek. During a 22-day assessment period, individual plans are designed for each inmate. Following the development of their corrections plans, inmates are assigned to a prison.

Women serving their sentences at CCCF have access to a full spectrum of programs to prepare them for their transition and re-entry to the community, including parenting programs and an on-site Early Head Start facility to help strengthen families and teach parental responsibility.

Columbia River Correctional Institution

Columbia River Correctional Institution (CRCI) is a 540-bed minimum-security prison located in Northeast Portland. The prison opened in September 1990, and houses 500 male inmates in dormitories. Major program activities for most inmates include community service work, institution support and maintenance work, and educational and cognitive skills classes.

Fifty inmates are housed in a separate living area designed specifically for use as a residential alcohol and drug treatment center. Inmates participate in this therapeutic community program designed to address serious addiction and substance abuse problems.

Deer Ridge Correctional Institution

Deer Ridge Correctional Institution (DRCI) is a men's prison located in Madras with 644 minimum- security beds and 1,240 medium-security beds. Construction began in October 2005, and the first minimum-security inmates arrived in September 2007. The medium-security facility is complete and ready to house inmates. When fully opened, the facility expects to employ between 400-500 people.

Eastern Oregon Correctional Institution

Eastern Oregon Correctional Institution (EOCI) was authorized in 1983 as the first medium-security adult male correctional facility established outside of Marion County. Until its conversion to a prison, EOCI had been a state mental hospital, with most of the buildings originally constructed in 1913. The 1,600-bed facility is Pendleton's second largest employer.

EOCI provides a variety of work opportunities to inmates. The Garment Factory manufactures the internationally recognized "Prison Blues" line of blue denim. The commercial laundry meets the needs of the facility as well as several local public service agencies and large industries. EOCI's physical plant mission is to teach marketable job skills to inmates in the fields of electricity, plumbing, and carpentry. In 1999, the creative arts, woodworking, and metal shops established to provide services to the community.

Blue Mountain Community College provides GED and Adult Basic Education services for the inmates at the prison. EOCI also offers the STEPS to Freedom Program, which is a 4-6 month pre-release alcohol and drug day- treatment program serving 70 inmates. The COPE Program provides mental health day-treatment services to inmates who experience moderate to severe mental health problems and have difficulty adjusting to prison life.

Mill Creek Correctional Facility

Mill Creek Correctional Facility (MCCF) is a minimum-security prison housing 310 inmates. The facility has been operated by the Department of Corrections since 1929. All inmates are within three years of release and most have successfully completed required correctional programs prior to assignment to MCCF. The facility prepares inmates for transition and release to the community by providing a variety of work programs and training opportunities.

Oregon State Correctional Institution

Oregon State Correctional Institution (OSCI), a men's medium-security transitional release facility located three miles east of Salem, established by the 1955 Legislature, became operational June 1, 1959.

The 880-bed facility confines males serving sentences for felony convictions from all counties of Oregon. OSCI focuses on providing transition programs and work skills to inmates who have less than three years to serve but are not suitable for housing in a minimum-security environment. Some of the work and skills training opportunities available to inmates at OSCI include Geographical Information Systems (GIS), Engineering Support Unit (ESU), printing, and telecommunication services for the Oregon Health Plan and the Oregon Secretary of State's Office.

Oregon State Penitentiary

Oregon State Penitentiary (OSP), Oregon's first state prison, was originally located in Portland in 1851. It moved to a 26-acre site in Salem and enclosed by a 25 foot-tall reinforced concrete wall, in 1866. OSP is the state's only maximum-security prison.

The penitentiary accommodates up to 2,150 inmates. Housing for the general inmate population in the penitentiary is in large cell blocks, most inmates assigned to double cells. In addition to its general population housing, the penitentiary also has a disciplinary segregation unit, a special management unit, and an infirmary.

The penitentiary's 236, self-contained Special Management Unit includes three special housing units to include a Mental Health Infirmary, Mental Health Day Treatment, and Behavioral Unit to provide programs, housing, and control for male inmates who have serious mental health issues and are disruptive or pose a substantial threat to staff and other inmates. This building also houses those inmates with a sentence of death. Executions, using lethal injection, are conducted at the penitentiary.

Penitentiary inmates may work in Oregon Corrections Enterprises shops including a furniture factory, metal shop, upholstery shop, or the state's third-largest commercial laundry. Several job skills training programs and comprehensive education programs are available.

The **OSP Minimum Facility** (OSPM) occupies the grounds formerly used by the Oregon Women's Correctional Center, houses 176 minimum-custody female inmates. This self-contained unit, managed by the Oregon State Penitentiary, provides support for other DOC facilities. Also included within the facility is a 48 bed residential alcohol and drug treatment program.

Powder River Correctional Facility

Powder River opened in 1989 housing 286 adult male inmates. The facility operates a 178-bed alternative incarceration addictions treatment program. Inmates are assigned to institution and/or community-based work programs and to the alternative incarceration addictions treatment program, which follows a strict regimen of work, education, treatment, physical exercise, service to the community and other program activities 16 hours daily. Inmates are also assigned to perform institution-based and/or community-based work projects for governmental, private sector, and non-profit organizations in Baker City and surrounding counties. In addition, inmates serve on fire crews in support of the Oregon Department of Forestry.

Powder River serves as a transition/re-entry facility for selected minimum-security inmates preparing for transition from prison to community.

Santiam Correctional Institution

The Santiam Correctional Institution (SCI) is a minimum-security prison located in southeast Salem that accommodates 425 male inmates in four dormitories. The department has operated the building as a correctional institution since 1977. SCI houses men who are within six months of release. The prison emphasizes programs that enhance the inmates' chances of successful re-entry into their communities. In addition to transitional programs, the prison's work crews provide inmates with experience at state, county and city agencies, and other department facilities.

Shutter Creek Correctional Institution

Acquired from the Federal Government at no cost to Oregon taxpayers, this former Air National Guard radar station converted to a 230-bed minimum-security prison that opened in February 1990. Shutter Creek Correctional Institution (SCCI) consists of 56 acres and 20 buildings surrounded by forestland and located near North Bend on the Oregon coast.

The facility accommodates 100 general population male inmates who work on-site in the physical plant, warehouse, laundry, and kitchen areas and provide off-site public service in forests, parks, highways, and beaches.

In additional 180 male and female inmates are participants in the Oregon SUMMIT Alternative Incarceration Program, implemented in March 1994. Offenders volunteer for the intensive cognitive-based program and if successful, they can reduce their prison term by 30 months or less. Inmates evaluated daily that fail to maintain adequate standards of progress return to general population. The Legislature authorized the program and sentence reduction in 1993.

Snake River Correctional Institution

Snake River Correctional Institution (SRCI) is a multi-security facility that opened in August 1991. Although sited for 3,000 beds, in Phase I, only 576 medium-security and 72 minimum-security beds were constructed. In 1995, the Oregon Legislative Assembly approved construction of the remaining 2,352 beds.

The largest prison in Oregon, Snake River has 105 acres inside the perimeter and 23.4 acres of buildings. SRCI has 2,336 medium-security beds, 154 minimum-security beds and 470 special-housing beds, (disciplinary segregation, intensive management, infirmary, administrative segregation and special management units). SRCI employs more than 900 corrections professionals.

South Fork Forest Camp

South Fork Forest Camp (SFFC) stands alone in its unique mission and operation within the Department of Corrections. Established in 1951, following the catastrophic Tillamook Burn, the camp operates in partnership with the State Forestry Department. Inmates housed at SFFC perform numerous reforestation projects in the Tillamook Burn area and are screened, selected, trained and deployed to fight wild fires throughout the state.

SFFC is located east of Tillamook and houses 200 minimum-security inmates. SFFC also operates an on-site salmon/steelhead rearing pond in cooperation with the Department of Fish and Wildlife. The prison's boot shop saves taxpayers approximately \$35,000 per year by repairing and recycling boots for the department.

Two Rivers Correctional Institution

Two Rivers Correctional Institution's groundbreaking occurred on April 5, 1997. The institution was substantially complete on March 10, 2000. Operation of the housing units phased in between December 1999 and September 2001 for an inmate capacity of 1,632. In 2004, the addition of 180 beds brought the population up to 1,812. These include 32 additional beds in minimum security, 30 single cells converted to double cells to add 60 beds, and a dormitory unit created in Workforce Development adding 88 beds.

TRCI, designated as an education/work facility for long-term inmates, focuses programs on GED and Adult Basic Education.

Warner Creek Correctional Facility

Warner Creek Correctional Facility (WCCF) is located north of Lakeview. WCCF is a 400 bed minimum- security men's facility, which opened in September 2005.

All inmates housed at WCCF are scheduled for release within three years. Programs and work assignments are designed to facilitate successful reentry into Oregon communities. The facility employs an average of 110 correctional professionals. The facility includes areas for inmate housing, work and education programs, health services, food services, religious services, physical plant, warehouse and storage, vehicle maintenance, a laundry facility, recreational activities, administration and various other functions.

PRISON POPULATION MANAGEMENT PLAN

Because of a rapidly growing inmate population, the state embarked on an ambitious prison construction and expansion program in 1995. The construction schedule is timed to meet the forecasted demand for beds. The Department of Administrative Services Office of Economic Analysis issues an *Oregon Corrections Population Forecast* every six months in April and October. DOC then uses these forecasts to update the Long-Range Construction Plan and population management plan for the biennium.

The inmate population was 13,589 on July 1, 2008, having grown by .54 percent (73 beds) during Fiscal Year 2008. The July 1, 2009 population is expected to be 13,804, 1.8 percent (247) higher than July 1, 2008. Oregon's prison population is expected to grow 4.3 percent (596 beds) in the following biennium (2009-11). The population is expected to reach 14,400 by July 1, 2011.

Junction City will be the next site developed for a men's prison. The institution will have a 525-bed minimum facility and a 1,278-bed medium facility. The 2007 Legislature approved funding for partial design of the facility.

The Oregon Accountability Model

The Oregon Accountability Model encompasses the simultaneous, coordinated and efficient implementation of many Department of Corrections initiatives and projects that provide a foundation for inmates to lead successful lives upon release.

The Oregon Accountability Model has six components. Each of these components stands on its own as a project or a part of the Corrections organization and culture. However, woven together these six separate components form a stronger fiber that strengthens the department's ability to hold inmates/offenders accountable for their actions and DOC staff accountable for achieving the mission and vision of the department.

Components of the Oregon Accountability Model

Criminal Risk Factor Assessment and Case Planning:

With the opening of the new intake center at Coffee Creek Correctional Facility in Wilsonville, the department implemented an enhanced assessment process. The outcome is a corrections plan for every inmate that is tracked throughout an inmate's incarceration and supervision in the community.

The corrections plan is based on mitigating seven criminal risk factors that research indicates predict future criminal behavior. The seven criminal risk factors are:

- Associates
- Substance Abuse
- Community Functioning
- Education and Employment
- Emotional and Mental Health
- Marital and Family Life
- Attitudes

The department provides targeted programs and services to mitigate these risk factors during incarceration and community supervision. When offenders transition successfully back into their communities there is less likelihood that they will commit new crimes.

Staff-Inmate Interactions:

Correctional security practices such as classification, gang management, and housing assignments hold inmates accountable for their actions every day. They ensure that the prisons are safe, civil and productive. A key part of this component recognizes that staff interactions with inmates help shape positive behavior. The department encourages staff to influence inmates' behavior, acknowledge positive change and provide incentives to inmates to change their behavior.

Work and Programs:

To prepare an inmate for living in the community upon release, the Department of Corrections uses the assessments performed at intake to create a corrections plan for each inmate. The plan specifies the correctional programs the inmate should complete before release to best mitigate his identified risks.

Meaningful work is known to contribute to the success of offenders upon release. Many correctional programs contribute to inmates' preparedness for work (education, treatment) and others teach inmates the skills they need to gain employment and succeed in the workplace. Most Oregon state inmates have a job while incarcerated to give them on-the-job experience.

Children and Families:

The department encourages productive relationships between families and inmates to strengthen ties and increase the likelihood of success upon release. The period of a parent's incarceration provides an excellent opportunity for positive intervention with families at risk.

The department has a strong interest in the children of incarcerated parents because they are five to six times more likely to be incarcerated than are their peers. The department leads a statewide partnership called The Children of Incarcerated Parents Project that has the best interests of children in mind. Project initiatives to date provide inmates with tools for successful parenting and allows opportunities for inmates to practice those pro-social behaviors. Three strategies initially identified are: parent education classes for inmates, a therapeutic child-centered facility serving children of female inmates, and examination of current rules and practices including visiting, mail and phones.

Reentry:

The department is involved in a statewide project that focuses on transition — a seamless movement of offenders from the community to incarceration to community supervision. The project would limit duplication of services and increase effective and efficient use of partnerships. Seven of the department's prisons have been identified as reentry facilities. These prisons are strategically located to encourage reach-in by the community. Connections with the community before release are important factors in offenders' successes on the outside, and may include work, treatment religion, and housing. Reentry prisons will be geared to preparing inmates for release during their last six months of incarceration.

Community Supervision and Programs:

There are more than 30,000 offenders on probation or post-prison supervision in Oregon communities. The department continually works in partnership with each county to develop, deliver and administer best practices regarding supervision, sanctions and programs for offenders and their families in the communities. The goal is to reduce the odds that these offenders will commit new crimes.

The ultimate goal of the Oregon Accountability Model is to improve public safety. The model ties together many concurrent and interrelated efforts of the department and its partners into a cohesive strategy to reduce recidivism and influence inmates into becoming productive citizens.

Office of Public Affairs, Oregon Department of Corrections
2575 Center Street, Salem, OR 97301-4667
(503)945-0925
<http://www.doc.state.or.us>



Agency Director:

Max Williams
2575 Center St NE
Salem, OR 97301
503 945-0927

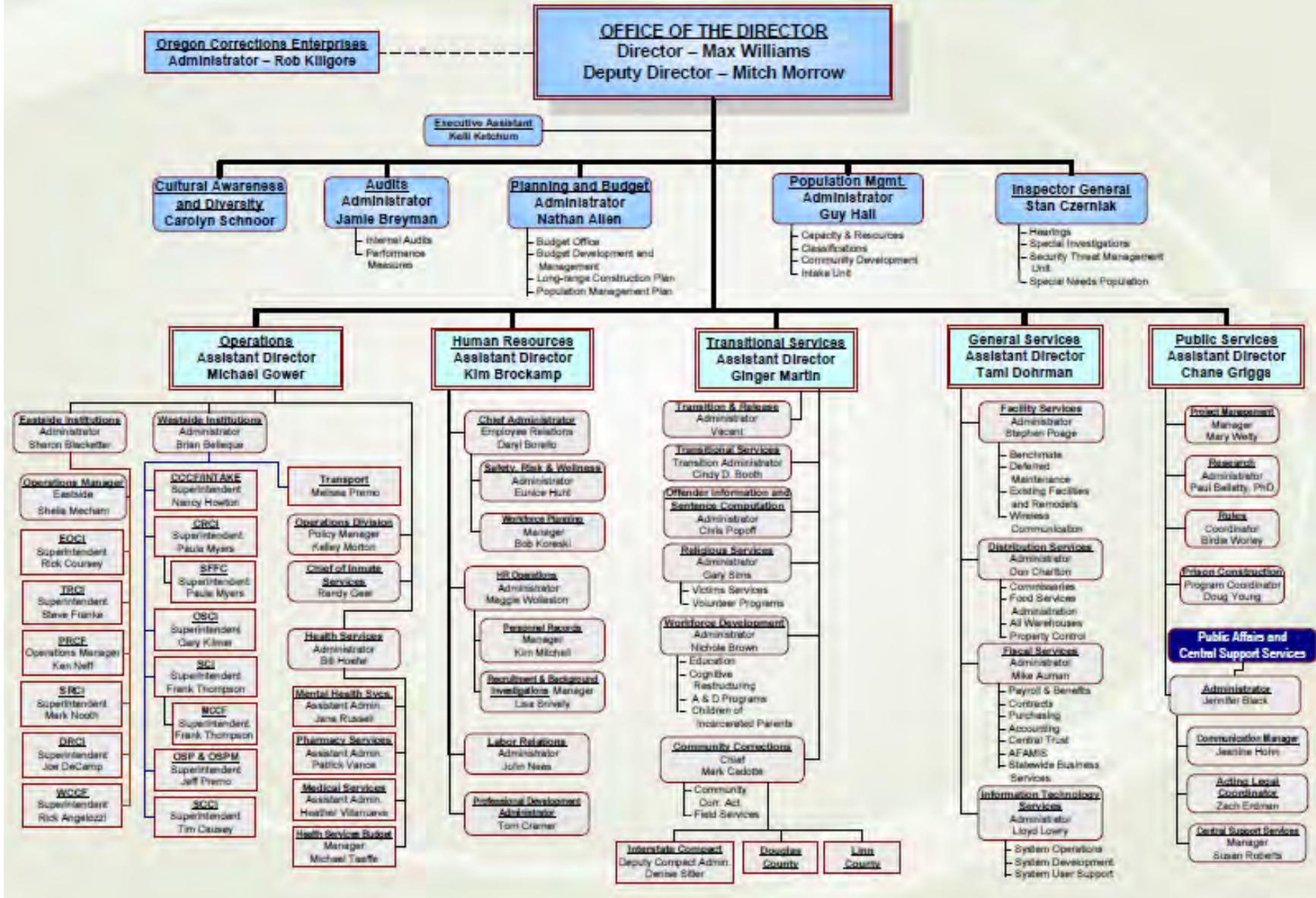
Governor's Policy Advisor:

Joseph O'Leary
503 378-8636

Workforce Planning and Affirmative Action Manager:

Bob Koreski
503 934-1063

Oregon Department of Corrections Central Administration Organizational Chart July 7, 2010



Section II.

Affirmative Action Plan and Affirmative Action Policy Statement

The following sections fall under this Chapter of the Affirmative Action Plan:

Affirmative Action Policy Statement

Training, Education and Development Plan

Contractors

Volunteers

Programs

Update: Executive Order 08-18

Cultural Competency Assessment and Implementation Services

Statewide Exit Interview Survey

Performance Evaluation of all Management Personnel

Status of Contracts to Minority Businesses



Oregon

Theodore R. Kulongoski,

Oregon Department of Corrections

Office of the Director
2575 Center Street NE
Salem, OR 97301-4667
(503) 945-0920
FAX (503) 373-1173



DATE: August 24, 2010

TO: Department of Corrections Employees, Applicants, Contractors, and Vendors

FROM: Max Williams, Director
Mitch Morrow, Deputy Director

SUBJECT: 2011-2013 AFFIRMATIVE ACTION PLAN – Policy Statement

One of the Department of Corrections' core values is: "We value respecting others." As a part of our mission we have a Code of Ethics that states: "As an employee, volunteer or contract service provider of the Oregon Department of Corrections, I will value and maintain the highest ideals of professional and compassionate public service by respecting the dignity, cultural diversity and human rights of all persons, and protecting the safety and welfare of the public." To this end, the department is committed to creating a work environment that is positive, productive, and free from harassment and discrimination. All employees share in this responsibility.

Managers and employees are accountable for creating and promoting a work environment that is free from any kind of hostility or unwelcome behavior. These principles also apply to our dealing with contractors, volunteers, victims, vendors and the public. We expect managers to participate and encourage others to participate in the agency's activities designed to promote affirmative action. Each manager and supervisor's effectiveness in promoting the Department of Corrections' affirmative action goals and objectives will be a part of their annual performance evaluation.

The Department of Corrections employs a diverse workforce that reflects the diversity found through out the state. Our ability to model diversity is dependent on our ability to attract individuals with a diverse background who are committed to the mission and vision of the agency. Individual success depends on our collective practice or recognizing and respecting the value of human differences. To reach this level of success, every effort will be made to reach out to the broadest-possible labor market. In addition to proactive recruiting efforts, the quality of the work environment is an important part in maintaining a diverse workforce. Equal employment opportunity covers all employment practices, including but not limited to, recruitment, hiring, promotion, transfer, reassignment, training, benefits and separation.

We believe that everyone at corrections is a vital part of promoting and achieving diversity in the workplace. As employees, we are committed to ensuring equal employment opportunity for all employees and applicants for employment regardless of their race, religion, color, sex,

national origin, age, political opinion or affiliation, marital status, or disability. Success in achieving these goals will aid the department in its vision or "...A diverse, skilled workforce which shares the responsibility for outcomes across organizational boundaries."

In support of these commitments, please reference Department of Corrections' policies:

- Equal Employment Opportunity and Affirmative Action (20.4.1)
- ADA and Reasonable Accommodation (20.5.16)
- Promotion and Maintenance of a Respectful Workplace (20.6.1)
- Code of Ethics (20.1.2)

Department of Corrections Policy 20.6.1 Promotion and Maintenance of a Respectful Workplace provides the process for, reporting, investigating, and resolving employee complaints of discrimination and harassment. Please find Department of Corrections Policy 20.6.1 on the following pages in reference to the complaint process.

To ensure the Affirmative Action Plan is disseminated to all Department of Corrections employees, volunteers, applicants, contractors, and vendors the Agency will post the Affirmative Action Plan on the DOC public website and hardcopies will be provided to each Department of Corrections correctional facility, the office of the Director, and the Assistant Directors. The Affirmative Action Policy statement will be posted throughout the Agency on employee bulletin boards.

Further questions related to the Affirmative Action Policy Statement or the Affirmative Action Plan should be directed to:

Bob Koreski
Workforce Planning and Affirmative Action Officer
Oregon Department of Corrections
1793 13th Street SE
Salem, OR 97302
503 934-1063

Affirmative Action Policy Statement

| | | |
|---|--|---|
|  | DEPARTMENT OF CORRECTIONS Human Resources |  |
| Title: | Promotion and Maintenance of a Respectful Workplace | DOC Policy: 20.6.1 |
| Supersedes: | 1/1/99 | |
| Applicability: | All employees, volunteers, and contract service providers | |
| Directives Cross-Reference: | State Policy 50.010.01, ORS 659.030(1) Civil Rights Act of 1964 | |

I. PURPOSE

To reaffirm that it is the policy of the Department of Corrections 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 all employees, customers, clients, contractors and visitors to the worksite.

II. DEFINITIONS

- A. 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 or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile or offensive working environment.

III. POLICY

It is the policy of the Department of Corrections to provide a work environment free from behavior, action, or language, which may be perceived by others as discriminatory or harassing.

- A. **Discrimination.** It is the policy of the Department 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 purposes

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 the Department that all employees, customers, clients, contractors and visitors to the work site enjoy a work environment that is free from harassing behavior.

1. Employees at all levels shall be expected to interact with co-workers, inmates and the public in a business-like and professional manner at all times. This includes refraining from sexual or other harassment.

Conduct in violation of this policy will not be tolerated. Any member of the staff found to have engaged in conduct in violation of this policy will be subject to disciplinary action up to and including dismissal.

2. Supervisors and managers shall serve as role models for subordinates, educate staff, respond to and investigate actions that may be discriminatory or harassing in nature.

Managers and supervisors who know or should have known of workplace harassment behavior and who fail to report such behavior, or fail to take prompt, appropriate, corrective action, will be subject to disciplinary action up to and including dismissal.

C. Any employee, volunteer or contract employee who alleges discrimination or harassment in the workplace may submit a complaint as outlined in this policy.

1. 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, another manager, or a human resources consultant. A complaint should be filed within 30 calendar days of the alleged act(s) or when the act(s) becomes known to or should reasonably be known by the complainant.

2. 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 complaint may be reported to the employee's immediate supervisor, another supervisor, or a human resources consultant. Employees may report to any of the persons listed above and need not observe any particular chain of command.

3. Complaints of discrimination or workplace harassment may be made verbally or in writing and must include the following: 1) name of the complainant; 2) the names of person(s) alleged to have engaged in the prohibited conduct; 3) a specific and detailed description of the

conduct which the employee believes is discriminatory, and 4) a description of the remedy the employee desires.

4. The recipient of a discrimination or harassment complaint shall promptly notify the human resources consultant to discuss and determine the appropriate person(s) to be responsible for the investigation. The complaint will be given prompt and thorough attention with an impartial investigation.

All staff can be assured that such complaints will be taken seriously and will be investigated as necessary. They will be dealt with in a discreet and confidential manner to the extent possible.

5. When an investigation substantiates the complaint, the supervisor shall initiate immediate and appropriate corrective action, which may include disciplinary action up to and including termination. The affected parties shall be informed that the investigation has concluded and that immediate appropriate corrective action will be taken. If the complaint involves persons outside the agency, appropriate measures shall be taken to remedy the problem.

6. Nothing in this policy precludes any person from filing a formal grievance in accordance with a collective bargaining agreement, or with the state's Affirmative Action Office, the Bureau of Labor and Industries, or the Equal Employment Opportunity Commission. Timelines for filing complaints with BOLI and the EEOC are different from those established in this policy. Contact them directly for specific guidance on filing a formal grievance with them.

- D. **Non-Retaliation.** 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.

IV. POLICY CLARIFICATION

- A. 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 innuendoes, teasing and other sexual talk such as jokes, intimate inquiries, persistent unwanted courting and sexist put-downs or insults;

Effective Date: 1/1/01

Page 3 of 4

3. Derogatory remarks, slurs and jokes about a person's national origin, race, color, religion, language, 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.

V. IMPLEMENTATION

This policy will be adopted immediately without further modification.

Effective Date: 1/1/01

Page 4 of 4

Training, Education and Development

Due to the current budget limitation training in the Agency has been curtailed to mandatory training. The Department of Corrections Professional Development Unit is developing training alternatives that will still meet the needs of the organization without cost. Through WebEx, computer based training, and mini trainings.

New Employee Orientation (ongoing)

The department offers a 40-hour New Employee Orientation (NEO) program to all employees new to the department, prior employees who have been away from the department for two years or more, and full-time contractors. The NEO program is designed to provide new employees base-line information on the mission, vision, values, concepts, principles, policies and rules of the agency, focusing on the Oregon Accountability Model. Selected functional units, such as Inmate Workforce Development, Security Threat Group Managers, and Emergency Response Managers provide information pertaining to their responsibilities. Skill-based training such as CPR and First Aid is also included. Newly hired staff are expected to successfully complete the NEO program within their trial service period. Additionally, custody series staff are expected to complete the DOC NEO before attending the Department of Public Safety Standards and Training (DPSST) Basic Corrections Academy

Annual In-Service (limited to 8 hours)

Each annual 40-hour training program is designed to meet the training requirements for both custody and non-custody employees and contractors. The programs design is based on employee surveys, focus group results, outside regulatory agency requirements, and training need assessments, and the program's design and presentation is intended to further the department's mission and goals while strengthening teamwork and communication among and between staff and functional units.

Preparation for Supervision (suspended)

This 32-hour National Institute of Corrections course effectively serves as an introduction to supervisory concepts and is designed for those staff who might be seen as or who want to be considered for the next generation of department management.

Management In-Service (suspended)

Each year a variety of subjects are delivered which are specific to the needs and duties of department management employees. This 16-hour intensively interactive course provides participants with a standard set of knowledge and skills focusing on leadership and decision-making, communication, management of security, legal issues, ethics, and personnel procedures.

Contractor Orientation (ongoing)

This one-day program, specifically designed for the part-time contractor (less than 20 hours per week), provides the information needed for them to work within the department in a manner that is both safe and constructive for the worker, the inmates, and other staff with whom they will have contact. The program includes presentations on work-place safety, professional conduct, working with inmates, including special-need inmates, and institution security practices and protocols.

Director's Academy (suspended)

The Director's Academy is a one-week long training for management service employees. The agency Executive Management Team, including the director, deputy director, and assistant directors, are the presenters of these leadership classes.

Leadership Training and Succession Planning (ongoing)

Staff Development and Leadership Work Plan (LWP)

At the start of each new performance evaluation cycle, all ODOC managers/supervisors meet with their subordinate staff for a performance evaluation and review of the past year, and develop new goals and objectives for the coming year. The LWP can be integrated into that cycle or can be customized for each staff member at a mutually agreed upon time during the year.

The purpose of this work plan is two-fold:

To further career growth. ODOC is committed to helping each employee reach his/her full potential. Exploring and discussing career aspirations and goals with subordinates is part of a supervisors job, but should also come at the behest of any member of the DOC staff interested in career development.

For succession planning purposes. ODOC is committed to preparing staff for future appointments to key positions in the department by offering appropriate training and development activities. If the employee is in a career path, or interested in future appointment to one of the departments key positions, he/she should be advised about the type of knowledge, skills, abilities and leadership qualities management will be looking for in the candidate field. The training and activities should relate to helping the candidate master those requirements in an effort to become as competitive as possible for those future leadership opportunities.

A set of leadership qualities each candidate should possess in order to be successful for key positions follows. Not every target group contains key positions, but all are valid career paths.

Leadership Qualities

1. A Leader is Creative and Resourceful
 - Sees beyond the current state of affairs.
 - Develops new responses to situations.
 - Identifies and applies useful and unique approaches and solutions to problems even when they are presented from other sources.
 - Explores innovative solutions, including seeking new and/or improved ways to serve the needs of the department's increasingly diverse inmate population, staff and community.

2. A Leader is Tolerant of Ambiguity and Change
 - Deals with unresolved situations, frequent change, delays or unexpected events calmly and with clear reasoning.

- Maintains a mature, problem-solving approach while dealing with conflicting priorities, interpersonal conflict, positional differences, hostility, hazardous conditions or time demands.
 - Perseveres with an appropriate course of action, despite obstacles and resistance.
 - Responds in a consistent and stable manner during a crisis.
3. A Leader Possesses Self Discipline and Credibility
- Demonstrates ethical standards, credibility and integrity that exemplify the mission, vision and values of the department.
 - Fosters a respectful, healthy workplace environment.
 - Possesses a high degree of self-control and direction.
 - Operates in a manner that effectively represents the department's policies and priorities.
 - Follows through with projects and initiatives to ensure their successful completion.
4. A Leader Understands the Political Environment
- Works in a way that is mindful of the political dynamics of state/local government and communities.
 - Understands intra- and inter-agency dynamics and how they affect one another.
 - Understands that politics influences outcomes and strategically uses or defuses that energy.
 - Responds to political mandates and legislative inquiries/initiatives.
 - Uses political savvy and influence consistent with the policies and priorities of the department.
5. A Leader Demonstrates Systems Thinking
- Understands that organizations are interdependent and that change to one area of the organization could affect operations in other areas.
 - Thinks in terms of each element as part of a complex system.
 - Understands the Oregon Accountability Model, both as a philosophical abstract and as a conceptual framework from which to begin the process of fundamentally changing inmate behavior.
 - Uses their knowledge in problem solving, planning and change.
6. A Leader Navigates Within the Organization
- Uses information about the organizational climate and key individuals to accomplish organizational goals.
 - Recognizes the importance of stakeholders, timing, and group dynamic processes in influencing decisions.
 - Identifies support and resistance.
 - Adjusts strategies to fit the organizational climate.
 - Understands the cyclical nature of government and the functions within it.
7. A Leader Takes Risks
- Knows when and how to question the status quo.
 - Listens to diverse ideas and viewpoints.
 - Makes strategic and thoughtful evaluations.
 - Has the courage to take calculated risks and accept and deal with the outcomes.

- Encourages and rewards informed risk-taking in others.
- Learns from both success and failure.

8. A Leader Recognizes and Develops Staff Potential

- Understands the value of communication and places a high priority on developing professional relationships with staff, labor organizations, inmates, and the community.
- Makes a personal commitment to career development activities that ensure leadership succession.
- Understands the value of diversity in the workplace, recruits the best talent, and maximizes agency performance by using those diverse talents.
- Supports employees in reaching their maximum potential while holding them accountable for the department's mission and values.
- Sets an example by applying the OAM principles of role modeling, reinforcing and redirecting.

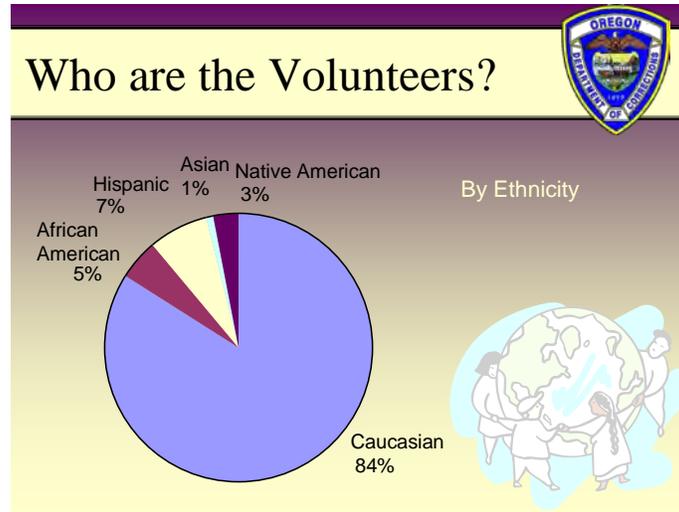
9. A Leader Possesses Expertise in Correctional Programs and Fiscal Management

- Has a working knowledge of programs provided by the department and is able to use this knowledge effectively and make it understandable to others.
- Effectively communicates knowledge of the department's programs and financial policies.
- Possesses sufficient financial expertise to manage institution or program budgets and adapt to budgetary changes and other challenges.
- Conducts a rigorous evaluation of fiscal resources, selects the most effective option, and makes difficult funding decisions.
- These qualities have been identified for all key positions. If an employee wants to be a candidate for a key position, he/she needs to participate in training and development activities that concentrate in those areas. Working with their supervisor, they should agree on activities that will help them gain experience and knowledge in that area.
- Any of the following activities or combinations is possible. Supervisors and employees may decide on other equally effective activities.
- Formal training courses provided by vendors off-site
- Formal training courses provided by vendors or training staff in-house
- On-the-job training
- Special assignments
- Assignments to task forces or workgroups
- Customized individual coaching and/or mentoring
- Pairing with an experienced worker
- Job rotation
- Job shadowing
- Loaned executive programs to other agencies
- Computer-assisted training
- Seminars or lunch time training sessions given by supervisor or division staff
- Obtaining advanced degrees or taking college courses

- Activities must also necessarily be limited to available resources. However, creativity and resourcefulness should be used to ensure those activities that can be achieved are pursued.

Volunteers

There are currently about 2100 active volunteers who come in regularly to provide service to the incarcerated. They come from every race, socio-economic background, religious/spiritual tradition, educational background, marital status, sexual orientation and culture. Men and women are almost equally represented as volunteers. Their common bond is the desire to make a difference.



Each volunteer is required to complete a self-paced training module and four hours of classroom training. The training emphasizes the need to treat everyone with respect and to treat all inmates the same. Religious volunteers are taught that they may not discuss any religious/spiritual tradition but their own. They must refer questions about another tradition to a volunteer from that tradition. Volunteers are made aware that there is a prison culture and how to be effective within that culture.

Quarterly, we publish a Volunteer Newsletter. The purpose of the newsletter is to continue training through targeted articles. The last issue in 2007 featured an article written by the wife of a Hispanic inmate in which she talked about the effects of incarceration on her and her children. The 1st Quarter 2008 newsletter dealt with mental illness in our inmate population. The third quarter newsletter presents the issue of children of incarcerated parents.

It is the goal of the volunteer program to recruit volunteers who best meet the needs of the incarcerated without respect to race, gender, culture, sexual orientation or religious/spiritual background. It is also our goal to promote understanding and tolerance.

Programs

Recruitment Programs

Interview Panels Managers and selecting officials will make every reasonable effort to ensure that interview panels are diverse. The department will ensure both hiring and promotion panels, where practical, have membership composed of racial/ethnic and

gender diversity. In order to maintain some neutrality for hiring and promotions to management and executive level positions, the panel should include at least one member from outside the functional unit where the vacancy exists. The department provides a Supervisor's Recruitment Guide for hiring managers that delineates the appropriate process for selecting and setting up interview panels.

Newspaper Advertisements In an effort to reach a broad range of job applicants, staff in Human Resources Recruitment and Background Investigations may place ads for vacant positions in major local newspapers within the state such as The Oregonian, The Statesman Journal, The East Oregonian, The Eugene Register Guard, The Hermiston Herald, the Argus Observer, Malheur Enterprise, Baker City Herald, The Record Courier, La Grande Observer, and the Democrat Herald, just to name a few. Newspapers designed to reach all populations will be used. These publications include EL Hispanic News and the Goal Latino for Hispanics; The Asian Reporter for Asians; The Skanner and The Portland Observer for African Americans. Provided there are sufficient funds, national papers published by minority organizations, such as EOE Journal and Affirmative Action Register, may be used as well. Note: Advertisements will be placed when economically feasible.

Online The department will use on-line web sites such as SHRM, Salem News, Craig's List and Monster.com to broaden the range of job applicants.

Job Information Fairs The department will participate, when financial and staffing resources permit, in a multitude of job fairs held around the state focusing on women, people of color, and people with disabilities.

College/University Career Days Employees of the department will attend college and university career days and job recruitment functions, as staffing and finances allow. Each institution will make staff available to attend career days held at community colleges and universities located in their geographical area of the state. Recruitment and Career Services staff has visited with various schools throughout the state.

The department School-to-Work Coordinator coordinates the agencies participation in the School-to-Work week in April that invites students to accompany their parents to work. There is participation throughout the department in providing student with career exploration activities.

Slide Show The department has developed a new slide show showing staff working in some of the primary institutions and in the administration. The slide show is an information tool for showing at career days and job fairs.

Policies The Human Resources staff will ensure that the department's formal, written procedures on selection includes statements to the effect that appointing officials are to seriously consider gender and ethnic status in hiring and promotion decisions where positions exist which are seriously under-represented and the affirmative action goal in this plan has identified this particular job group.

Vacancy Type and Order Where affirmative action goals have been established for the particular classification and representation remains clearly below parity standards, the first

priority when considering the type of application to develop, is open competitive. The second would be for advertising the position as a statewide vacancy. Managers should justify reasons to open announcements that are limited to agency promotions. There are a considerable number of potential applicants in the state labor force with work experience in public safety occupations. The diversity of candidates will be increased considerably by opening up the majority of announcements to job applicants in the public arena.

Applicants with Disabilities Job applicants with severe disabilities work with a Job Match Coordinator at the Department of Administrative Services, or a Vocational Counselor to learn of job openings through the H.I.R.E. Program. The H.I.R.E. Program maintains a database of qualified applicants with disabilities and provides it monthly to agencies for their consideration. The department has facilitated numerous referrals from the H.I.R.E. Program. Recruitment staff meets with Vocational Rehabilitation Counselors regularly to discuss department openings. Additionally, the Recruitment and Career Services staff provides informational interviews to applicants with disabilities interested in qualifying for department career opportunities.

SB 822 Veteran's Points SB 822 established the manner in which state agencies provide preference to qualifying veterans or disabled veterans in scored or un-scored employment application processes. (ORS 408.225-235)

In order to be in compliance of SB 822 both the recruitment unit and the hiring managers have responsibilities.

Recruitment Unit:

In the initial application screening, the recruitment unit determines if applicants are eligible for veterans or disabled veterans preference points. Eligible veterans will have the appropriate points designated upon the certification list you receive.

Hiring Manager:

Hiring Managers review their certification lists to determine who they will be interviewing.

In a scored screening, the Veterans points must be taken into consideration when determining where to cut off the certification list.

In a non-scored screening, all Veterans are interviewed.

Community Organization Outreach The department will maintain a list of minority and women's organizations around the State. For vacant positions showing a serious under-representation of women or minorities, the Recruitment and Career Services Unit will mail job announcements to appropriate community organizations, if they are not getting state vacancy lists or announcements from HRSD, recruitment.

Contact with organizations representing the special interests of people of color will be maintained by having staff from the department attend group meetings and conferences. In addition, the intent is to have senior staff represented at key, influential and large statewide organization conferences which address minority community and employment issues. Staff will pursue the opportunity to meet personally with officials representing minority organizations.

Training Programs

The Department spends a considerable amount of resources on staff training. In making decisions as to who will attend training other than mandatory DOC training, women, people of color and/or people with disabilities will be considered if that career field is clearly under-represented by members of protected classes or if it will enhance the prospects for career advancement and if it provides the Department with an employee developing a needed job skill.

Leadership/Supervisor Training: The Department has developed a Director's Academy leadership training program and is developing a new supervisor training program to be called Management Basic Training. Topics to be covered in the new supervisor training will include affirmative action, diversity, and ADA issues. The leadership training program covers a broad range of subject matter and includes a focus on interpersonal relationships and valuing others. An online resource titled the Human Resource Quick Reference Guides speaks to the topics of Cultural Competency as well as provides links to both the Department's AAP and the State of Oregon AAP, and will be published in 2009.

In-Service Training: Annual in-service training includes a segment on valuing others.

DOC Strategic Initiative-Cultural Competency: The Department has identified Cultural Competency as a Strategic Initiative. A work group has been formed to further promote the work of the AAP. A major part of this work group's plan in promoting Cultural Competency is a strong training effort.

Work Environment Programs

The department will continue to develop ways to maintain a positive and supportive work environment to benefit all employees and the department relative to equal employment opportunity, affirmative action and cultural diversity.

Emphasis will be placed on the importance of the department's Promotion and Maintenance of a Respectful Workplace policy, which prohibits harassment and discrimination in the workplace.

Exit interviews In order to determine if there are problems, patterns, or trends affecting women or minorities in a disparate manner, an exit interview process has been

implemented. The results of these exit questionnaires will be reviewed by the Recruitment and Career Services Administrator and will be reported to the Executive Management Team members and functional unit managers as needed.

Other Programs

Reports The department's Affirmative Action Officer will review affirmative action goals and the progress of the entire department, on a quarterly basis. This person will develop and distribute to managers a report based on the DAS Affirmative Action Progress Report, summarizing workforce statistics, on a semi-annual basis.

Correctional Officer Hiring Trends Since correctional officer hiring represents the largest volume, entry level position in the department, a study has been implemented to track selection trends. The test criteria were reviewed to determine if inequities or bias exists for members of protected classes. Data gathered provides numbers and percentage of women and people of color who apply, the numbers which failed the entrance exam, the number interviewed, the numbers and percentage of women and people of color who failed the interview, the pass/fail rate for background checks and the pass/fail rates of physicals. The numbers and percentage of women and minorities who were hired will also be determined. If there is sufficient data and enough staff time, a follow-up study will be done to determine how many of these hires completed trial service as a correctional officer. This study will follow the "Uniform Guidelines on Employee Selection Procedures" of the Equal Employment Opportunity Commission (29 CFR 1607).

Position Descriptions As position descriptions are written and/or revisions made, conditions which might limit or restrict people with disabilities from consideration will either be eliminated or will be clearly justified on the basis of essential duties and basic requirements of the job. Only where there are bona fide requirements should duties be identified which might limit people with disabilities from consideration. Human resources analysts, classification and recruitment staff are to work closely with managers and supervisors to ensure that position descriptions are not inadvertently biased against people with disabilities. Position descriptions of all managers in the department will include affirmative action language.

Bilingual Pay Differential The department will continue to utilize certain staff members to provide language skills for communication and translation purposes. The position description must clearly specify this duty in order to receive pay differential.

Additional staff members need to be identified who have these skills and who can provide translation services. Since a large portion of the inmate population speaks Spanish and languages other than English, there are important safety and security reasons to expand the number of staff members who can exercise these special skills. In the future, the department will consider ways in which specific positions are identified for which language skills are a job requirement, so they can be used for target recruiting and advertising.

Special Observances Functional unit managers are encouraged to address cultural diversity awareness issues through topics at staff meetings, planning special observances in recognition of minorities, encouraging staff participation in special events in the community related to minority heritage and in special training sessions. The emphasis will

be placed on resolving problems, combating stereotypes and highlighting the advantages of cultural diversity.

The types of observances include, but are not limited to: Women's Equality Day, Martin Luther King Jr. birthday (January), Cinco de Mayo (May), Native American Indian Heritage Month (September), Women's History Month (March), Black History Month (February), Asian Heritage Month (April or September), Disabilities Month (October), and National American Indian Heritage Month (November).

Update: Executive Order 08-18

Reference Governor's Executive Order 05-01 Affirmative Action, and Executive Order 08-18.

“Cultural Competency Assessment and Training is a proactive management strategy within a program of Affirmative Action that is designed to reduce discriminatory behaviors and practices that may exist; and

The State of Oregon, by and through the agencies, boards and commissions of the Executive Branch, values the principles of equal employment opportunities, affirmative action and diversity and should proactively lead the State on issues of equality and diversity and on the promotion of Affirmative Action.

The Director of Affirmative Action shall provide to all state agencies a list of approved firms that provide Cultural Competency Assessment and Training. The services of these firms are intended to enable state agencies to address the following objectives:

- *The creation of a climate of increased cultural awareness;*
- *An ability to appropriately identify and respond to cultural and language barriers;*
- *A common understanding of how all members of the organization should be valued and respected;*
- *Promotion of managerial skills among diverse populations of employees;*
- *An understanding of the roles of employers and employees in creating a welcoming environment; and*
- *The improvement of employee morale.”*

Status

Technological advances now connect the world's peoples in unsurpassed methods and numbers. Those advances have contributed to Oregon's labor pool diversity and our on-going need to recruit and retain a skilled workforce. Accordingly, it is imperative that we maintain a culturally competent organization. The demographics of today's workforce continue to change as do the demographics of our inmate population. To maintain a viable workforce that interacts with each other, the public and the inmate population in a culturally healthy fashion, the Department of Corrections must embrace the competitive edge found in employees with diverse skills, perspectives and backgrounds.

During the 2009-2011 biennium, the Department's Director assigned a manager to create a cultural awareness and diversity program within the department. The Cultural Awareness & Diversity Manager reports directly to the Director/Deputy Director and works closely with the Human Resources Division to coordinate and respond to affirmative action, cultural awareness and diversity issues.

Methods and Findings

The Department first created the Cultural Competence Project in 2007 with the purpose of creating a department-wide, sustainable Cultural Competency Program. A moderate amount of difficulty was encountered when attempting to define what cultural competence should mean within the Department of Corrections and how it

should look within the framework of a statewide program. The creation of the Cultural Awareness & Diversity Manager position helped bring focus to the area. The Cultural Competence Project was renamed the Cultural Awareness Project and members have identified several ideas and recommendations for the statewide program. Members have also attended the mandatory 8 hour Cultural Competence training conducted by the Department of Human Services in order to broaden their understanding of the issues, tools and resources that accompany organizational management.

Evaluation of the current organization state

The state of the Department as it relates to diversity and cultural competency is still very complex. The economic downturn and budget constraints have curtailed expenditures in all areas and challenged the Agency to accomplish more with less.

In 2002, the department created and distributed a cultural awareness survey to help assess the status of the department related to cultural awareness and diversity. Unfortunately there was no one available to interpret the data and finalize a report for review and consideration. In 2009, the department was able to prioritize the survey results and create a report establishing a baseline. A second survey was distributed electronically and in paper format in July 2010 and the subsequent data will be reviewed by the Project Team to analyze the department's status and make specific recommendations around training, recruitment, and conflict-resolution.

Also in 2009, one of the eastern prisons, Two Rivers Correctional Institution (TRCI) was selected to receive a National Institute of Corrections (NIC) technical assistance grant around cultural awareness. This led to several NIC sponsored consultants spending time at the prison, interviewing all levels of staff, evaluating processes and procedures, and making recommendations for future training and assessment. Two of the NIC Consultants are scheduled to return sometime in the latter half of 2010 to assist in completing training of Captains and Lieutenants and to draft a curriculum for training of all TRCI staff.

TRCI was again the beneficiary of some special training opportunities when the Department hired an outside consultant, Miguel Valenciano, to conduct three days of cultural awareness training with 30 staff in each of the three classes. Of the 90 participants, approximately 2/3 were managers and the other 1/3 were volunteer staff representing all facets of the prison organization. Evaluations were very positive although the institution has continued to face some challenges in the area of workplace respect and discrimination.

Staff from the Professional Development Unit of the Department has built a curriculum around gender discrimination and inclusion for management staff at the Deer ridge Correctional Institution. The class was very well accepted.

Other accomplishments include copying and distributing the 2009–2011 Biennium Affirmative Action Plan to all superintendents and functional unit managers within the Department of Corrections, placing the Plan on the website, a message to DOC staff about the availability of the Plan, and an article shared with DOC volunteers in the Volunteer newsletter.

Definition of the Desired Organization State

Definitions of cultural competency are numerous and varied with the majority focusing on cultural competency as a process versus a state of being. After a deliberate change from “Cultural Competence” to “Cultural Awareness”, the Cultural Awareness Project Team drafted a definition of cultural awareness for inclusion in the strategic plan:

Cultural awareness is an understanding and respect for each individual’s unique cultural history in ways that foster and promote ongoing personal growth.

By recognizing and adjusting behavior to be respectful of each person’s cultural norms and differences, we will increase the effectiveness of communication and the quality of service, thereby producing better outcomes.

Recommendations

The Cultural Awareness Project Team meets monthly and is very close to completing a Strategic Plan that will be forwarded to the Department’s Policy Group for approval and implementation. Recommendations to date include:

- Definition of *cultural awareness* for the Department (as noted above).
- Develop a statewide Cultural Inclusion & Awareness Council comprised of high-level Department employees and labor leadership.
 - Incident review – look for trends;
 - Initiatives from functional units;
 - Make recommendations for training, programming, policy review, revision and addition; guest speakers, events planning, and; recruitment & retention review and recommendations.
 - Receive updates from worksite committees.
- Require that each functional unit establish a Workplace Cultural Inclusion & Awareness Committee. Members would be selected by the functional unit manager based upon:
 - Employees in good standing;
 - Demonstrated aptitude and/or willingness to promote inclusiveness or problem solving in the workplace;
 - Reflective of the demographics of the workforce;
 - Each workplace committee to be comprised of 3-11 members;
 - Recommend that membership be comprised of:
 - Managers
 - Represented staff
 - Labor
- Creation of a webpage on the Department’s website.
- Training of selected individuals throughout the state who could function as “peer support” when an employee is having difficulties in this area.

These recommendations may or may not be approved through the DOC Policy Group, or may go through several evolutions. It is certain, however, that there will be some progress made around cultural awareness and diversity as two institutions have already requested assistance in establishing a Workplace Inclusion & Awareness Committee. Additionally, while the Department has cancelled all but required

security training for 2011, it is still possible DOC staff may be able to build a small computer-based curriculum and make it voluntary for staff participation.

Exit interviews In order to determine if there are problems, patterns, or trends affecting women or minorities in a disparate manner, the Department of Corrections uses the statewide exit interview survey administered by the Department of Administrative Services.

The results of these exit surveys will be requested quarterly and reviewed for patterns of disparate treatment by the Agency Affirmative Action Officer. The results of that review will be presented to the Human Resource Executive team and if patterns of disparate treatment are identified appropriate action will be taken with the specific management team. In the case of patterns of positive comments those findings will be shared with other Divisional Management teams to be implemented agency wide. These results will also be presented to the Agency Director and the other members of the Policy Group team in conjunction with the quarterly affirmative action statistics.

Performance Evaluation of all Management Personnel In 2005 all management service position descriptions were audited to ensure diversity language was a criteria for evaluation annually. All management service employees continue to have diversity activities evaluated annually.

In 2009 management service performance evaluation training is being delivered with affirmative action, diversity, cultural competency performance and documentation being a key aspect of the training.

Section III.

Roles for Implementation of Plan

Responsibilities and Accountabilities

The success of the Affirmative Action Program depends upon commitment and leadership of employees at all levels of the organization.

Director

The director has committed the department to a policy of equal employment opportunity and maintains an active interest in the attainment of affirmative action goals and objectives. The director has overall responsibility to:

- Implement the policy and Affirmative Action Plan.
- Monitor progress toward meeting Affirmative Action Plan goals and objectives.
- Ensure compliance with all applicable federal and state laws, rules, and regulations.
- Ensure division administrators understand they are responsible for participating in and promoting affirmative action activities and for communicating this same responsibility to their subordinate managers and supervisors. The effectiveness of managers and supervisors in promoting the affirmative action activities, goals, and objectives for DOC will be included in the annual performance appraisals. **ORS 659A.012 State agencies to carry out policy against discrimination in employment; evaluation of supervisors; affirmative action reports** (1) states:

“To achieve the public policy of the State of Oregon for persons in the state to attain employment and advancement without discrimination because of race, religion, color, sex, marital status, national origin, 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.”

Communications Manager

Include articles in the department newsletters, “Corrections Briefings” and “Corrections News”, which express the director’s commitment to promoting a diverse workforce and environment. Articles relating to equal employment opportunity, affirmative action, and the ongoing development of a diverse workforce, and the efforts and progress made toward meeting department goals in these areas are some examples. Ensure that newsletter articles about employees are non-discriminatory in their portrayal of employees’ gender, ethnic heritage, disability, or other non job-related characteristics.

Assistant Directors

The agency assistant directors will be responsible for initiating, administering, and controlling affirmative action activities within their functional area to assure full implementation of the policy. Specific responsibilities are to:

- Establish a positive climate for program success within their sections.
- Hold regular discussions with section managers to be certain they understand and follow the Affirmative Action Plan.
- Ensure that affirmative action implementation activities carry out, as they apply to their units.
- Ensure work performance of subordinate managers and supervisors is evaluated on their affirmative action efforts and results, as well as other criteria, and performance appraisal of each section manager includes a key component evaluating the manager's accomplishments in integrating an appreciation of cultural diversity into the everyday work habits, patterns and thinking of his or her staff. Chief among these responsibilities are to:
 - Accomplish the affirmative action hiring goals for his or her section.
 - Assure staff members are aware of the department's discrimination complaint process, and the appropriateness of using it without fear of retribution.
 - Establish a work environment and culture both supportive of cultural diversity and responsive to customers in the service area.
 - Work whenever possible with community groups and leaders assuring the department is an agency known as committed and responsive to affirmative action and cultural diversity values.

Appointing Authorities

Appointing authorities have primary responsibility for the success of the program through their direct supervisory role. Specific responsibilities are to:

- Become thoroughly familiar with the details of the Affirmative Action Plan as they apply to their section/unit, and monitor progress of hiring and promotions, in relation to goals.
- Communicate the Affirmative Action Plan by:
 - informing all new employees of the plan
 - maintaining a readily available copy of the plan for employees to read
 - discussing the plan and the progress being achieved at staff meetings
 - EEO and sexual harassment issues information distributed to staff.
- Provide assistance in the identification of problem areas and establish functional unit objectives to meet affirmative action goals.

- Maintain active involvement, whenever possible, as a representative of the Department of Corrections with local minority organizations, women's organizations, and organizations representing the disabled.
- Review training programs and hiring/promotion patterns to remove impediments to the attainment of goals.
- Put forth individual efforts and achieve results in Equal Employment/Affirmative Action objectives, and have these evaluated via the performance appraisal process.
- Maintain a work environment free from harassment of any kind, and report barriers to affirmative action existing within offices/sections to the appropriate Department of Corrections Human Resources Analyst (includes incidents of reported or known harassment on the basis of sex, race, color, national origin, religion, age, mental or physical disability).
- Take positive steps to recruit and locate qualified women, people of color, and people with disabilities for vacant positions. Select qualified candidates in light of affirmative action goals.
- Attend, and encourage employees to attend, EEO/AA training programs.
- Encourage upward mobility for employees who are women, people of color, and/or people with disabilities by becoming familiar with the career development opportunities which may occur in the department, by evaluating positions for restructuring or establishing special upward mobility positions, and by reviewing employee training and career plans to determine appropriate development assignments.

Assistant Director, DOC Human Resources Division

- Manage the Affirmative Action Plan and implementation.
- Recognize policy needs and initiate necessary policy changes.
- Review quarterly, the progress the department is making toward achieving their affirmative action goals.
- Recommend the annual goals to the Executive Staff.
- Provide oversight and review of all civil rights (Title VII) complaints of discrimination in employment.

Human Resources Managers/Analysts

The Human Resources Managers/Analysts serve as technical advisor to assigned functional units. Specific responsibilities are to:

- Provide and/or refer employees for counseling related to informal discrimination complaints.
- Maintain statistical information on race, sex, and disability with respect to personnel actions.
- Assist management in ensuring administration of union contracts are in a nondiscriminatory manner.

- Assist management in ensuring internal discrimination complaint procedures are followed.
- Attempt to resolve all discrimination and sexual harassment complaints within assigned units.
- Conduct civil rights investigations where appropriate.

Recruitment and Background Investigation Unit Manager

- Participate in job fairs and career days with an emphasis on opportunities for women, people of color, and people with disabilities.
- Participate in minority group meetings/partner with minority groups.
- Evaluate job announcements, applicant testing, hiring practice, employment policies, and report to the Assistant Director, DOC Human Resources Division any having an adverse impact on women, people of color, or people with disabilities.
- Review hiring and promotion patterns, training programs, job descriptions, and work assignments to identify and remove any barriers to equal employment opportunity.

Workforce Development and Affirmative Action Manager

The Affirmative Action Manager has responsibility for the Affirmative Action Plan and ensures completeness and operational effectiveness of the program. Specific responsibilities are to:

- Develop the written Affirmative Action Plan and Publicize its content internally and externally.
- Keep management informed of the latest developments (law and rule changes, etc.) in the EEO/AA area and measure the effectiveness of the department's program.
- Determine the degree to which the department has attained goals and objectives, indicate need for corrective action if necessary and provide such information to the director, deputy director, and assistant directors on a semi-annual basis.
- Provide an annual update of the Affirmative Action Plan to department administration.
- Serve as a liaison between the department and minority organizations, women's organizations and community action groups concerned with employment opportunities of women, people of color, and people with disabilities.
- Receive complaints of discrimination from employees and applicants with the department Attempt to resolve internal discrimination and sexual harassment complaints and serve as a liaison between the department and Civil Rights enforcement agencies (EEOC and BOLI).
- Keep the Assistant Director, DOC Human Resources Division, and the DOC Director informed of complaint activity and provide advice to the Assistant Director, DOC Human Resources Division and staff on discrimination complaint cases.

Managers and Supervisors

Take steps to select, retain and promote people of color, people with disabilities, women and other protected classes.

- Provide tools and resources for employees to interact with each other from all backgrounds.
- Create and promote a work environment that is free from any kind of hostility or unwelcome behavior.
- Promote Cultural Awareness.
- Involve the manager or supervisor in strategies to evaluate the unit's work force, develop goals for the fair representation of women, people with disabilities and minorities, and sketch timetables for achievement of those goals.
- Evaluate the manager or supervisor annually on his/her contribution to the establishment of a culturally competent work environment.
- Attend meaningful activities related to cultural competency:
 - Training, Workshops
 - Workgroup Meetings
 - Culturally-specific activities.

Internal Monitoring and Evaluation

Responsibilities

- The Assistant Director for Human Resources has overall responsibility to ensure the agency is following Equal Opportunity and Affirmative Action guidelines of the EEOC and the Governor's Office of Affirmative Action. Human Resources policies and practices will be reviewed for compliance.
- The Legal Affairs and Affirmative Action Manager has the responsibility of monitoring, evaluating, and reporting the effectiveness of the Affirmative Action Plan and gives advice and makes recommendations to the Assistant Director for Human Resources and to the Executive Management Team and/or Functional Unit Managers, as needed.
- Hiring managers request lists of applicants appropriate to the recruitment.
- Recruitment and hiring managers monitor the selection of applicants, ensuring that women, people of color, and people with disabilities are considered and selected in accordance with the collective bargaining agreements and applicable statutes policies and rules.

Purpose

- Monitoring affirmative action activity;
- Identifying weak areas of recruitment;
- Improving identified weak areas;
- Identifying long term trends;
- Tracking the retention and departure rates of employees who are women, people of color and people with disabilities; and
- Identify effective affirmative action activities.

Methods for Monitoring and Reporting the Affirmative Action Program

- Maintain affirmative action reports, guides, records, and statistics;
- Analyze statistical reports;
- Evaluate managers performance in all areas of diversity and affirmative action;
- Determine that interview and selection methods are appropriate to each recruitment;
- Compare the number of women, people of color, and people with disabilities hired to the department's goals;
- Discuss employee performance or retention problems with supervisors to identify methods for improvement;
- Conduct exit interviews to learn the reason for resignation and how the department might improve working relationships if applicable; and

- Report on an annual basis to the director of department the progress and efforts made toward accomplishment of goals and objectives, and recommendations for improvement, if necessary.
- Brief administrators and executive staff annually on workforce composition and Affirmative Action progress.

Assessment Tools

- Affirmative action reports generated quarterly by DAS; and
- Statistics on number of BOLI, EEOC and tort claims filed alleging discrimination or harassment.

Section IV.

Accomplishments

2009-2011 Biennium Goals and Accomplishments

The Department of Corrections Affirmative Action Plan statistics which establish the following 2009 – 2011 accomplishments are gathered from data provided by the Department of Administrative Services as of June 30, 2010. These Affirmative Action statistics describe the composition and diversity of the department's workforce. They allow senior managers to share the Department's achievements with their management teams to increase awareness of agency successes, while recognizing actions yet to be taken. The quarterly statistics are also available to all department employees to view in the department's public folders.

The department's overall workforce composition has remained comparatively consistent for representation of women and for people of color as compared to the previous biennium. As of June 30, 2010, the total representation of women is at 34.4 percent and the representation of people of color is at 11.2 percent.

Narrative Analysis of Current Workforce

Utilization Analysis

The utilization analysis consists of a review of all job classifications and EEO job categories throughout the department. The purpose of this analysis is to determine whether women, people of color, and people with disabilities are represented at rates roughly equivalent to their availability and participation in the labor force.

EEO Job Category Analysis

The job category analysis is based on a statistical description of the department's total workforce of regular, permanent employees. Positions are grouped within broad categories of similarly related jobs and career fields. The eight categories are designated by the Equal Employment Opportunity Commission of the federal government.

Group Parity

The standard of measurement is parity figures for protected groups such as people of color, women and people with disabilities. Parity formulas are developed for all state agencies by the Governor's Office of Affirmative Action. Parity is established for major job groups within EEO categories and uses a multi-factor data source. Parity is based on applicant availability, unemployment rates, education figures, and participation in the civilian labor market. Depending on the specific job classification, the workforce statistics may be local, just within the State of Oregon, the Western Region or the entire United States.

Using the Department of Administrative Services (DAS) statistical report printouts, direct comparisons can be made between the total numbers of employees in each job group and the parity standard of equity. Actual numbers of people of color, women or people with disabilities are broken down in each EEO job category. Parity is calculated first for percentages and then the number of people needed to achieve equity.

Accomplishments and Progress Made or Lost Since Previous Biennium

Employee Workforce Analysis Report

Agency Totals

| 06/30/08 | Total by Gender | Pct by Gender | White | Total POC | African Amer | Hispanic | Asian Pacific | Native Amer | Disabled |
|-----------------|-----------------------|------------------|-------|--------------|-----------------|----------|------------------|----------------|----------|
| Men: | 2900 | 65.9 | 2576 | 324 | 58 | 175 | 46 | 45 | 33 |
| Women: | 1498 | 34.1 | 1333 | 165 | 25 | 83 | 35 | 22 | 15 |
| Total: | 4398 | | 3909 | 489 | 83 | 258 | 81 | 67 | 54 |
| Percent: | | | 89 | 11.1 | 1.9 | 5.9 | 1.8 | 1.5 | 1.2 |

| 06/30/10 | Total by Gender | Pct by Gender | White | Total POC | African Amer | Hispanic | Asian Pacific | Native Amer | Disabled |
|-----------------|-----------------------|------------------|-------|--|-----------------|----------|------------------|----------------|----------|
| Men: | 2862 | 65.6 | | Statics by gender not available using on line data retrieval through PPDB. | | | | | |
| Women: | 1500 | 34.4 | | | | | | | |
| Total: | 4362 | | 3873 | 488 | 80 | 263 | 82 | 63 | 54 |
| Percent: | | | 88.8 | 11.2 | 1.8 | 6.0 | 1.9 | 1.4 | 1.2 |

DOC Workforce Representation by EEO Job Categories

A) Officials/Administrators: In key occupations within the department at senior positions, people of color occupy 10.6 percent in upper level management (salary range 31+) and 12.1 percent in mid-level management positions (salary range 24-30). Some jobs occupied by people of color are very critical positions, such as prison superintendent, assistant superintendent and security manager. Senior management parity for people of color is 12.2 percent for upper management and 13.6 percent for mid-level management, according to calculations established by the Governor's Office of Affirmative Action. The DOC is below parity on both.

Women occupy 31.8 percent of upper management and 39.4 percent of mid-level management. These are below the parity goals of 36.6 percent in upper management and 43 percent in middle management. Women occupy critical agency leadership positions, including four of the five assistant directors of agency divisions (Human Resources, Public Services, General Services, and Transitional Services). Two prison superintendents are women.

B) Professionals: The second largest EEO job category within the department is professionals. This broad category includes nurses, teachers, counselors, direct line supervisors, lieutenants and captains. People of color are above the parity goal for Physician/Dentist, Hearings Officer, Accounting/Finance, and Researcher. African Americans are above parity in Social Services. Native Americans and Hispanics are above parity for both Nurses and Computer Analysts. Native Americans are above parity for Lieutenants and Captains. People with Disabilities are above parity for Purchasing Agents and Personnel.

Women are above parity in eight of the thirteen Professionals categories; Communications/Editor, Nurses, Purchasing Agency, Researcher, Personnel/Employment, Hearings Officer, Accounting/Finance, and Program Coordinator/Analyst.

C) Technicians: Workers in the technician job category include Health Services Technicians, Dental Technicians, Construction Project Managers, Construction Inspectors, and Electronic Communications Systems Analysts. Women are well represented in this category. 84 percent are women, mainly due to the large number of Health Services/Dental and Pharmaceutical Technicians. People of color represent 14.6 percent, meeting the parity goal. People with Disabilities are generally under-represented.

D) Correctional Officer: Correctional officers, corporals and sergeants are in this EEO job category. People of Color are represented well in this field, representing 12 percent of this EEO category, above the parity standard of 10.9 percent. This is particularly significant since this is the largest job category in the department, with 2364 employees. They serve as the backbone of security. This representation surpasses parity goals.

Because this is a non-traditional career field for women, their representation is 18.9 percent, below parity at 22.8 percent. However, women have been making some progress in security occupations, as there are now 447 female correctional officers, corporals and sergeants.

E) Para-Professionals: DOC only has 33 employees in the Para-professional category. People of color are above parity standard of 9.8 percent, achieving 15.2 percent in this category. Women are well below, occupying only 36.4 percent of the 33 positions. Parity for women is set at 58.1 percent.

- F) Administrative Support:** People of color represent 43 of the 389 administrative support positions, achieving 11.1 percent of the job category, above the parity standard of 9.7 percent. Women are over-represented in administrative support positions at 93.1 percent, as would be expected of traditional gender role career patterns.

- G) Skilled Craft:** People of Color in skilled craft positions generally meet parity when compared to parity figures, Women are under-represented, with only two female employees out of 102 mechanics, carpenters, plumbers, electricians and trades.

- H) Service Maintenance:** In service and maintenance positions, people of color are under-represented. They represent 20 of the 258 positions held, or 7.8 percent, under goal by 3.9 percent. Women represent 71 of the 258 positions, representing 27.5 percent of the positions.

Affirmative Action statistical data for comparison of the previous biennium to the current statistics is reported in the tables below showing the changes in numbers of employees for Women, People of Color, and People with Disabilities between the 2005-2007 and current 2007-2009 biennia as of June 30, 2008.

Women

| <i>EEO-4 Category</i> | <i>Women</i> | | | | |
|-------------------------------|----------------------------|-------------------------|----------------------------|-------------------------|-----------------------------------|
| | Total Employees 6/30/10 | Number Women 6/30/10 | Total Employees 6/30/08 | Number Women 6/30/08 | % Change in number of Women |
| A. Officials/Administrators | 198 | 68 | 210 | 72 | 0 |
| B. Professionals | 932 | 475 | 883 | 429 | 2.3 |
| C. Technicians | 86 | 64 | 88 | 66 | 0 |
| D. Protective Service Workers | 2364 | 447 | 2414 | 473 | -.7 |
| E. Paraprofessionals | 33 | 12 | 36 | 14 | -2.5 |
| F. Administrative Support | 389 | 361 | 405 | 377 | -.3 |
| G. Skilled | 102 | 2 | 104 | 2 | 0 |
| H. Service/Maintenance | 258 | 71 | 258 | 65 | 2.3 |
| TOTAL AGENCY | 4362 | 1500 | 4397 | 1498 | .3 |

The Department remains strong in the upper-management category, with approximately 32 percent, or 42 of the 132 upper-management positions in the Department filled by women. Although the Department remains below parity in middle-management categories, the Department has seen an increase to 39.4 percent of women in middle-management positions (salary range 24-30). Women represent 26 of the 66 employees in these positions.

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Women are under-represented in five of the 13 professional categories utilized in the Department:

- Physician/Dentist/Vet
- Inspector/Compliance/Investigator
- Computer Analyst
- Security Services
- Lieutenant/Captain

Parity has been achieved in eight of the 13 professional categories utilized in the Department:

- Communication/Editor
- Nurse/Health
- Purchasing
- Researcher
- Personnel/Employment
- Attorney/Hearings
- Accounting
- Program Coordinators

Women are under-represented in the Para-Professional categories. As of June 30, 2010, we are at 36.4 percent in this category.

Women also continue to be under-represented in the Skilled Craft Worker categories. There has been a small amount of hiring activity for these positions. However, we currently only have two women in these non-traditional jobs.

Women are under-represented in the Service/Maintenance Worker job categories. As of June 30, 2010, there is a 27.5 percent female workforce versus a parity percentage of 37.8 percent.

People of Color

| <i>EEO-4 Category</i> | <i>People of Color</i> | | | | |
|----------------------------------|----------------------------|--------------------------|-------------------------------|--------------------------|------------------------------------|
| | Total Employees 6/30/10 | Number POC 6/30/10 | Total Employees 6/30/08 | Number POC 6/30/08 | % Change in number of POC |
| A. Officials/Administrators | 198 | 22 | 210 | 22 | .6 |
| B. Professionals | 932 | 95 | 883 | 92 | -.2 |
| C. Technicians | 86 | 11 | 88 | 13 | -1.9 |
| D. Protective Service Workers | 2364 | 284 | 2414 | 288 | 0 |
| E. Paraprofessionals | 33 | 5 | 36 | 4 | 4.0 |
| F. Administrative Support | 389 | 43 | 405 | 42 | .6 |
| G. Skilled | 102 | 8 | 104 | 9 | 0 |
| H. Service/Maintenance | 258 | 20 | 258 | 19 | 0 |
| TOTAL AGENCY | 4362 | 488 | 4397 | 489 | 0 |

The representation of people of color within the Department was 9.5 percent on June 30, 2004. As of June 30, 2008, the number of people of color has increased to 11.1 percent, where it remains as of June 30, 2008. On June 30, 2010 representation of people of color increased again to 11.2%

The largest job occupation group within the Department is the security series. As of June 30, 2010, there were 2364 correctional officers, corporals and sergeants. Of these, 284 were people of color. People of color represent 12 percent of uniformed, represented security staff versus a parity of 10.9 percent. Parity has been exceeded in representation of Hispanics in the security series.

Of the 163 captains and lieutenants, 11.0 percent are people of color; this is below the parity goal of 15.3 percent. All individual ethnic groups are represented, with parity exceeded in representation of Native Americans. The Department of Corrections management recognizes the importance of continued progress toward building and maintaining strong diversity within the correctional security staff. The Department sees a need to develop a strategy to effectively recruit minority applicants.

In upper-management positions, there were 14 people of color on June 30, 2008. They represent 10.6 percent of the 132 senior executive managers, with parity at 12.2 percent. People of color represent 12.1 percent of the Department's middle-management positions, with parity at 13.6 percent. The Department recognizes the need to continue to recruit individuals from all ethnic groups for both upper-management and middle-management positions.

Of note, 2 of the 11 superintendents are People of Color. One oversees the largest facility in the state located in eastern Oregon with 3,000 prison beds. The other oversees two minimum custody facilities in Salem.

In the Professional job category, women, African American and Hispanics represent areas where the Department is doing well in our efforts to reach parity.

In the Technicians category, as of June 30, 2010, the people of color and Hispanics in the Health job category are above parity at 14.7 percent and 10.7 percent, respectively. The Department is above parity in representation of people of color in the Administrative Support category with 11.1 percent on June 30, 2010. Parity is 9.7 percent. In this category the Department exceeds the parity for Hispanics with 5.7 percent actual versus parity of 3.6 percent.

People with Disabilities

| <i>EEO-4 Category</i> | <i>People with Disabilities</i> | | | | |
|-------------------------------|---------------------------------|-----------------------|----------------------------|-----------------------|--|
| | Total Employees 6/30/10 | Number PWD 6/30/10 | Total Employees 6/30/08 | Number PWD 6/30/08 | % Change in number of PWD |
| A. Officials/Administrators | 198 | 3 | 210 | 3 | 0 |
| B. Professionals | 932 | 8 | 882 | 10 | 0 |
| C. Technicians | 86 | 0 | 88 | 0 | 0 |
| D. Protective Service Workers | 2364 | 31 | 2414 | 26 | 0 |
| E. Paraprofessionals | 33 | 0 | 36 | 0 | 0 |
| F. Administrative Support | 389 | 8 | 405 | 8 | 0 |
| G. Skilled | 102 | 1 | 104 | 2 | 0 |
| H. Service/Maintenance | 258 | 3 | 258 | 5 | 0 |
| TOTAL AGENCY | 4362 | 54 | 4397 | 54 | 0 |

Representation of persons with disabilities continues to fall significantly below the target of 6 percent in state agencies. Although roughly 60% of the Department’s positions are in security classifications where strict physical standards and requirements exist pursuant to the Department of Public Safety Standards and Training (ORS 259-08-010), the Department continues to strive to improve recruitment efforts toward people with disabilities. Efforts to close the gap include continued meetings with staff of the Vocational Rehabilitation Division to discuss the number of non-security positions that are available, as well as providing education and awareness of the variety of career paths available to individuals within the Department of Corrections. The Recruitment Unit has made progress in establishing better working relationships with both public and private vocational rehabilitation agencies and has found that working one-on-one with disabled individuals is proving to be the best approach to helping them secure employment with the Department.

Under Goal Summary – Change Since Last Biennium

| Agency-wide Under Goal on 06/30/08 | | | | | | | | |
|---|-------|-------|-----|--------|--------|-------|--------|--------|
| | Total | Women | POC | AFAMER | HISPNC | ASIAN | NVAMER | DISABL |
| Employee Count | 4398 | 1498 | 489 | 83 | 258 | 81 | 67 | 54 |
| Under Goal | | 174 | 42 | 43 | 17 | 35 | 28 | 209 |
| Agency-wide Under Goal on 06/30/10 | | | | | | | | |
| Employee Count | 4362 | 1500 | 488 | 80 | 263 | 82 | 63 | 54 |
| Under Goal | | 49 | 14 | 45 | 0 | 34 | 25 | 207 |

The growth of the department continues to present challenges in our ability to attract and retain people of color in the eastern region of the state where growth has occurred, due to the relatively low percentage of African Americans, Asian/Pacific Island, and Native Americans in the applicant pool. The Recruitment and Career Services Unit has made the following efforts to attract people of color and people with disabilities into our organization:

Job Fairs

In the 2009-2011 biennium, the Recruitment and Background Investigation Unit has made every effort to represent DOC in a wide variety of Job Fairs in order to both recruit for open positions within the department, but also to make a long term investment in education and training of the public about what working for the department is all about. Although with the difficult budgetary times the Agency has had to curtail Job Fair participation to only those without cost and within a days travel. To accomplish this, we have called upon a wide variety of DOC staff from every background to represent our interests and to reflect the diversity of the organization. In particular, we emphasized women in security, people of color from every job classification and when possible, people with disabilities in an attempt to display to the public the opportunities available to individuals.

Job Fairs and events attended and/or to be attended:

- Career Expo / Convention Center Portland
- Portland Expo Center / Gun Show
- University of Phoenix Job Fair
- Salem Area Job Fair - Salem Conference Center
- Recruitment Military / Portland
- State of OR Career Fair / Capital Mall
- Recruitment Military / Portland “Yellow Ribbon Career Fair”
- Health Career Fair Clackamas school of nursing

Achieving a diverse and representative workforce is a primary goal of the Recruitment and Background Investigations Unit. Utilization of the many talents residing within the department helps us towards accomplishing that goal. Recruitment continues to look for new ideas to attract minority and applicants with disabilities to our organization, additional internet sites to post vacant jobs to, as well as a School-to-Work program at the high school level to help prepare a new generation of DOC staff.

The following charts show the trend over the past ten years for the department in the representation of women, people of color, and people with disabilities. The numbers have made continual growth, but due to the growth in the total number of employees, the percentages of the workforce have not always shown that direction as clearly. The department continues to work toward a goal of reflecting the diversity of the state of Oregon communities and effectively manage the diversity of the inmate population

Section V.

Goals & Strategies for Implementation

2011 – 2013 Development and Implementation of Programs

2011-2013 Biennium Goals and Strategies

As the department continues to experience statewide growth, emphasis will continue to be placed on expanding and maintaining a diverse workforce. Recruitment efforts will focus on obtaining applicants from the various minority populations. As new institutions of all sizes are located in small communities throughout the central, eastern and southern parts of the state, opportunities exist to bring diversity not only to the workplace, but to those small local communities as well. Selection officials will take into consideration protected class status applicants specifically where there is clearly established statistical under-representation and where we are below parity standards in that particular job. The department will continue to review current recruitment strategies for women, people of color and with disabilities to see what actions have been successful in bringing applicants to the department. Each local community provides the DOC with a unique applicant pool from which to draw. The Department will also continue to transfer seasoned professionals into each community, with an increased level of diversity being one intended outcome.

Throughout 2011 and 2013 the biggest driver for increased state correctional system growth, and corresponding increased growth of the state correctional workforce, will be the implementation of Ballot Measure 57. Ballot Measure 61 did not get majority votes to pass but Measure 57 did receive the requisite number of votes and passed. Due to the forecasted increase in inmate population and the continuing decline in State Revenue, the implementation of Measure has been delayed. Should Measure 57 become fully implemented it is predicted that the department will experience rapid growth similar to that experienced when Ballot Measure 11 passed in November, 1994.

The sustained expansion of the department's facilities throughout the state will continue to allow us an opportunity to promote more protected class employees and, at the same time, increase diversity in the eastern regions of the state.

The department continues to focus on recruiting women in security positions, people of color in both mid- and upper-level management positions, as well as positions in areas such as health and fiscal services, and persons with disabilities in non-security positions. In addition, we are seeking to place more women into other job categories which are long overlooked as being more traditionally male-oriented. Actual numbers to achieve equity in these positions are determined in the parity goals established by the Governor's Affirmative Action Office. These statistics are received quarterly by the DOC Human Resources Division, analyzed for areas of non-compliance, and reported to the Department's Executive-level Policy Group at standing quarterly presentations.

It has been recommended to the Policy Group that the Department of Corrections utilize the following Affirmative Action/Cultural Competency Implementation Strategy for the 2011-2013 biennium.

Affirmative Action/Cultural Competency Implementation Strategy

Through June 30, 2013

Analyze and disseminate quarterly Affirmative Action data; monitor compliance with requirements of the Affirmative Action Plan; meet with Policy Group quarterly. Distribute monthly calendars and proclamations received from Governor's Office, DAS, DHS, using HR managers as local points of contact and Public Affairs for broader distribution.

July 1, 2011 – December 30, 2011

Develop annual Affirmative Action Plan; analyze and disseminate quarterly Affirmative Action data; monitor compliance with requirements of the Affirmative Action Plan; meet with Policy Group quarterly. Distribute monthly calendars and proclamations received from Governor's Office, DAS, DHS, using HR managers as local points of contact and Public Affairs for broader distribution.

- Continue the work of the Cultural Competency Advisory Committee made up of relevant stakeholders, or continue to utilize Executive-Level Policy Group for this purpose, depending on Policy Group's preference.
- Review agency policies and procedures with Cultural Competency Advisory Committee.
- Conduct a review of agency recruitment activities with Cultural Competency Advisory Committee.
- Conduct review of agency exit interview process.
- Conduct review of agency performance review process.

January 1, 2010 – June 30, 2010

Analyze and disseminate quarterly Affirmative Action data; monitor compliance with requirements of the Affirmative Action Plan; meet with Policy Group quarterly. Distribute monthly calendars and proclamations received from Governor's Office, DAS, DHS, using HR managers as local points of contact and Public Affairs for broader distribution.

- Continue multi-level Cultural Competency Advisory Committee made up of relevant stakeholders.
- Recommend enhancements to agency recruitment activities with Cultural Competency Advisory Committee.
- Develop mini training modules in veteran staff Cultural Competency training sequence, emphasizing content recommended by the Cultural Competency Advisory Committee.
- Administer department-wide Cultural Competency survey instrument.

July 1, 2012 – December 31, 2012

Develop annual Affirmative Action Plan; analyze and disseminate quarterly Affirmative Action data; monitor compliance with requirements of the Affirmative Action Plan; meet with Policy Group quarterly. Distribute monthly calendars and proclamations received from Governor's Office, DAS, DHS, using HR managers as local points of contact and Public Affairs for broader distribution.

- Continue multi-level Cultural Competency Advisory Committee made up of relevant stakeholders.
- Monitor enhancements to agency recruitment activities with Cultural Competency Advisory Committee.
- Deliver mini training modules in veteran staff Cultural Competency training sequence, emphasizing content recommended by the Cultural Competency Advisory Committee.
- Deliver continuing modules in Management Service Cultural Competency training sequence, emphasizing content recommended by the Cultural Competency Advisory Committee.
- Review training evaluation results with Cultural Competency Advisory Committee.
- Analyze department-wide Cultural Competency survey results with department Policy Group.

January 1, 2013 – June 30, 2013

Develop annual Affirmative Action Plan; analyze and disseminate quarterly Affirmative Action data; monitor compliance with requirements of the Affirmative Action Plan; meet with Policy Group quarterly. Distribute monthly calendars and proclamations received from Governor's Office, DAS, DHS, using HR managers as local points of contact and Public Affairs for broader distribution.

- Continue multi-level Cultural Competency Advisory Committee made up of relevant stakeholders.
- Monitor enhancements to agency recruitment activities with Cultural Competency Advisory Committee.
- Deliver continuing modules in veteran staff Cultural Competency training sequence, emphasizing content recommended by the Cultural Competency Advisory Committee.
- Deliver continuing modules in Management Service Cultural Competency training sequence, emphasizing content recommended by the Cultural Competency Advisory Committee.
- **Develop 2013-2015 implementation strategy based on Policy Group recommendations.**

Parity Goal Results Desired:

Effective with the first quarterly Affirmative Action report of 2011, reduce “Under Goal” totals for the following job groups or categories with currently unmet parity targets:

Women –

Official/Administrator (Middle Management/Upper Management)

Physician/Dentist

Inspector/Compliance/Investigator (Corrections Inspector/ Investigator)

Social Services (Correctional Counselor/Adult Parole-Probation Officer/Chaplain)

Computer Analyst

Correctional Officer (CO/Corporal/Sergeant)

Engineer/Construction

Nonsupervisory (Recreation Specialist/Library Coordinator/Test Coordinator)

Skilled Craft Workers

Service Maintenance Worker (Supply Specialist/Truck Driver/ Facility Maintenance Specialist/Food Service Coordinator)

African American –

Official/Administrator (Middle Management/Upper Management)

Nurse/Health (Pharmacist/Nurse Manager/Nurse Practitioner/ Registered Nurse/Mental Health Specialist)

Correctional Officer (CO/Corporal/Sergeant)

Administrative Support (OS/Accounting Technician/ESS/Admin Specialists/Medical Record Specialist)

Service Maintenance Worker (Supply Specialist/Truck Driver/ Facility Maintenance Specialist/Food Service Coordinator)

Hispanic –

Upper Management Official/Administrator

Lieutenant/Captain

Service Maintenance Worker (Supply Specialist/Truck Driver/ Facility Maintenance Specialist/Food Service Coordinator)

Asian/Pacific Islands –

Computer Analyst (Info Systems Specialist)

Social Services (Correctional Counselor/Adult Parole-Probation Officer/Chaplain)

Correctional Officer (CO/Corporal/Sergeant)

Service Maintenance Worker (Supply Specialist/Truck Driver/ Facility Maintenance Specialist/Food Service Coordinator)

Native American –

Social Services (Correctional Counselor/Adult Parole-Probation Officer/Chaplain)

Correctional Officer (CO/Corporal/Sergeant)

Disabled –

Official/Administrator (Middle Management/Upper Management)

Nurse/Health (Pharmacist/Nurse Manager/Nurse Practitioner/ Registered Nurse/Mental Health Specialist)

Physician/Dentist

Computer Analyst (Info Systems Specialist)

Program Coordinator/Analyst (Ops and Policy Analyst, Executive Assistant/Program Analyst)

Social Services (Correctional Counselor/Adult Parole-Probation Officer/Chaplain)

Health Technician (Pharmacy Technician/Dental Assistant/Health Services Technician)

Administrative Support (OS/Accounting Technician/ESS/Admin Specialists/Medical Record Specialist)

Mechanic/Boiler Operator (Facility Energy Technician/ Automotive Technician)

Trades (Electrician/Plumber/Welder/PEST/Painter/Carpenter)

Service Maintenance Worker (Supply Specialist/Truck Driver/ Facility Maintenance Specialist/Food Service Coordinator)

To accomplish the above goals and strategies, the following actions for 2009-2011 are recommended:

Recruitment and Selection

Interview Panels Managers and selecting officials will make every reasonable effort to ensure that interview panels are diverse. The department will ensure both hiring and promotion panels, where practical, have membership composed of racial/ethnic and gender diversity. In order to maintain some neutrality for hiring and promotions to management and executive level positions, the panel should include at least one member from outside the functional unit where the vacancy exists. The department provides a Supervisor's Recruitment Guide for hiring managers that delineates the appropriate process for selecting and setting up interview panels.

Newspaper Advertisements In an effort to reach a broad range of job applicants, staff in Human Resources Recruitment and Background Investigations may place ads for vacant positions in major local newspapers within the state such as The Oregonian, The Statesman Journal, The East Oregonian, The Eugene Register Guard, The Hermiston Herald, the Argus Observer, Malheur Enterprise, Baker City Herald, The Record Courier, La Grande Observer, and the Democrat Herald, just to name a few. Newspapers designed to reach all populations will be used. These publications include EL Hispanic News and the Goal Latino for Hispanics; The Asian Reporter for Asians; The Skanner and The Portland Observer for African Americans. Provided there are sufficient funds, national papers published by minority organizations, such as EOE Journal and Affirmative Action Register, may be used as well. Note: Advertisements will be placed when economically feasible.

Online The department will use on-line web sites such as SHRM, Salem News, Craig's List and Monster.com to broaden the range of job applicants.

Job Information Fairs The department will participate, when financial and staffing resources permit, in a multitude of job fairs held around the state focusing on women, people of color, and people with disabilities.

College/University Career Days Employees of the department will attend college and university career days and job recruitment functions, as staffing and finances allow. Each institution will make staff available to attend career days held at community colleges and universities located in their geographical area of the state. Recruitment and Career Services staff has visited with various schools throughout the state.

The department School-to-Work Coordinator coordinates the agencies participation in the School-to-Work week in April that invites students to accompany their parents to work. There is participation throughout the department in providing student with career exploration activities.

Slide Show The department has developed a new slide show showing staff working in some of the primary institutions and in the administration. The slide show is an information tool for showing at career days and job fairs.

Policies The Human Resources staff will ensure that the department's formal, written procedures on selection includes statements to the effect that appointing officials are to seriously consider gender and ethnic status in hiring and promotion decisions where positions exist which are

seriously under-represented and the affirmative action goal in this plan has identified this particular job group.

Vacancy Type and Order Where affirmative action goals have been established for the particular classification and representation remains clearly below parity standards, the first priority when considering the type of application to develop, is open competitive. The second would be for advertising the position as a statewide vacancy. Managers should justify reasons to open announcements that are limited to agency promotions. There are a considerable number of potential applicants in the state labor force with work experience in public safety occupations. The diversity of candidates will be increased considerably by opening up the majority of announcements to job applicants in the public arena.

Applicants with Disabilities The Recruitment and Background Investigations Unit staff provides informational interviews to applicants with disabilities interested in qualifying for department career opportunities.

SB 822 Veteran's Points SB 822 established the manner in which state agencies provide preference to qualifying veterans or disabled veterans in scored or un-scored employment application processes. (ORS 408.225-235)

In order to be in compliance of SB 822 both the recruitment unit and the hiring managers have responsibilities.

Recruitment Unit:

In the initial application screening, the recruitment unit determines if applicants are eligible for veterans or disabled veterans preference points. Eligible veterans will have the appropriate points designated upon the certification list you receive.

Hiring Manager:

Hiring Managers review their certification lists to determine who they will be interviewing.

- In a scored screening, the Veterans points must be taken into consideration when determining where to cut off the certification list.
- In a non-scored screening, all Veterans are interviewed.

Community Organization Outreach The department will maintain a list of minority and women's organizations around the State. For vacant positions showing a serious under-representation of women or minorities, the Recruitment and Career Services Unit will mail job announcements to appropriate community organizations, if they are not getting state vacancy lists or announcements from HRSD, recruitment.

Contact with organizations representing the special interests of people of color will be maintained by having staff from the department attend group meetings and conferences. In addition, the intent is to have senior staff represented at key, influential and large statewide organization conferences which address minority community and employment issues. Staff will pursue the opportunity to meet personally with officials representing minority organizations.

Training

The Department spends a considerable amount of resources on staff training. In making decisions as to who will attend training other than mandatory DOC training, women, people of color and/or people with disabilities will be considered if that career field is clearly under-represented by members of protected classes or if it will enhance the prospects for career advancement and if it provides the Department with an employee developing a needed job skill.

Leadership/Supervisor Training: The Department has developed a Director's Academy leadership training program and is developing a new supervisor training program to be called Management Basic Training. Topics to be covered in the new supervisor training will include affirmative action, diversity, and ADA issues. The leadership training program covers a broad range of subject matter and includes a focus on interpersonal relationships and valuing others. An online resource titled the Human Resource Quick Reference Guides speaks to the topics of Cultural Competency as well as provides links to both the Department's AAP and the State of Oregon AAP, and will be published in 2009.

In-Service Training: Annual in-service training includes a segment on valuing others.

DOC Strategic Initiative-Cultural Competency: The Department has identified Cultural Competency as a Strategic Initiative. A work group has been formed to further promote the work of the AAP. A major part of this work group's plan in promoting Cultural Competency is a strong training effort.

Work Environment

The department will continue to develop ways to maintain a positive and supportive work environment to benefit all employees and the department relative to equal employment opportunity, affirmative action and cultural diversity.

Emphasis will be placed on the importance of the department's Promotion and Maintenance of a Respectful Workplace policy, which prohibits harassment and discrimination in the workplace.

Exit interviews In order to determine if there are problems, patterns, or trends affecting women or minorities in a disparate manner, an exit interview process has been implemented. The results of these exit questionnaires will be reviewed by the Recruitment and Career Services Administrator and will be reported to the Executive Management Team members and functional unit managers as needed.

Other Programs

Reports The department's Affirmative Action Officer will review affirmative action goals and the progress of the entire department, on a quarterly basis. This person will develop and distribute to managers a report based on the DAS Affirmative Action Progress Report, summarizing workforce statistics, on a semi-annual basis.

Correctional Officer Hiring Trends Since correctional officer hiring represents the largest volume, entry level position in the department, a study has been implemented to track selection trends. The test criteria were reviewed to determine if inequities or bias exists for members of protected classes. Data gathered provides numbers and percentage of women and people of color who apply, the numbers which failed the entrance exam, the number interviewed, the numbers and percentage of women and people of color who failed the interview, the pass/fail rate for

background checks and the pass/fail rates of physicals. The numbers and percentage of women and minorities who were hired will also be determined. If there is sufficient data and enough staff time, a follow-up study will be done to determine how many of these hires completed trial service as a correctional officer. This study will follow the "Uniform Guidelines on Employee Selection Procedures" of the Equal Employment Opportunity Commission (29 CFR 1607).

Position Descriptions As position descriptions are written and/or revisions made, conditions which might limit or restrict people with disabilities from consideration will either be eliminated or will be clearly justified on the basis of essential duties and basic requirements of the job. Only where there are bona fide requirements should duties be identified which might limit people with disabilities from consideration. Human resources analysts, classification and recruitment staff are to work closely with managers and supervisors to ensure that position descriptions are not inadvertently biased against people with disabilities. Position descriptions of all managers in the department will include affirmative action language.

Bilingual Pay Differential The department will continue to utilize certain staff members to provide language skills for communication and translation purposes. The position description must clearly specify this duty in order to receive pay differential.

Additional staff members need to be identified who have these skills and who can provide translation services. Since a large portion of the inmate population speaks Spanish and languages other than English, there are important safety and security reasons to expand the number of staff members who can exercise these special skills. In the future, the department will consider ways in which specific positions are identified for which language skills are a job requirement, so they can be used for target recruiting and advertising.

Special Observances Functional unit managers are encouraged to address cultural diversity awareness issues through topics at staff meetings, planning special observances in recognition of minorities, encouraging staff participation in special events in the community related to minority heritage and in special training sessions. The emphasis will be placed on resolving problems, combating stereotypes and highlighting the advantages of cultural diversity.

The types of observances include, but are not limited to: Women's Equality Day, Martin Luther King Jr. birthday (January), Cinco de Mayo (May), Native American Indian Heritage Month (September), Women's History Month (March), Black History Month (February), Asian Heritage Month (April or September), Disabilities Month (October), and National American Indian Heritage Month (November).

Internal Dissemination

The Affirmative Action Plan will be brought to the attention of employees in the following ways:

- The director's Affirmative Action Policy Statement shall be disseminated to all staff along with DOC policies, ADA and Reasonable Accommodation and Promotion and Maintenance of a Respectful Workplace available at each worksite outlining the procedure for filing a compliant.
- Affirmative Action progress reports of statistical data by functional unit will be disseminated to superintendents and members of the department's Executive Management Team and posted in an electronic public folder for access by all department staff and managers.

- Affirmative Action accomplishments and diversity issues will be published in the department's employee newsletters and on bulletin boards.
- Recruitment and Career Services Newsletter will include statistics and information regarding diversity.
- New Employee Orientation shall include a two-hour module on a respectful workplace. Primary Level Leadership Training shall include a two-hour module on valuing a diverse workforce. In-service Training also contains a three-hour module on valuing and respecting others.
- The department's policy statement on Affirmative Action and Respectful Workplace will be posted on employee bulletin boards, in public lobbies, employee lounges, and meeting rooms.
- Biennial training will be held with department managers and supervisory staff to inform them of the department's Affirmative Action Plan.
- Meetings will be held with union officials to inform them of the Affirmative Action Plan and to request their continued cooperation.
- Non-discrimination clauses shall remain in all collective bargaining agreements.
- Affirmative action goals and progress will be on the agenda of key departmental staff meetings dealing with personnel.
- Supervisors will conduct meetings with employees to discuss the Affirmative Action Plan.
- Copies of the Affirmative Action Plan distributed to DOC Human Resource Managers and available in each workplace and accessible to employees. Additional copies can be obtained by contacting the DOC Human Resources Division.

External Dissemination

The Affirmative Action Plan will be represented to outside sources through the following means:

- The department's employment advertisements shall state that the Department of Corrections is an "Equal Opportunity/Affirmative Action Employer in compliance with the ADA." Advertising shall occur, when adequate financial resources are available, in local publications frequently read by individuals who fall within a protected class.
- Except in the case of a bona fide occupational qualification, employment advertising shall omit reference to sex, religion, age, and national origin, and shall clearly convey the commitment of the agency to equal opportunity/affirmative action.
- Recruiting sources, including minority, and women's organizations, and organizations for the people with disabilities; churches, community agencies, and colleges shall be informed of the department's equal employment policy.
- Articles and pictures in Department of Corrections' newsletters, publications, and recruitment brochures will include or feature employees in protected classes at various levels and in non-traditional jobs.

- Contractors will be informed of the department's policy of equal opportunity and affirmative action.
- The Assistant Director, DOC Human Resources Division and/or designee(s) shall establish communication and maintain relationships with outside organizations representing the interests of protected classes and individuals in the field of equal employment opportunity.
- Copies of the Affirmative Action Plan will be provided to the Governor's Office of Affirmative Action.
- Copies of the department's Affirmative Action Plan will be distributed to the department labor organizations.
- Copies of the department's Affirmative Action Plan will be provided to other state government agencies upon written request.

Copies of the department's Respectful Workplace, Affirmative Action and Equal Employment Opportunity and related policies are available to the public and state agency personnel on the Department of Corrections internet site: http://www.oregon.gov/DOC/INSPEC/rules_policies/.

Section VI.
Appendix A

**Agency Policy
Documentation**

- A. ADA & Reasonable Accommodation Policy
- B. Discrimination and Harassment Free Workplace
- C. Workplace Effects of Domestic Violence, Sexual Assault and Stalking
- D. Employee and Training Policies
- E. Veterans Preference in Employment
- F. Other agency documentation in support of its affirmative action plan

2011-2013 Affirmative Action Plan
Department of Corrections

DAS-ADA & Reasonable Accommodation Policy 50.020.10



Statewide Policy

SUBJECT: ADA and Reasonable Accommodation in Employment **NUMBER:** 50.020.10

DIVISION: Human Resource Services Division **EFFECTIVE DATE:** 6/7/10

APPROVED: Signature on file with Human Resource Services Division

POLICY STATEMENT:

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

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

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

AUTHORITY:

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

APPLICABILITY:

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

ATTACHMENTS:

ADA Accommodation Tool Kit

DEFINITIONS:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

| | |
|---|-----------|
| <u>Statewide Policy</u> ADA and Reasonable Accommodation in Employment | 50.020.10 |
|---|-----------|

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

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

POLICY

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

DOC-ADA & Resonable Accomodation Policy 20.5.16

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|  DEPARTMENT OF CORRECTIONS Human Resources  | |
| Title: | ADA and Reasonable Accommodation DOC Policy: 20.5.16 |
| Supersedes: | DOC Policy 20.5.16, "ADA and Reasonable Accommodation" dated 01/01/99 |
| Applicability: | All employees in all functional units |
| Directives Cross - Reference: Americans with Disabilities Act (ADA) | |

I. PURPOSE

To establish a process by which the Department of Corrections provides reasonable accommodation for qualified people with disabilities.

II. DEFINITIONS

- A. **Americans with Disability Act (ADA):** Federal law that prohibits discrimination based on disability in recruitment for employment, services by state and local governments, places of public accommodation, transportation and telecommunication services.
- B. **ADA Coordinator:** The department Affirmative Action Officer has been designated the ADA Coordinator for employment pursuant to part 35.107 of the ADA.
- C. **Applicability:** This policy covers activities related to recruitment, new hires, current employees, promotions, and retention of employees with disabilities, agency training, information exchange or social activities.
- D. **Essential Functions:** The ADA does not clearly define "essential." Legislative history says the term means those job tasks that are fundamental to the job, not marginal. Some considerations for determining whether a function is essential are:
 - 1. The position exists to perform the function.
 - 2. There are a limited number of other employees available among whom the performance of the function can be distributed.
 - 3. The function may be highly specialized so the person hired must have the expertise or ability to perform the particular function.
- E. **Evidence of Essentiality:** Includes the employer's judgment of which functions are essential, written job descriptions prepared before advertising or interviewing for the position, time spent on the job performing the function, the consequences of not requiring the incumbent to perform the function, the terms of a collective bargaining agreement, and the current work experience of incumbents in similar jobs.

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DOC Policy: 20.5.16 ADA and Reasonable Accommodation

- F. **Major Life Activity:** Breathing, walking, hearing, seeing, speaking, learning, working or self-care.
- G. **Mental Impairment:** Any mental or psychological disorder or characteristic, including but not limited to developmental disability, head injury, emotional/mental illness or a learning disability.
- H. **Person with a Disability:** A person with a physical or mental impairment that substantially limits one or more major life activities, has a record of such an impairment, or is perceived as having such an impairment.
- I. **Physical Impairment:** Any physiological disorder, disfigurement, or anatomical loss affecting one or more of the following body systems: neurological, musculoskeletal, sense organs, respiratory, speech, cardiovascular, digestive, skin or endocrine.
- J. **Qualified Person with a Disability:** A person with a disability who the DOC determines satisfies the requisite skill, experience, education and other job related requirements of the position and who, with or without reasonable accommodation, can perform the essential functions of the position.
- K. **Reasonable Accommodation:** Any reasonable change, modification, or adjustment to the work environment that enables individuals with disabilities to enjoy equal employment opportunities. This may include making facilities readily accessible, job restructuring, modifying work schedules, acquiring equipment or devices, adjusting or modifying examinations, training materials or policies or other similar actions.
- L. **Undue Hardship:** Significant difficulty, expense or impact on the employer when making reasonable accommodations.

III. POLICY

The department is committed to comply with the Americans with Disabilities Act (ADA), which protects qualified applicants and employees with disabilities from unlawful discrimination in recruitment, hiring, promotion, discharge, pay, training, fringe benefits, classification, referral, and other aspects of employment. Additionally, the department shall provide reasonable accommodation unless it can be demonstrated that to do so would cause an undue hardship on the DOC or if it places the individual or others at physical harm or risk.

- A. **Responsibility for requesting and providing reasonable accommodation under the ADA:**
 - 1. The applicant/employee must initiated the request for accommodation, submit any necessary medical documentation that is requested and cooperate in any resulting discussion and evaluation.

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DOC Policy: 20.5.16 ADA and Reasonable Accommodation

2. Prior to interview for a job, the hiring supervisor/manager shall contact each applicant to inform him or her of the interview. All eligible applicants will be advised that reasonable accommodation for the interview will be provided upon request.
 - a. If the person applying is a current employee with a known disability, the hiring supervisor/manager may choose to contact the candidate directly to arrange accommodation.
 - b. The hiring supervisor/manager will provide applicants with an opportunity to review the position description prior to the commencement of the interview.
3. Offer of conditional employment: Once an employee or applicant is offered a position and the applicant or employee requests an accommodation, the department is responsible for providing the necessary accommodation consistent with the following:
 - a. Determine whether or not the person has a disability that qualifies under the ADA by thorough evaluation of medical documentation.
 - b. Ensure that the applicant/employee is qualified to perform the essential functions of the job with or without reasonable accommodation.
 - c. Review to determine if the accommodation shall enable the individual to perform the essential functions of the job.
 - (1) Obtain relevant job and task information through a job analysis.
 - (2) Determine if function is essential by review of analysis.
 - (3) Explore job modification alternatives by consulting with the individual; identify barriers to job performance and assess how accommodation could overcome those barriers.
 - (4) Determine the most effective modification for the individual.
 - d. Determine whether the reasonable accommodation would pose an undue hardship for the employer considering:
 - (1) The nature and cost of the accommodation.

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DOC Policy: 20.5.16 ADA and Reasonable Accommodation

- (2) The financial resources of the State of Oregon and the effect of expenses on the operation of the department.
 - e. The manager, in consultation with the assigned Human Resources Consultant (HRC) and the ADA Coordinator, shall consider the reasonableness of the proposed accommodations. The HRC shall serve as the contact person for all parties.
 - f. If approved, implement the most effective accommodation giving due consideration to the preferences of the individual, or notify the individual that the requested accommodation is not reasonable.
 - g. The individual may accept or reject the decision and/or the specific modifications proposed. The individual may offer additional information and/or may propose alternative accommodations.
 - h. The ADA Coordinator may consult with appropriate staff, managers, and technical specialists to decide if additional information presented establishes that the individual is qualified under the ADA, or if the proposed alternative is feasible or would cause an undue hardship for the employer.
 - i. The individual may disagree with the decision or reject the accommodations offered. However, if the employee cannot perform the essential functions as a result of the rejection, the employee shall not be considered a qualified individual with a disability.
 - j. Temporary conditions may be covered as disabilities depending on the duration and impact of the impairment and the extent it limits major life activities and shall be treated on a case-by-case basis.
- B. Technical assistance is available from the department's Affirmative Action Officer. The Affirmative Action Officer shall maintain a resource list outlining where to access sign language interpreters and/or alternative format resources. If there are questions about technical expertise regarding job analysis, worksite analysis, worksite modification or other possible accommodations, managers and/or supervisors shall contact the department's Affirmative Action Officer. The Affirmative Action Officer may contact the Vocational Rehabilitation Division, the Oregon Disabilities Commission or the Oregon Commission for the Blind. IF a question arises as to the determination of reasonableness or about the extent of the department's obligation to provide accommodation in a particular case, the

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Affirmative Action Officer may contact the Office of Civil Rights of U. S. Department of Labor for Technical Assistance.

- C. Complaint procedure: All complaints shall be handled in accordance with the DOC Policy 20.6.1, Promotion and Maintenance of a Respectful Workplace.
- D. Confidentiality:
 - 1. Information obtained during the accommodation process concerning the medical condition or history of the applicant shall be held as confidential medical records. Access shall only be provided as necessary to the managers involved in the accommodation process; first aid/safety personnel if emergency treatment may be required; and government officials investigating compliance with the ADA, Rehabilitation Act, and Oregon's Civil Rights Laws.
 - 2. Each employee shall decide whether to provide information for possible emergency treatment using the employee Emergency Information Record, PD100Y. The manager/supervisor is responsible for maintaining this information in a confidential manner.

IV. IMPLEMENTATION

This policy shall be adopted immediately without further modification.

Effective: 01/01/01

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DOC-Staff Training and Development Policy 20.7.1

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|  DEPARTMENT OF CORRECTIONS Human Resources  | |
| Title: | Staff Training and Development DOC Policy: 20.7.1 |
| Supersedes: | DOC Procedure #71, Employee Training Program dated 9/4/90 and Procedure #14, Membership Fee for Professional/Management Organizations dated 2/1/94 |
| Applicability: | All department employees, volunteers, and contractors |
| Directives Cross-Reference: | State Policy 50.045.01 |

I. PURPOSE

To describe the responsibilities and services of the department's Staff Training and Development Section, and the responsibilities of supervisors and employees in the professional growth and continuous learning of the workforce.

II. POLICY

The department places high value on developing and realizing the full potential of each employee through investment in their training and professional development to meet changing needs, keep skills up to date, and develop new personal and organizational competencies which further the department mission, vision, and core values. Accordingly:

- A. The department's Staff Training and Development Section is responsible to provide within budgeted resources an employee training and development plan and program that meets the training policy requirements and current department training priorities. The Employee Training and Development Section shall:
 1. Establish a department Training Advisory Committee (TAC) to provide the Section with consultation and advice to include course content, training delivery modes, training standards, employee development programs, training procedures, and selection of training contractors. The TAC shall include representation from both management and classified staff, as recommended by the functional unit manager, and selected by department Assistant Directors. The committee shall meet at least quarterly.
 2. Complete a comprehensive training needs assessment by March 31 of each even-numbered year as the basis of the department's employee training and development budget request and plan for the following biennium. Training program recommendations from all department staff shall be included in the biennial needs assessment and may be included in the biennial training plan.
 3. Provide the training and development programs identified in the biennial training plan including the Department of Corrections Orientation program, the annual In-Service Training program, a department

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Leadership and Professional Development Program, and other skill-based training courses as identified in the plan and as described in department policies 20.7.2, 20.7.3, and 20.7.4.

4. Develop a biennial training report as part of the department budget request process to include the number of employees and training hours received, number of employees participating in department orientation, annual in-service, leadership development, and selected other courses and information.
 5. Maintain employee training records and produce reports or respond to requests for training information.
 6. Provide a department liaison to DPSST for the purposes of providing content experts from the department as trainers, advocating for the department's DPSST training requirements, and providing instructional services and input on curriculums, policy, standards, and procedures.
 7. Upon request, provide consultation services related to improving the effectiveness and efficiency of teams or work groups through the application of employee and organizational development tools and workshops to the extent that resources and priorities permit. Such services may include team building, conflict resolution, meeting management, group communications, trainer and curriculum development, and contractor selection, and focus groups.
 8. Maintain a library of employee and organizational development resource materials such as books, audio and video tapes, and CD-ROMS available for employee or organizational use.
- B. Supervisors, in discussion with their employees, shall develop and update annually a written individual employee development plan that provides for the continuous improvement of the employee's job-related knowledge and skills and implement it to the extent that resources permit.
- C. Supervisors may provide educational assistance to employees when it directly relates to their job responsibility or future professional growth, or to assist employees in meeting the department's mission and can be accommodated within the assigned budget:
1. When an employee is assigned to attend courses, the department shall reimburse the cost of registration fees, course materials, and necessary travel.
 2. When an employee makes a request to attend a class(s), either during or after working hours, the department may reimburse all or part of the costs attendant to the class(s) contingent upon satisfactory completion of the course.
 3. Educational assistance to employees may include paid leave. Provisions of the paid leave agreement between the agency and the employee shall be documented and maintained in the employee's personnel file.

- D. Upon written request from a management or executive service employee, supervisors may approve one job-related, professional membership per year as their resources permit. Authorization for payment must include the employee name, functional unit, professional organization, and job-related rationale and be forwarded to the department accounting unit. Memberships for classified represented employees must be bargained and identified in the applicable collective bargaining agreement to be approved.
- E. Employees, volunteers and contractors are expected to give full attention to and participation in all department training and development programs and courses in which they are enrolled, dress and conduct themselves in a professional manner, and satisfactorily complete the program or course.

III. IMPLEMENTATION

This policy will be adopted immediately without further modification.

DOC-Orientation Programs Policy 20.7.2

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|  DEPARTMENT OF CORRECTIONS Human Resources  | |
| Title: | Orientation Programs DOC Policy: 20.7.2 |
| Supersedes: | DOC Procedure #71, Employee Training Program dated 9/5/90 |
| Applicability: | All department employees, volunteers, and contractors |
| Directives Cross-Reference: | None |

I. PURPOSE

To provide new employees, volunteers, and contractors with a basic understanding of the department's expectations of their conduct and the department's mission, rules, policies, regulatory requirements, and procedures.

II. POLICY

The department Staff Training and Development Section shall determine and provide the appropriate Department of Corrections Orientation. Accordingly:

- A. All supervisors shall enroll new employees or those who have been absent from the department for two or more years in the appropriate program within the first month of their employment;
- B. The duration, location(s), curriculum, and schedule for each program shall be determined and announced no less than three months prior to the beginning of each calendar year (training year). The curriculum for each program shall be reviewed and approved by the Training Advisory Committee and include at a minimum:
 1. Training that familiarizes and explains regulatory requirements;
 2. Training that provides an understanding of the department mission and vision and employee expectations related to the department's core values and code of ethics and conduct; and
 3. Training that familiarizes and explains department rules, policies and procedures.
- C. All department employees are expected to attend, to dress and conduct themselves in a professional manner, and complete the full program; and
- D. Functional units may choose to provide a new employee orientation for their facility or institution in addition to, but not in lieu of, the department programs. Units choosing to provide such orientation shall provide the

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Staff Training and Development Section a copy of the curriculum and have a course number assigned by the Section.

III. IMPLEMENTATION

This policy will be adopted immediately without further modification.

DOC-Annual In-Service Training Programs Policy 20.7.31

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|  DEPARTMENT OF CORRECTIONS Human Resources  | |
| Title: | Annual In-Service Training Programs DOC Policy: 20.7.3 |
| Supersedes: | DOC Procedure #71, Employee Training Program dated 9/4/90 |
| Applicability: | All department employees |
| Directives Cross-Reference: | Policy: Leadership and Professional Development Program #20.7.4 |

I. PURPOSE

To provide department managers and employees with the description, requirements, and procedures of the department's annual In-Service Training programs.

II. POLICY

All permanent employees shall participate in at least forty (40) hours of in-service training annually. The department Staff Training and Development Section shall determine, develop, and provide a menu of Annual In-Service Training course offerings based on the biennial training needs assessment and training plan as reviewed by the department Training Advisory Committee. Accordingly:

- A. The course offerings shall provide opportunity for individual development or remediation in a variety of delivery methods to maximize the availability of courses and resources and minimize the need for overtime or post relief costs;
- B. The Staff Training and Development Section shall publish a list of mandatory training requirements and catalog of course offerings, location, and schedule at least three months prior to the beginning of each calendar year (training year);
- C. Supervisors, in discussions with employees, shall identify and enroll employees in all mandatory training and/or the most appropriate or applicable in-service course and provide the employee on-duty time for completion of the course;
- D. Supervisors and employees may jointly agree upon other job-related training that enhances the employee's ability to support the department mission available from other sources which will meet the requirement of forty hours of annual in-service training based on the employee's individual development plan and as resources permit. The

employee is responsible to submit a record of any such training to the Staff Training and Development Section within five days of successful completion; and

- E. The Staff Training and Development Section shall conduct regularly scheduled instructor development courses for those employees interested and approved to become department adjunct trainers. The department training staff shall prepare curriculum and train trainers to deliver courses in fire arms use, cell extraction, and range master duties in their functional units.
- F. Each level of the department Leadership and Professional Development Program may be substituted for annual In-Service Training as described in department Policy 20.7.4.

III. IMPLEMENTATION

This policy will be adopted immediately without further modification.

DOC-Leadership and Professional Development Program Policy 20.7.4

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|  DEPARTMENT OF CORRECTIONS Human Resources  | |
| Title: | Leadership and Professional Development Program DOC Policy: 20.7.4 |
| Supersedes: | N/A |
| Applicability: | All interested permanent department employees |
| Directives Cross-Reference: | State Policy 50.045.05 DOC Policy Annual In-Service Training #20.7.3 |

I. PURPOSE

To provide interested employees with program description, entry requirements, and procedures for enrolling in the department's Leadership and Professional Development Program.

II. POLICY

The department places high value and priority on providing a department Leadership and Professional Development Program to prepare department employees interested in career advancement and leadership positions the knowledge, skills, and work experiences to effectively compete for higher level positions throughout the department. Accordingly:

A. The department Staff Training and Development Section shall develop and deliver a multi-level Leadership and Professional Development Program that meets the requirements of this policy. Each level of the program may substitute for annual department In-Service as described in department Policy 20.7.3:

1. A Primary Level program shall be offered annually. This classroom-based training program is designed to focus on introductory leadership skills and practices, specifically as they are applied in a correctional setting:
 - a. Priority enrollment shall be offered to current department management and executive service employees. All such employees are strongly encouraged to complete the Primary Level program; and
 - b. Enrollment shall also be offered to department classified represented employees. The enrollment process for these employees shall be determined each year by the Staff Training and Development Section and the Leadership Advisory Committee jointly, and shall be implemented in combination with the enrollment process utilized for all department In-Service training.

2. A Secondary Level program shall be offered annually. This classroom-based training program is designed to allow participants to customize their training activities according to their professional needs. In addition, the Secondary Level program addresses individual career planning so as to assist participants in the further tailoring of career development activities.
 3. An Enhancement Level program shall be offered to graduates of the Secondary Level. This experiential level is designed to meet the specific needs of each participant, as identified in the Secondary program and may include:
 - a. A formal cross training, work-out-of-class, or job rotation assignment;
 - b. Written learning objectives;
 - c. A specific duration, not less than six months; and
 - d. Continuation of the individual equivalent may be accepted at any level.
 4. Credit for completion of an approved equivalent may be accepted at any level.
- B. A Leadership Advisory Committee shall be established to advise and guide the program curriculum, entry requirements, and enrollment process for each level of the program; and
- C. The department shall obtain certification of the Leadership and Professional Development Program from the Department of Administrative Services as meeting the requirements of State Policy 50.045.05, Core Curriculum for Oregon State Managers.

III. IMPLEMENTATION

This policy will be adopted immediately without further modification.

DAS-Discrimination and Harassment Free Workplace Policy 50.010.01



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

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

AUTHORITY: ORS 174.100, 240.088(1); 240.145(3); 240.250; 240.318(4); 240.321; 240.555; 240.560; 659A.029; 659A.030; Title VII; Civil Rights Act of 1964; Executive Order EO-93-05; Rehabilitation Act of 1973; Employment Act of 1967; Americans with Disabilities Act of 1990; and 29 CFR §37.

APPLICABILITY: All employees, state temporary employees and volunteers.

ATTACHMENTS: None

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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| <u>DAS Statewide Policy</u> | |
| Policy title: Discrimination and Harassment Free Workplace | 50.010.01 |

POLICY

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

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

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

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

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

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

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

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

(ii) the name of the complainant;

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

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

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

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

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

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

DAS Statewide Policy

Policy title: **Discrimination and Harassment Free Workplace**

50.010.01

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

(f) **Investigation.** The agency, board, or commission Human Resource section, Executive Director, or chair, as applicable, will coordinate and conduct or delegate responsibility for coordinating and conducting an investigation.

(A) All complaints will be taken seriously and an investigation will be initiated as quickly as possible.

(B) The agency, board or commission may need to take steps to ensure employees are protected from further potential discrimination or harassment.

(C) Complaints will be dealt with in a discreet and confidential manner, to the extent possible.

(D) All parties are expected to cooperate with the investigation and keep information regarding the investigation confidential.

(E) The agency, board or commission will notify the accused and all witnesses that retaliating against a person for making a report of discrimination, workplace harassment or sexual harassment will not be tolerated.

(F) The agency, board or commission will notify the complainant and the accused when the investigation is concluded.

(G) Immediate and appropriate action will be taken if a complaint is substantiated.

(H) The agency, board or commission will inform the complainant if any part of a complaint is substantiated and that action has been taken. The complainant will not be given the specifics of the action.

(I) The complainant and the accused will be notified by the agency, board or commission if a complaint is not substantiated.

(g) **Penalties.** Conduct in violation of this policy will not be tolerated.

(A) Employees engaging in conduct in violation of this policy may be subject to disciplinary action up to and including dismissal.

(B) State temporary employees and volunteers who engage in conduct in violation of this policy may be subject to termination of their working or volunteer relationship with the agency, board or commission.

(C) An agency, board or commission may be liable for discrimination, workplace harassment or sexual harassment if it knows of or should know of conduct in violation of this policy and fails to take prompt, appropriate action.

(D) Managers and supervisors who know or should know of conduct in violation of this policy and who fail to report such behavior or fail to take prompt, appropriate action may be subject to disciplinary action up to and including dismissal.

(E) An employee who engages in harassment of other employees while away from the workplace and outside of working hours may be subject to the provisions of this policy if that conduct has a negative impact on the work environment and/or working relationships.

(F) If a complaint involves the conduct of a contracted employee or a contractor, the agency, board, or commission Human Resource section, Executive Director, chair, or designee must inform the contractor

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| <u>DAS Statewide Policy</u> |
| Policy title: Discrimination and Harassment Free Workplace 50.010.01 |

of the problem behavior and require prompt, appropriate action.

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

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

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

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

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

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

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

(B) be given directions to read the policy;

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

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

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

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

Performance Standard: 100%

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

Performance Standard: 100%

DAS-Maintaining a Professional Workplace Policy 50.010.03



Statewide Policy

| | | |
|--|------------------------|-----------|
| SUBJECT: Maintaining a Professional Workplace | NUMBER: | 50.010.03 |
| DIVISION: Human Resource Services Division | EFFECTIVE DATE: | 08/27/07 |
| APPROVED: Signature on file with the Human Resource Services Division | | |

POLICY STATEMENT: It is the policy of the State of Oregon to create and maintain a work environment that is respectful, professional and free from inappropriate workplace behavior.

AUTHORITY: ORS 240.145 and ORS 240.250

APPLICABILITY: All employees, including state temporary employees

ATTACHMENTS: N/A

DEFINITIONS:

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

Agency: Refers to state agencies, boards and commissions

Professional Workplace Behavior: Supporting the values and mission of the State of Oregon and the agency, building positive relationships with others, communicating in a respectful manner, holding oneself accountable and pursuing change within the system.

Inappropriate Workplace Behavior: Unwelcome or unwanted conduct or behavior that causes a negative impact or disruption to the workplace or the business of the state, or results in the erosion of employee morale and is not associated with an employee's protected class status.

Examples of inappropriate workplace behavior include but are not limited to, comments or behaviors of an individual or group that disparage, demean or show disrespect for another employee, a manager, a subordinate, a customer, a contractor or a visitor in the workplace.

Inappropriate workplace behavior does not include actions of performance management such as supervisor instructions, expectations or feedback, administering of disciplinary actions, or investigatory meetings.

Inappropriate workplace behavior does not include assigned, requested or unsolicited constructive peer feedback on projects or work.

Protected Class Under Federal Law: Race; color; national origin; sex (includes pregnancy-related conditions); religion; age (40 and older); disability; a person who uses leave covered by the Federal Family and Medical Leave Act; a person who uses

Maintaining a Professional Workplace

Statewide Policy

50.010.03

Military Leave; a person who associates with a protected class; a person who opposes unlawful employment practices, files a complaint or testifies about violations or possible violations; and any other protected class as defined by federal law.

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

POLICY

- (1) It is the policy of the State of Oregon to create and maintain a work environment that is respectful, professional and free from inappropriate workplace behavior.
- (a) **Conduct** Employees at every level of the agency should foster an environment that encourages professionalism and discourages disrespectful behavior. All employees are expected to behave respectfully and professionally and refrain from engaging in inappropriate workplace behavior.
- (b) **Addressing Inappropriate Workplace Behavior**
- (A) Supervisors must address inappropriate behavior that they observe or experience and should do so as close to the time of the occurrence as possible and appropriate.
- (B) If an employee observes or experiences inappropriate workplace behavior and the employee feels comfortable in doing so, they should:
- (i) redirect inappropriate conversations or behavior to workplace business; and/or
 - (ii) tell an offending employee his/her behavior is offensive and ask him/her to stop.
- (c) **Reporting Inappropriate Workplace Behavior**
- (A) An employee should report inappropriate workplace behavior he/she experiences or observes to his/her immediate supervisor as soon as practicable. If the employee's immediate supervisor is the one engaging in the inappropriate behavior, the employee should report the behavior to upper management, the agency head or Human Resource section, as soon as practicable. The report may be made orally or in writing.
- (B) If past practice exists in the agency, an employee who is represented by a labor union may have a union representative present during regular work hours, when reporting inappropriate workplace behavior and through the process set forth in this policy. The union representative must not be a witness or party to the investigation.
- (C) Reporting behavior or conduct directed toward an employee because of his/her protected class status is addressed in DAS Statewide Policy 50.010.01, Discrimination and Harassment Free Workplace.
- (d) **Responding to a Report of Inappropriate Workplace Behavior** Inappropriate workplace behavior must be addressed and corrected before it becomes pervasive, causes further workplace disruption or lowers employee morale. Unless the agency decides otherwise, the supervisor of the employee allegedly engaging in the inappropriate workplace behavior must investigate the report as soon as possible.

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| Maintaining a Professional Workplace | <u>Statewide Policy</u> | 50.010.03 |
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(e) Consequences

(A) Any employee found to have engaged in inappropriate workplace behavior, will be counseled, or, depending on the severity of the behavior, may be subject to discipline, up to and including dismissal.

(B) A supervisor who fails to address inappropriate behavior, will be counseled, or, depending on the severity of the behavior, may be subject to disciplinary action, up to and including dismissal.

(f) Retaliation Retaliating against someone for reporting or addressing inappropriate workplace behavior is prohibited. The agency will investigate reports of retaliation. Any employee found to have engaged in retaliation may be subject to discipline, up to and including dismissal.

DOC-Promotion & Maintenance of a Respectful Workplace Policy 20.6.1

| | |
|---|---|
|  DEPARTMENT OF CORRECTIONS Human Resources  | |
| Title: | Promotion and Maintenance of a Respectful Workplace DOC Policy: 20.6.1 |
| Supersedes: | 1/1/99 |
| Applicability: | All employees, volunteers, and contract service providers |
| Directives Cross-Reference: | State Policy 50.010.01, ORS 659.030(1) Civil Rights Act of 1964 |

I. PURPOSE

To reaffirm that it is the policy of the Department of Corrections 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 all employees, customers, clients, contractors and visitors to the worksite.

II. DEFINITIONS

A. 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 or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile or offensive working environment.

III. POLICY

It is the policy of the Department of Corrections to provide a work environment free from behavior, action, or language, which may be perceived by others as discriminatory or harassing.

A. Discrimination. It is the policy of the Department 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 purposes

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 the Department that all employees, customers, clients, contractors and visitors to the work site enjoy a work environment that is free from harassing behavior.

1. Employees at all levels shall be expected to interact with co-workers, inmates and the public in a business-like and professional manner at all times. This includes refraining from sexual or other harassment.

Conduct in violation of this policy will not be tolerated. Any member of the staff found to have engaged in conduct in violation of this policy will be subject to disciplinary action up to and including dismissal.

2. Supervisors and managers shall serve as role models for subordinates, educate staff, respond to and investigate actions that may be discriminatory or harassing in nature.

Managers and supervisors who know or should have known of workplace harassment behavior and who fail to report such behavior, or fail to take prompt, appropriate, corrective action, will be subject to disciplinary action up to and including dismissal.

C. Any employee, volunteer or contract employee who alleges discrimination or harassment in the workplace may submit a complaint as outlined in this policy.

1. 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, another manager, or a human resources consultant. A complaint should be filed within 30 calendar days of the alleged act(s) or when the act(s) becomes known to or should reasonably be known by the complainant.

2. 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 complaint may be reported to the employee's immediate supervisor, another supervisor, or a human resources consultant. Employees may report to any of the persons listed above and need not observe any particular chain of command.

3. Complaints of discrimination or workplace harassment may be made verbally or in writing and must include the following: 1) name of the complainant; 2) the names of person(s) alleged to have engaged in the prohibited conduct; 3) a specific and detailed description of the

conduct which the employee believes is discriminatory, and 4) a description of the remedy the employee desires.

4. The recipient of a discrimination or harassment complaint shall promptly notify the human resources consultant to discuss and determine the appropriate person(s) to be responsible for the investigation. The complaint will be given prompt and thorough attention with an impartial investigation.

All staff can be assured that such complaints will be taken seriously and will be investigated as necessary. They will be dealt with in a discreet and confidential manner to the extent possible.

5. When an investigation substantiates the complaint, the supervisor shall initiate immediate and appropriate corrective action, which may include disciplinary action up to and including termination. The affected parties shall be informed that the investigation has concluded and that immediate appropriate corrective action will be taken. If the complaint involves persons outside the agency, appropriate measures shall be taken to remedy the problem.

6. Nothing in this policy precludes any person from filing a formal grievance in accordance with a collective bargaining agreement, or with the state's Affirmative Action Office, the Bureau of Labor and Industries, or the Equal Employment Opportunity Commission. Timelines for filing complaints with BOLI and the EEOC are different from those established in this policy. Contact them directly for specific guidance on filing a formal grievance with them.

- D. **Non-Retaliation.** 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.

IV. POLICY CLARIFICATION

- A. 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 innuendoes, 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, language, 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.

V. IMPLEMENTATION

This policy will be adopted immediately without further modification.

DOC-Code of Conduct Policy 20.1.3

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|---|---|--------------------|
|  DEPARTMENT OF CORRECTIONS Human Resources  | | |
| Title: | Code of Conduct | DOC Policy: 20.1.3 |
| Supersedes: | DOC Rule #33 (Tab #13), "Employee/Inmate-Offender Relationships," dated 01/03/94; DOC Procedure #40; "Code of Ethics," dated 03/05/87; DOC Procedure #72, "Secondary Employment (Moonlighting), Educational Pursuits, or Other Activities" dated 07/25/86 | |
| Applicability: | All executive service, management service, classified, and unrepresented employees, and all volunteers and contract service providers | |
| Directives Cross- Reference: | DOC Rule #105 (Tab #22), "Prohibited Inmate Conduct and Processing Disciplinary Actions," DOC Rule #39, (Tab#34), "Release of public Information" | |

I. PURPOSE

To establish a code of conduct for all DOC employees.

II. DEFINITIONS

- A. Employees: executive service, management service, classified, and unrepresented employees of the department, temporary employees, volunteers and contract service providers.
- B. Inmate/Offender: any person under the supervision of a federal, state, city or local correctional agency who is in custody or on parole, post-prison supervision or probation status.
- C. Contraband: any article or thing which an inmate is prohibited by statute, rule or order from obtaining, possessing, or which the inmate is not specifically authorized to obtain or possess or which the inmate alters without authorization.

III. POLICY

Every employee of the Department of Corrections shall constantly strive to attain the highest standards of conduct and professional public service. This requires that employees be faithful to the principles of providing professional services, adhering to the code of ethics and meeting the vision, values, rules, policies and procedures of the department. Employee's conduct must be above reproach and must not impugn the credibility and honesty of the department, its employees, or the corrections profession. Contract service providers and volunteers working in department facilities are expected to conduct themselves according to these same standards.

Effective Date: 07/15/98

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- A. Failure by employees to follow this policy may result in appropriate disciplinary action, up to and including dismissal.

- B. It is essential to the orderly operation of the department that employees conduct themselves professionally, in accordance with the following standards:
1. **Violation of Directives.** Employees shall not knowingly commit or omit acts which constitute a violation of any of the policies, rules, procedures, regulations, directives, or orders of the department.
 2. **Violation of Law.** Employees shall obey all laws of the United States, state, and local jurisdiction in which the employee is present. Should an employee be charged with, arrested for, or convicted of any felony, class A misdemeanor, or traffic violation resulting in a suspended license, that employee must immediately inform his/her supervisor in writing.
 3. **Reporting for Duty.** Employees shall report for duty at the time and place required by assignment or orders and shall be capable of performing all of the essential duties required of their position.
 4. **Attentiveness to Duty.** Employees shall not engage in any activities or personal business that would cause them to neglect their duty. Employees shall remain awake, fully alert, and attentive.
 5. **Truthfulness.** Employees shall be truthful in rendering any report, in giving testimony, or in giving any official statement about any action taken that relates to the employee's employment or position. Every employee is obligated and shall promptly report to the proper line authority any illegal acts, acts that would pose an immediate threat to the safety, security and welfare of staff and inmates, violations of post orders, rules, regulations, policies and procedures. An employee who has knowledge of such conduct by other employees is encouraged to inform those employees committing the act that unless they turn the information in themselves, the employee will have to do it for them. Employees who possess factual knowledge of behavior that should be communicated to the proper authority and choose not to report it may be subject to disciplinary action.

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C. Relationships with Inmates/Offenders.

1. All employees shall confine their relationships with inmates/offenders, or their families and friends, to those activities which are within the scope of the employee's duties. Requests for exceptions must be submitted in writing to, and approved by the functional unit manager. Upon receipt of authorization, the employee shall provide a copy to the supervising authority.
2. Employees shall submit written notification to their supervisor as soon as they know a relative, or close personal acquaintance is an offender/inmate within the State of Oregon.
3. Employees shall not become emotionally, romantically, or sexually involved with inmates/offenders, or allow an inmate/offender to engage in any behavior of a sexual nature with another inmate/offender.
4. An employee shall not use brutality, physical violence, profane, obscene, or otherwise abusing language or intimidation toward inmates, and only use the force necessary as defined in "Use of Force" Rule #13.

D. Relationships with Colleagues/Courtesy Toward Others

1. Employees shall, in the performance of their duties, be respectful, courteous, and considerate toward all members of the department and the general public. Employees shall not use terminology that disrespects the dignity or violates the human rights of others. Employees shall not use physical force, threats or intimidation toward fellow employees, family members of employees, or visitors while at a department work site.
2. Employees shall conduct themselves in accordance with DOC Policy 20.6.1, Promotion and Maintenance of a Respectful Workplace.

E. Introduction of Contraband. The introduction of contraband by an employee into or upon any department worksite, without the functional unit manager's knowledge and consent is prohibited. Contraband is defined by Rule 105, Tab 22.

- F. Dissemination of Information.
 - 1. The Department of Corrections shall ensure that public records shall be available to all persons consistent with all department procedures and laws governing the disclosure of such records.
 - 2. Employees shall not remove information from files or make copies of records or documents, except in accordance with established procedures or upon proper authorization.
 - 3. Each employee shall maintain the integrity of information received in the course of employment with the department, and not seek information beyond that needed to perform their duties; or reveal such information to anyone not having proper authorization
- G. Discrimination/Harassment. All employees shall maintain a work environment that is free from discrimination and/or harassment (see DOC Policy 20.6.1).
- H. Drug and Alcohol Free Workplace. The Department of Corrections will maintain a drug/alcohol-free work place through zero tolerance (see DOC Policies 20.6.2, 20.5.18 and applicable collective bargaining agreements).
- I. Smoke-Free Workplace. Employees shall not use tobacco products within Department facilities designated as smoke-free and/or where such use has been prohibited (see DOC Policy 20.6.3).
- J. Misuse of Official Department Position.
 - 1. Employees shall not use their official department position, identification card or badges for:
 - a. Personal or financial gain, or partisan political purpose.
 - b. Obtaining privileges not otherwise available to them except in the performance of duty.
 - c. Avoiding consequences of illegal acts.
 - 2. Employees shall not lend to another person their uniforms, identification cards, or badges, or permit identification cards or badges to be photographed or reproduced.

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- K. Gifts, Gratuities, Bribes or Rewards. Employees shall not solicit or accept from any person, business, or organization any gift including but not limited to money, tangible or intangible personal property, food, beverage, loan, promise, service, or entertainment for the benefit of the employee or the department, if it may be reasonably inferred that the person, business, or organization:
 - 1. Seeks to influence action of an official nature or seeks to affect the performance or nonperformance of an official duty, or
 - 2. Has an interest which may be substantially affected, directly or indirectly, by the performance or non-performance of an official duty.

- L. Conflicts of Interest
 - 1. Employees will not use their official position or office to solicit or receive for themselves or for any member of their household, or for any business with which they or a member of their household is associated, the following:
 - a. Employment by a contractor currently engaged in a contract with the Department of Corrections.
 - b. Gifts from anyone known to have a legislative or administrative interest in the department, its institutions, schools, programs, and services. Legislative or administrative interest is defined as an economic interest, distinct from that of the general public, in one or more bills, resolutions, regulations, proposals, or other matters subject to the formal vote or official action of a department employee.
 - c. Financial gain, honoraria, or reimbursement of expenses, other than official salary, except:
 - (1) when the employee is engaged under a professional services contract that conforms with other department policies and applicable laws, rules, and regulations, or
 - (2) when offering services as a speaker or as another participant while representing the State of Oregon in an official capacity, in which instance the employee shall only accept reimbursement of reasonable expenses as specified in the Department of Administrative Services travel policy and applicable collective bargaining agreements.

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2. Department employees will not be employed by a contractor engaged in a contract providing services to the department.
3. Employees working for a current or former department contractor shall declare this relationship in writing and forward it to the functional unit manager.
4. All department employees shall declare in writing potential conflicts of interest to their supervisor, as soon as the employee knows a potential conflict exists. A conflict of interest may be any transaction where a person acting in the capacity of a department employee takes any action or makes any recommendation, the effect of which would be to the person's benefit or detriment. The appropriate supervisor shall submit this declaration to the functional unit manager.
5. The functional unit manager shall determine if a conflict of interest exists. The functional unit manager may direct the employee to refrain from engaging in the conduct causing the potential conflict of interest while the matter is under review.
6. If the functional unit manager determines that a conflict of interest exists, he/she shall direct the employee to cease the activity causing the conflict. The functional unit manager may direct an immediate cessation of the activity or designate a reasonable period of time for the employee to dispose of the matter.
7. The functional unit manager shall forward declarations of potential conflicts of interest by employees to the employee's personnel file.

M. Political Activities

1. Employees shall not be involved in promoting or opposing any initiative, referendum or recall petition, ballot measure or candidate while on duty. While on duty, employees shall not prepare any materials used in either support or opposition, distribute advocacy materials or correspondence for political committees, prepare candidate filing forms, voter's pamphlet filings or related correspondence.

Effective Date: 07/15/98

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2. When acting in an official capacity, employees shall not solicit funds or otherwise act to influence, interfere with, or affect the results of any initiative, referendum or recall petition, ballot measure or candidate's campaign or election.
- N. Unauthorized Use, or Taking of Property. Employees shall not use, remove, or borrow property from the department for other than official business, unless authorized by the director or designee.
- O. Gambling. Employees shall not engage in any form of gambling on duty.
- P. Secondary Employment
1. Employees shall not accept secondary employment outside their employment with the Department if such employment creates a conflict of interest or interferes with the ability of the employee to effectively perform the duties of their position.
 2. Any request to work for another state agency must be submitted to the functional unit's human resources consultant. The human resources consultant is responsible for coordinating with the potential second state agency employer to comply with state policy 20.005.20, and DOC Policy 20.2.4, Fair Labor Standards Act, and avoid any potential overtime liability.

IV. IMPLEMENTATION

This policy will be adopted immediately without further modification.

Effective Date: 07/15/98

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DOC-Violence-Free Workplace Policy 20.6.14

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|---|--|
|  DEPARTMENT OF CORRECTIONS Human Resources  | |
| Title: | Violence-Free Workplace DOC Policy: 20.6.14 |
| Supersedes: | None |
| Applicability: | All employees, volunteers, and contract service providers |
| Reference: | State Policy: 50.010.02 |

I. PURPOSE

To promote and enhance a safe workplace environment for employees in their dealings with staff, volunteers, contract service providers, and/or the public to reduce the potential risk of violence in the workplace. This policy is not to be used or construed as policy concerning inmate behavior.

II. DEFINITIONS

- A. Threats and threatening behavior: Behavior (i.e., physical, verbal or written acts) that express or are perceived as expressing intent to cause physical or psychological harm, or both, against an individual or individuals or to cause damage to property.
- B. Violence or violent behavior: The actual carrying out of threatening behavior.
- C. Workplace violence: Harassment, threats, threatening behavior, and violent behavior in the workplace.

III. POLICY

- A. The Department of Corrections has a zero tolerance for behavior, which, to a reasonable person, is intimidating, hostile, threatening, violent, abusive, or offensive. Such behavior can include oral or written statements, gestures, or expressions that communicate a direct or indirect threat of physical or psychological harm. Also prohibited are acts that express or are reasonably perceived as expressing intent to cause damage to property. Employees who commit such acts may be removed from the premises and may be subject to disciplinary action, criminal penalties or both.
- B. Any potentially dangerous situations must be reported immediately to a supervisor or a human resource consultant. Reports may be made anonymously and all reported incidents will be investigated. Reports or incidents warranting confidentiality will be disclosed to others only on a need-to-know basis. Supervisors shall report incidents to a human resources consultant.

Effective Date: 1/1/01

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- C. Retaliation against employees who report or experience workplace violence is prohibited. Any employee found to have engaged in retaliatory action or behavior will be subject to discipline up to and including dismissal.
- D. The following measures shall be taken to effectively implement this policy and maintain a safe working environment:
 - 1. Reference checks and reviews of final candidates' backgrounds shall be conducted to reduce the risk of hiring individuals with a history of violent behavior. Reference background checks shall also be conducted on new volunteers and contract service providers.
 - 2. Public access buildings shall, if necessary develop policy or procedures for the safe access of the public into the facility.
 - 3. Training. Employees and managers shall be educated to identify behaviors, which may lead to potentially dangerous situations.
 - 4. Threats or assaults that require attention by security or police shall be reported to the appropriate personnel or agency.

IV. IMPLEMENTATION

This policy will be adopted immediately without further modification.

Effective Date: 1/1/01

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DAS-Veteran's Preference in Employment – 105-040-0015



U.S. Equal Employment Opportunity Commission FACT SHEET

Age Discrimination

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

FIND THIS ARTICLE ON THE WEB AT:
Facts About Age Discrimination FSE/9
<http://www.eeoc.gov/eeoc/publications/age.cfm>

SEE ALSO:
Filing a Charge of Discrimination
<http://www.eeoc.gov/employees/charge.cfm>

This document was last modified on December 28, 2009.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) Advancing the application of a Veteran one level;

(ii) Advancing an application of a Disabled Veteran two levels.

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

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

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

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

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

Stat. Auth: ORS 240.145(3) & 240.250

Stats. Implemented: ORS 408.225, 408.230 & 408.235

Hist.: HRSD 3-2007(Temp), f. & cert ef. 9-5-07 thru 3-3-08; HRSD 1-2008, f. 2-27-08, cert. ef. 3-1-08; HRSD 3-2009, f. 12-30-09, cert. ef. 1-1-10

DOC-Department Mission, Vision, & Core Values

Policy 20.1.1

| | | |
|---|---|--------------------|
|  DEPARTMENT OF CORRECTIONS Human Resources  | | |
| Title: | Department Mission, Vision, and Core Values | DOC Policy: 20.1.1 |
| Supersedes: | DOC Policy 20.1.1 "Department Mission, Vision and Core Values," dated 7/15/98 | |
| Applicability: | All employees, volunteers, and contract service providers | |
| Directives Cross-Reference: | None | |

I. PURPOSE

To provide all employees, volunteers, and contractors with a clear department mission statement, a vision for the desired future, and a core value-set that will provide the day-to-day governance and desired organizational culture for the department.

II. POLICY

The following department mission, vision, and core values are adopted to enable a framework for employee decision-making and personal behavior in the daily conduct of business. All department employees are expected to support and be guided by them.

Mission

The mission of the Oregon Department of Corrections is to promote public safety by holding offenders accountable for their actions and reducing the risk of future criminal behavior.

Vision

We take a proactive role in the development of criminal justice policy.

We create partnerships with Oregon communities to hold offenders accountable, engage victims, and enhance the quality of life for the citizens of Oregon.

We are a committed, creative, and productive organization which recognizes safety and security as an essential business practice.

We require sound fiscal management of public resources using outcome-oriented strategies.

We provide offender programs and resources which support the department's mission.

We are a diverse, skilled work force which shares the responsibility for outcomes across organizational boundaries.

Core Values

We Value:

Effective Date: 09/01/98

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Our responsibilities

Integrity

Teamwork

Respecting others

Constructive change

The participation of all

III. IMPLEMENTATION

This policy will be adopted immediately without further modification

Effective Date: 09/01/98

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DOC-Code of Ethics Policy 20.1.2

| | | |
|--|---|--------------------|
|  DEPARTMENT OF CORRECTIONS Human Resources  | | |
| Title: | Code of Ethics | DOC Policy: 20.1.2 |
| Supersedes: | DOC Procedure #40, Code of Ethics (in part), dated 3/5/87 | |
| Applicability: | All permanent and temporary employees, volunteers, and contract service providers | |
| Directives Cross-Reference: | | |

I. PURPOSE

To provide employees, volunteers, and contract service providers with a clear understanding of the department's values and expectations for ethical conduct and professional and compassionate public service and to provide the opportunity for each employee, volunteer, and contract service provider to commit to such conduct and service.

II. POLICY

- A. All department appointing authorities shall ensure that each permanent and temporary employee and volunteer in their organization has an opportunity to read and sign the attached Code of Ethics, form CD 1382.
- B. All department permanent and temporary employees and volunteers shall read and be asked to sign the attached Code of Ethics, form CD 1382, and return it to their supervisor.
- C. Supervisors shall forward completed Code of Ethics forms from employees to the department's Personnel Records Unit for permanent retention in the employee's personnel file. Forms for volunteers and contract service providers shall be retained at the work site.
- D. Hiring supervisors shall ensure that the selected applicant for permanent or temporary employment sign the attached Code of Ethics, form CD 1382, as a condition of employment with the department. Volunteers shall sign the Code of Ethics as a condition of volunteering for the department.
- E. The department's Contracts Office shall include the attached Code of Ethics, form CD 1382, for contract service providers to sign as a condition of contracting with the department.

Effective Date: 07/15/98

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- F. Hiring supervisors shall ensure that the applicant selected for promotion within the department sign the attached Code of Ethics, form CD 1382, as a condition of promotion.

III. IMPLEMENTATION

This policy will be adopted immediately without further modification.

Effective Date: 07/15/98 2 of 3

DEPARTMENT OF CORRECTIONS

CODE OF ETHICS

As an employee, volunteer or contract service provider of the Oregon Department of Corrections, I will value and maintain the highest ideals of professional and compassionate public service by respecting the dignity, cultural diversity and human rights of all persons, and protecting the safety and welfare of the public.

I accept that my fundamental duty is to serve the public; to safeguard lives and property, to protect Department of Corrections incarcerated persons against deception, oppression or intimidation, violence or disorder.

I will be constantly mindful of the welfare of others. To the best of my ability, I will remain calm in the face of danger and maintain self-restraint in the face of scorn or ridicule.

I will be honest and truthful. I will be exemplary in obeying the law, following the regulations of the department, and reporting dishonest or unethical conduct.

I acknowledge that I have been selected for a position of public trust and I will constantly strive to be worthy of that trust and to be true to the mission and values of the Department of Corrections.

Signature _____ Date _____

Print Name _____

CD 1382

Effective Date: 07/15/98 3 of 3

DOC-Equal Employment Opportunity & Affirmative Action Policy 20.4.1

| | |
|---|---|
|  DEPARTMENT OF CORRECTIONS Human Resources  | |
| Title: | Equal Employment Opportunity and Affirmative Action |
| | DOC Policy: 20.4.1 |
| Supersedes: | N/A |
| Applicability: | Applicants and state employees |
| Directives Cross -Reference: | State Administrative Policy 105-40-001 |

I. PURPOSE

The department is committed to achieving a workforce that represents the diversity of Oregon and being a leader in providing fair and equal employment opportunity for all interested applicants and its employees.

II. POLICY

A. Supervisors shall insure:

1. Equal employment opportunities are afforded to all applicants and employees by making employment related decisions that are non-discriminatory.
2. Employment practices are consistent with the state's Affirmative Action Plan and state and federal laws to:
 - a. Promote good faith efforts to achieve established department affirmative action goals, which include persons with disabilities;
 - b. Take proactive steps to develop diverse applicant pools for position vacancies and assess the diversity of an applicant pool prior to closing a job announcement; and
 - c. Make a good faith effort to have diverse representation on screening and interviewing panels to include representation of employees outside the work unit doing the hiring.

B. Persons who believe they have been subjected to discrimination by the department in violation of this policy may file a complaint with the department's Human Resources Division within 30 calendar days of the alleged act, upon knowledge of the occurrence, or when the person should have known.

III. POLICY CLARIFICATION

Effective: 07/15/98

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- A. Employment related decisions include, but are not limited to: hiring, promotion, demotion, transfer, termination, layoff, training, compensation, benefits, and performance evaluations.
- B. Diverse applicant pools are developed by using proactive steps in outreach strategies which generally include targeted newspapers, professional organizations, employee networks, community organizations, and resume banks.
- C. The Department of Administrative services statewide automated affirmative action system establishes goals for each EEO category and ethnic group for the Department of corrections.
- D. Nothing in this policy precludes any person from filing a formal grievance/complaint in accordance with a collective bargaining agreement, or with the state's Affirmative Action Office, the Bureau of Labor and Industries, or the Equal Employment Opportunity Commission.

IV. IMPLEMENTATION

This policy shall be adopted immediately without further modification.

Effective: 07/15/98

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DOC-Alternate Methods of Filling Positions Policy 20.4.11

| | | |
|---|--|----------------------------|
|  DEPARTMENT OF CORRECTIONS Human Resources  | | |
| Title: | Alternate Methods of Filling Positions | DOC Policy: 20.4.11 |
| Effective: | 12/15/10 | Supersedes: 7/15/98 |
| Applicability: | All Employees (where not in conflict with collective bargaining agreements) | |
| Directives Cross-Reference: OAR 105-040-050 and OAR 105-040-070 | | |
| Attachments: None | | |

I. PURPOSE

To provide appointing authorities with an alternate method of filling positions in situations such as employee development, job sharing, short-term transitioning for training, pending position establishment of change, and to cover employees on leave under certain conditions.

II. DEFINITIONS

III. POLICY

The Department has adopted the following Department of Administrative Services (DAS), Human Resource Services Division (HRSD) policy:

[Policy Number: 105-040-0070](#)

IV. IMPLEMENTATION

This policy will be adopted immediately without further modification.

Certified: Signature on File
Birdie Worley, Rules Coordinator

Approved: Signature on File
Mitch Morrow, Deputy Director

DOC-Recruitment and Selection Process Policy 20.4.5

| | | |
|---|--|--------------------|
|  DEPARTMENT OF CORRECTIONS Human Resources  | | |
| Title: | Recruitment and Selection Process | DOC Policy: 20.4.5 |
| Supersedes: | 1/1/01 | |
| Applicability | Applicants for DOC positions, Management Service employees, and initial appointment to all classified positions. | |
| Directives Cross-Reference: | Rules: ORS 240.145(3); 240.250; 240.306; 240.321(2); 240.99; 249.391; State Rule 105-40-010 | |

I. PURPOSE

To establish the criteria and explain the process for filling vacancies.

II. DEFINITIONS

- A. Exam: may be in the form of a written exam, interview board, evaluation of experience and training, supervisor's rating or any combination of these.
- B. Alternate exam: an exam which is equivalent and used to rate applicants for the same job.
- C. Minimum qualifications: minimum experience, training, knowledge and skills for admission to an exam or for successful entry and performance in a class or position, or other pre-screening tools to evaluate applicant's suitability for employment.
- D. The retaking of an exam described in III., E., 4. below, applies to only written multiple-choice tests to measure technical/job competency.
- E. Temporary correctional security employees: certified applicants, processed through the same pre-screening and application process as all other certified correctional security applicants and are placed on the same applicant list.
- F. Certificate of Eligibles List for Correctional Officer is active for six (6) months, unless the functional unit requests differently.

III. POLICY

It is the policy of the Department of Corrections (DOC) to base hiring and promotion decisions on an applicant's relative knowledge, experience and skills, determined by competition without regard to an individual's race, color, religion, sex, marital status, national origin, political affiliation, age, disability or other non-job related factors with proper regard for an individual's privacy.

- A. Hiring supervisors shall confer with the Recruitment Unit to develop and prepare a recruitment plan and appropriate marketing/outreach strategies, taking into consideration workforce diversity, and to identify job groups which are under represented so that expanded recruitment efforts can be made to attract a diverse and qualified applicant pool.

Effective Date: 9/10/01

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1. DOC vacancies are generally filled through open competition. Exceptions may be made consistent with labor agreements to allow selection of employees for lateral transfer, and to provide agency-only promotional opportunities to forward DOC workforce development goals.
 2. Hiring supervisor confers with the Recruitment Officer and takes the following steps to initiate a recruitment process:
 - a. completes a Recruitment/Certification Request form;
 - b. reviews and updates Position Description;
 - c. determines method of filing the position;
 - d. develops application exam questions;
 - e. develops criteria for evaluating candidate responses;
 - f. forms a diverse interview panel;
 - g. develops interview questions and criteria to evaluate candidate responses; and
 - h. conducts employment references.
- B. Open competitive recruitment announcements will be open for a minimum of two (2) weeks.
1. The recruitment announcement shall include job requirements and any special qualifications, salary, selection method, how, when, and where to apply, the length of the recruitment, the type of exam, if any, and the basis and method for an applicant's request for review of disqualification.
 2. Any exams administered shall be competitive, unbiased and of such content as to assist in determining an applicant's qualifications to perform the work
- C. An applicant shall complete an official State of Oregon application (PD100) and follow the instructions on the recruitment announcement within the designated time period.
1. An applicant claiming veteran's preference points must submit as verification of eligibility a copy of the Certificate of Release or Discharge from Active Duty (DD214) with the State of Oregon application (PD100).
 2. Clients of the Oregon Department of Human Services programs who meet the eligibility criteria under Administrative Rule 105-40-060, Limited Competitive and Noncompetitive Appointments should apply through the Employment Department for appropriate position vacancies. The applicant must submit proof of current program participation at the request of the appointing authority before a job offer can be made.

3. An applicant who has been certified as severely disabled by the Vocational Rehabilitation Division (VRD) or the Oregon Commission for the Blind (OCB) may apply to the H.I.R.E (Hiring Individuals Ready for Employment) System. The certified applicant works with an OCB or VRD Counselor to learn of vacancies and apply through the open competitive process. H.I.R.E. system qualified candidates will automatically appear at the top of open competitive recruitments with an "HR" next to their names. Their eligibility on generic hiring lists allows them to appear as qualified whether or not the announcement included test questions.

Hiring supervisors may send H.I.R.E. System applicants a letter offering an interview and include a copy of the position description. If test questions were a part of the announcement, hiring supervisors may also request the questions be answered by a specific date. H.I.R.E System applicants will review the position description to determine whether they meet the special requirements of the position and whether they wish to respond to the test questions. Not responding to the test questions will not eliminate HR candidates from further consideration, but may affect their overall score.

- D. Hiring supervisors shall conduct employment reference checks, criminal background and other work-related background investigations on department (employees) applicants and new applicants, to secure further information concerning the applicant's qualifications and to verify statements contained in an application or a statement made in an interview. An adjustment may be made to the applicant's rating if information obtained materially affects the applicant's rating of experience, training, or suitability.
- E. DOC employees, other state employees, and members of the public may:
 1. Obtain information regarding DOC employment opportunities by accessing the Internet, accessing the department's web site, accessing the state job-line, visiting a local office of the Employment Department where recruitment announcements are posted or at DOC institutions where recruitment announcements are posted.
 2. Request a review of disqualification within 10 calendar days for not meeting minimum qualifications as directed in the recruitment announcement. Any changes due to a disqualification review shall not affect the previous selection decision(s) concerning other applicants.
 3. Request a review of exam results for reevaluation within 10 calendar days from the date of the grade notice from DOC or the Department of Administrative Services. The review shall be limited to the verification of scoring and any changes due to a review shall not affect the previous selection decisions concerning other applicants.
 4. Retake an exam if more than three (3) months have elapsed since the exam was previously taken and if the recruitment is still open to application. On delegated exams, DOC may determine the time period

before retesting. The most recent score obtained shall determine the candidate's placement on the eligible list or failure to make the list.

- F. Human Resources Division may establish and administer recruitment and selection processes for specific positions, including the development and administration of job related screening and assessment tools and methods.
- G. Human Resources Division may develop and administer alternate recruitment processes for specific classifications.
- H. Correctional officer series applicants take a Work-Style Behavior Survey and a Correctional Officer Test that establishes them on a scored, rank ordered correctional officer applicant list. The Work-Style Behavior Survey is a multiple-choice survey that addresses applicant behavior in the workplace and evaluates applicant suitability to work in DOC's correctional environment. The Correctional Officer Test describes a variety of situations prospective applicants might find themselves experiencing in a correctional workplace. It provides a multiple-choice set of answers from which an applicant can then select the appropriate response.
 - 1. All correctional officer applicants who are not currently permanent DOC employees complete both the Work-Style Behavior Survey and the Correctional Officer Test. Non-DOC applicants for corporal and above take only the Work-Style Behavior Survey.
 - 2. Current DOC employees, unless demoting or pursuing a lateral transfer to correctional officer, must take the Correctional Officer Test to establish them on the scored, rank-ordered list.
 - 3. Individuals eligible for re-employment with DOC and interested in becoming a correctional officer must submit a correctional officer application packet for review by Recruitment. These individuals are exempt from the Work-Style Behavior Survey, but may take the Correctional Officer Test to establish their names on the scored, rank-ordered correctional officer list.
 - 4. Applicants who do not pass the Work-Style Behavior Survey are not eligible to reapply for twelve (12) months after the date they first took the survey. Applicants who pass the Work-Style Behavior Survey but fail the Correctional Officer Test may retake the test six (6) months after they first took the test. Applicants do not have to take the Work-Style Behavior Survey if they pass it the first time. Pursuant to the Public Records Act (ORS 192.410 – 192.505), contents of the survey and test are for DOC use only, and an applicant's survey and test results are not disclosed to the applicant other than written notification of either Accepted or Not Accepted and the test score itself that is provided to the applicant by the Department of Administrative Services in the Applicant & Examination Notice.
- I. Supervisors may fill permanent positions with temporary employees:

1. If the temporary employees are currently working in the classification of the permanent position and meet the following conditions:
 - a. they were initially hired from a random-selection Certificate of Eligibles and interviewed through an open competitive interview process; and
 - b. the Certificate of Eligibles from which the temporary appointment was made is still active; and
 - c. all temporary employees who meet the above conditions and work in the same classification within the work unit where the vacancy is to be filled are interviewed for the position.

2. If the Certificate of Eligibles from which the temporary appointment was made has expired, or the temporary employees was not hired from a Certificate of Eligibles, then the hiring supervisor or designee shall:
 - a. request a Certificate of Eligibles with one or more names; and
 - b. add the name(s) of all temporary employee(s) working in the same classification and work unit to the Certificate of Eligibles L

IV. IMPLEMENTATION

This policy will be adopted immediately without further modification.

DOC-School to Work Policy 20.4.13

| | | |
|--|--|----------------------------|
|  DEPARTMENT OF CORRECTIONS Human Resources Division  | | |
| Title: | School to Work / Career Related Learning | DOC Policy: 20.4.13 |
| Effective: | 7/14/10 | Supersedes: 7/5/02 |
| Applicability: All Employees, Students, and Educators | | |
| Directives Cross-Reference: ORS 240.145(3); BOLI Regulations, HRSD Policies 40.025.01, 20.005.20 | | |
| Rules: Facility Access – Div 15, Volunteer Services/Student Interns – Div 16, Emergency Preparedness – Div 53, Release of Public Information – Div 39 | | |
| Attachment: DOC School-to-Work Plan Outline | | |

I. PURPOSE

The Department of Corrections (DOC) benefits from the contributions of volunteers, internships, job shadow assignments and other unpaid work programs. DOC also recognizes its responsibility to create the infrastructure and processes for this unique work force. Therefore, DOC will establish partnerships with schools in the communities in the state, and create a "School-to-Work" program. This program will provide opportunities for students to learn about DOC operations.

II. POLICY

- A. The Department has adopted the following Department of Administrative Services (DAS), Human Resource Services Division (HRSD) policy:

Policy Number: 40-025-05 [School to Work](#)

- B. The attachment contains the plan outline for implementation within DOC correctional institutions. The plan outline may be updated by Human Resources without revising the policy. The updated attachment will be distributed as necessary.

III. IMPLEMENTATION

DOC institutions shall develop an internal procedure to implement this policy within their functional unit.

Certified: Signature on file
Birdie Worley, Rules Coordinator

Approved: Signature on file
Mitch Morrow, Deputy Director

Effective 7/14/10

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**OREGON DEPARTMENT OF CORRECTIONS
SCHOOL-TO-WORK / CAREER RELATED LEARNING**

**PLAN OUTLINE
(July 14, 2010)**

Applicability

Each correctional institution shall write and maintain an operational procedure to ensure all requirements of this policy are adhered to while ensuring the safe and orderly operation of the institution.

Interns, student workers, and volunteers who will work inside an institution will attend Volunteer Program Training administered by Religious Services.

Human Resources shall maintain a procedure for non-institution interns and student workers to ensure all of the requirements of this policy are adhered to. Contact the Recruitment Unit for assistance.

A. Agency Development

1. The department will develop an agency plan which promotes participation in and support of work-based learning activities for students and educators and allows employees the flexibility to participate.
2. The department plan will establish an agency coordinator for interns, student workers and volunteers who will work inside and institution. The coordinator will:
 - a. Consider the business needs of persons/agencies while creating safe, professional, and meaningful work experience opportunities for student participants.
 - (1) Set department-wide parameters which include LEADS, background checks, and verification that student is not an inmate visitor or relative.
 - (2) Ensure an orientation is given to all students prior to any work-based learning assignment as deemed pertinent to the type and duration of the student's assignment.
 - b. Ensure that student participants (paid or unpaid) in the program do not displace permanent employees.
 - c. Ensure that all persons involved are subject to, possess a working knowledge of, and maintain consistent compliance with all applicable laws, rules, policies and directives which may include, but are not limited to, the following:

[DOC Rules and Policies](#)

- (1) OAR 291, Division 16, Facility Access;
- (2) OAR 291, Division 15, Volunteer Services/Student Interns;
- (3) OAR 291, Division 53, Emergency Preparedness;

- (4) OAR 291, Division 39, Release of Public Information;
 - (5) DOC Policy Section 20.1, Expectations of DOC Employees;
 - (6) DOC Policy Section 20.6, Workplace and Safety Management;
 - (7) OAR 291, Division 127, Visiting (Inmate).
- d. Be applied as consistently as possible throughout the department while ensuring that DOC operational needs, as well as applicable safety and security standards are complied with at all times.
 - e. Develop a Mentorship Training Program to be presented to the department's STW Representatives.
 - f. Provide orientation and training for all department employees as is pertinent to their level of participation in the department's STW Program.
 - g. Allow involved employees to maintain reasonable flexibility to participate in appropriate activities as required to properly maintain the STW Program without hindering the secure and orderly operation of the functional unit involved.
 - h. Provide orientation and training for school counselors or other educators in order to promote the department as an employer and aid in determining which students are appropriate for participation in the department's STW Program.
 - i. Establish criteria for disqualifying participants who are determined to be "high risk" even though the school counselors or liaison has recommended them for participation.
 - j. Match the participant with the appropriate position according to their interests and with an appropriate guide/escort/mentor with a knowledge of that position.
 - k. Provide adequate technology and the necessary equipment to support the STW Program in the department.
 - l. Ensure that the STW Program is consistent with and ties to applicable State Program Measures.
 - m. Provide opportunities for leadership and professional development for DOC employees who create successful work-based learning environments for students, educators, and others.
3. Each Facility and/or program area will appoint a STW Representative/s who will:
- a. Ensure that all requirements of this policy are adhered to while ensuring the continued safe and orderly operation of the affected facility/program area.
 - b. Establish a procedure providing guidelines for the implementation and administration of the STW Program as it affects the facility/program area.
 - (1) Work with the agency coordinator to match student placements within the facility/program area.

- (2) Present Mentorship Training Program to the facility/program area staff participants who are enlisted to provide career related learning experiences to students.
- (3) Advocate participation in career related learning activities within the facility/program area.
- (4) Consider the needs of the facility/program area to include the safety, security and orderly administration of all involved.
 - (a) Ensure that the student has completed all necessary forms, reviewed all applicable rules, policies, etc., and been through a student orientation process that is appropriate for the type and duration of the student's assignment.
 - (b) Ensure that an emergency preparedness plan is in place in the event of an emergency.
- (5) Determine when the program fits into the schedule of the facility/program area.
- (6) Ensure common understanding of the program mission, goals and standards as they pertain to the facility/program area.
- (7) Develop and maintain necessary documentation to ensure the safe, secure and orderly administration of the STW Program as it applies to the facility/program area.

All visiting students participating in the STW Program must have current and adequate Liability Insurance coverage.

Participating students in the STW / Career-Related Learning Program (STW/CRL) must have liability/injury protection insurance coverage provided by the participating school.

Student participants paid by the DOC will have "Temporary Employee Status" unless hired into an authorized budgeted student worker position.

All work-based learning experiences will be arranged through the institution coordinator in advance.

All work-based learning experiences shall be terminated at the discretion of the mentor or OIC if inappropriate behavior occurs.

DOC-Performance Planning Policy 20.5.3

| | | |
|---|--|--------------------|
|  DEPARTMENT OF CORRECTIONS Human Resources  | | |
| Title: | Performance Planning | DOC Policy: 20.5.3 |
| Supersedes: | DOC Policy 20.5.3, Performance Planning, dated 7/15/98 | |
| Applicability: | All management and executive service employees | |
| Directives Cross-Reference: | | |

- I. **PURPOSE** This policy will assist managers in clarifying performance expectations, promoting achievement and accountability and establishing positive personal relationships. This policy will also assist managers in enhancing and strengthening individual performance to further the mission, vision and values of the department.
- II. **POLICY** Managers of the Department of Corrections are people managers first. Necessary job duties include the use of discretion in mutually identifying performance outcomes that support the mission of the department while contributing to successful relationships within the context of a healthy working environment. Accordingly:
 - A. By September 30 of each year, utilizing the principles below, managers will mutually develop written performance plans, including specific measures which state what is to be accomplished, by whom and when. The plans may focus on either individual or group outcomes.
 - B. At frequent intervals thereafter, all involved parties will talk with each other about individual and group progress on the agreed upon objectives. Objectives will be re-written as necessary and added if needed. Managers will identify and recognize successes and commit to changes as needed. Training or other resources that will increase successes in the future will also be noted.
 - C. By September 15 of each following year, all parties will mutually prepare a signed written narrative that assesses progress to date on the previously agreed upon objectives. Managers conclude by beginning again at A.
 - D. Copies of all annual narratives will be forwarded to the Human Resources Personnel Records unit by the date stated above.
- III. **PERFORMANCE PRINCIPLES** Performance planning will be based on the following principles:
 - A. The performance plan links employee performance with organizational success.
 - B. The performance plan establishes targets and standards.
 - C. The performance planning process matches organizational values.
 - D. The performance planning conversation is continuous and on-going.
 - E. All performance planning activities are motivational. None are de-motivational.
 - F. All performance planning activities reinforce positive long-term relationships.
- IV. **IMPLEMENTATION**

This policy shall be adopted immediately without further modification.

Effective Date: 12/11/01

1 of 1

DOC-Management of Injured Workers Policy 20.5.17

| | | |
|--|--------------------------------------|----------------------------|
|  DEPARTMENT OF CORRECTIONS Human Resources  | | |
| Title: | Management of Injured Workers | DOC Policy: 20.5.17 |
| Effective: | 6/12/06 | Supersedes: 9/2/03 |
| Applicability: All Department of Corrections Employees | | |
| Directives Cross-Reference: None | | |
| Attachments: SAIF Claims Management, Flow Chart DOC Employee Medical Status Report (CD1422) DOC Job Description for Temporary Transitional Work Letter A, Time-Loss Payments Letter B, No Time-Loss Payments Letter C, Interim Review and/or Changes in Restrictions Letter D, Off-the-Job Injury Letter E, End of Temporary Modified Duty Employee/Volunteer Report or Incident/Near-Miss/Injury/Illness Supervisor's Analysis of Incident/Near-Miss/Injury/Illness Continuation of Benefits Employee Notice | | |

I. PURPOSE

The purpose of this policy is to establish a Department of Corrections program to return an employee with a compensable work-related injury or illness to an available and suitable position as soon as possible. This program will include provisions for an Early-Return-To-Work (ERTW) program (temporary transitional work/modified duty work) when appropriate and available while the employee is recovering from the on-the-job injury or illness. ERTW guidelines may be applied to employees who sustain an off-the-job injury if temporary modified work is available and appropriate (See Section IV, Policy Clarification, A.).

II. DEFINITIONS

- A. **Available reinstatement** means the injured employee's job at the time of injury/illness, if the position exists, and the employee is released by the treating physician back to his/her regular position regardless of the hiring or assignment of a replacement worker to that position. If the former position no longer exists, the employee will be reinstated in another existing position that is vacant and suitable. Rights of reinstatement will be subject to the provisions for seniority rights and other employment restrictions contained in valid collective bargaining agreements.
- B. **Available Reemployment** refers to another existing position that is vacant and suitable if the employee is disabled from performing the duties of his/her former regular position. Rights of reemployment will be subject to the provisions for seniority rights and other employment restrictions contained in valid collective bargaining agreements.
- C. **Early-Return-to-Work (ERTW)** is a program and process of returning an on-the-job injured employee to a transitional work assignment or temporary modified

duty as soon as possible after the treating physician provides a modified duty or restricted duty work release, provided that temporary modified work is available, suitable, and/or appropriate. (See Section IV, Policy Clarification, B.).

- D. **Suitable reinstatement employment** is the position held at time of injury if the employee is not disabled from performing the duties of that position or if that position no longer exists, an existing and vacant position that is most similar to the former position in compensation, duties, responsibilities, skills, location, duration, and shift. Please see Available reinstatement above.
- E. **Suitable reemployment** is an existing and vacant position that meets the injured employees' medical restrictions and for which the employee is qualified to perform the essential functions of the position, with or without accommodation. A suitable position is as similar as practical to the former position in compensation, duties, responsibilities, skills, location, duration, and shift and is within the same or lower salary range as the position held at time of injury. A suitable reemployment position is paid at the rate provided for in the compensation plan for that position. Please see Available reemployment above.
- F. **Transitional work assignments or temporary modified work** is designed to give an employee meaningful work while continuing to heal from an injury or illness. These are not permanent assignments or duties, but transitional work or modified duty assignments designed to meet temporary restrictions placed on the injured employee by the treating physician.

III. POLICY

It is an unlawful employment practice to discriminate against an employee (permanent or temporary) or potential employee with respect to hire, tenure, or any term or condition of employment because the individual has applied for Workers Compensation benefits, invoked, or utilized the procedures provided for in ORS Chapter 656 or has given testimony under the provisions of those laws.

A. Early Return to Work (ERTW):

- 1. The Department of Corrections shall endeavor to return an on-the-job injured employee to temporary transitional work or modified duty within three working days of an injury, illness, or attending physician's release.
- 2. The assigned safety manager, in consultation with the on-the-job injured employee's supervisor, will follow the procedures as outlined in Attachment A, "SAIF Claims Management".
- 3. Temporary transitional or modified duty is typically limited to 30 days. With continued improvement, 30-day extensions are possible but generally ERTW is limited to total of 90 days. During these 30-day extension periods employees shall provide an updated Employee Medical Status Report (within Attachment A) or a treating physician generated medical status statement. Extensions over 90 days may be granted due to major changes in claim status that have occurred during the present temporary modified duty such as surgery, but the Departments Administrator of Safety & Risk must approve all extensions. Extensions of transitional work or modified duty are limited to 30-day increments or less and will not exceed a total of an additional 90 days due to a major

change in claim status. An employee who is not released to return to full unrestricted duty (full release from the attending physician) after completing 90 days of a temporary modified duty assignment (barring possible extensions) will be placed on leave.

4. An employee who has filed a claim for workers' compensation benefits and is in temporary transitional work or temporarily modified duty will receive the same salary or rate of pay at time of injury, including any differentials during the transitional work period, regardless of shift, location, etc, of the transitional work.

B. Workers' Compensation - Reinstatement/Reemployment

1. Reinstatement of the employee to the position at time of injury will be in accordance with the ORS 659A.043, "Reinstatement of injured worker to former position; certificate of physician evidencing ability to work; effect of collective bargaining agreement; termination of right to reinstatement; when reinstatement right terminates".
2. Reemployment of an injured worker who is disabled from returning to his/her former position will be done in accordance with ORS 659A.046, "Reemployment of injured worker in other available and suitable work; termination of right to reemployment; certificate of physician; effect of collective bargaining agreement". The Departments Administrator of Safety & Risk shall determine suitable and available reemployment options.

C. Statewide Injured Workers List (entry level positions)

1. An employee with a compensable claim who cannot be reinstated or reemployed within the Department of Corrections shall be placed on the Statewide Injured Workers List by the Department's Human Resources Recruitment Division unless the employee is ineligible for placement on such list (see # 3 below).
 - a. The injured employee shall provide a current detailed PD-100 to the Department's Administrator of Safety & Risk when it has been determined that the injured employee cannot be reinstated or reemployed within the Department of Corrections.
 - b. The Department of Corrections, Human Resources Recruitment Division shall determine the appropriate classifications based on the supplied PD-100 from the injured employee for posting on the Statewide Injured Worker List.
2. The Department's Human Resources Recruitment Division will remove the injured worker's name from the Statewide Injured Workers List when notified that the worker is no longer eligible for placement or retention on this list (see #3 below).
3. An injured employee shall be ineligible for placement or retention on the State Wide Injured Worker List when the employee has:
 - a. Refused appropriate modified duty;
 - b. Declined interviews;

- c. Declined offers of suitable employment;
- d. Retired;
- e. Terminated for cause;
- f. Lost reemployment/reinstatement rights for any reason defined under ORS 659A.043 or ORS 659A.046;
- g. Otherwise separated from state service;
- h. Failed to notify the agency of injury of changes in address, telephone number, return to work status, or medical status; or
- i. Been on the list more than three years from the date of injury.

D. Continuation of Benefits

- 1. The Department will follow the requirements of OAR 659A.063, "State to continue group benefits for injured worker and covered dependents; when ended".
- 2. Any collections due to overpayment will be enacted in accordance with any applicable collective bargaining agreement, DOC Policy, State of Oregon payroll rules and/or policy, and/or any other applicable OAR or ORS. (Listing order does not construe order of process).

E. Filling a Vacancy

When filling a vacant classification, the Department of Corrections Human Resources Recruitment Division will:

- 1. Check the State Wide Injured Worker List of qualified injured workers of the appropriate class; and
- 2. Offer the position to the qualified injured worker who has been on the State Wide Injured Worker List the longest, if qualified for the position; and
- 3. Notify the agency-of-injury if the injured worker fails to respond or accept the position. The recruitment unit may code the State Wide Injured Worker List with the disposition code that indicates the employee's failure to respond or refusal of the job.

F. Employees will:

- 1. Report all accidents, incidents, near-miss, and work-related injuries/illness to the supervisor immediately or no later than the end of the work shift whether or not medical care is received or anticipated. If the immediate supervisor is not available, the report will be made to the next level supervisor or the assigned safety manager; and
- 2. If involved in an accident/incident and/or a near-miss complete an "Oregon Department of Corrections Employee/Volunteer Report of Incident/Near-Miss/Injury/Illness" form CD 1381 (5/02) (attached) to document the accident, incident, injury, illness and/or near-miss that may have occurred during the work shift and forward it immediately upon completion to the supervisor; and

3. Complete a SAIF Corporation 801 Claim form (U:/General-Information/Forms/Safety-Forms, or U:/Human-Resources/Safety & Risk/Safety-Form-Shortcut or downloadable from www.SAIF.com under "Filing a Claim") to file a claim for workers' compensation benefits for an on-the-job injury/illness if the employee has received or intends to receive medical attention and the employee intends to file a claim for workers' compensation benefits (See Section IV, Policy Clarification, C.). This form must be completed immediately or within 24 hours of the time the employee knows he/she will be seeking medical treatment for an on-the-job injury/illness. If the employee has filed a SAIF 827 "Worker's and Physician's Report for Worker's Compensation Claims" at his/her treating physician's office, then the employee will also complete a SAIF 801 form and immediately forward to the assigned safety manager. All SAIF claims will be submitted to SAIF five days from the employer's date of knowledge of the claim. The employee is responsible for completing the SAIF 801 form and forwarding it to the assigned safety manager or designee (if the safety manager is unavailable) for submission to SAIF within this time limit; and
4. Provide the assigned safety manager and/or designee with a medical status report prepared by the attending physician (Within Attachment A or treating physician generated medical status statement) within 24 hours of medical treatment. These medical status report(s) will contain only specific and objective information such as; employee capabilities, limitations, and prognosis so that the assigned safety manager in consultation with the supervisor may determine if there is any temporary modified duty work available; and
5. When off work due to an on-the-job injury, contact the assigned safety manager or designee every week (calling in weekly is normally limited to a four week time period of time loss) to report his/her medical condition. Employees who are off work for extended periods (four weeks or longer) shall contact the assigned safety manager or designee whenever there is a change in medical conditions that affect the return-to-work status. Employees shall also provide physician updates after claim related doctor visits, such as employee capabilities, limitations, and prognosis, so the assigned safety manager in consultation with the supervisor may determine an appropriate transitional work or modified duty assignment when the employee is released to such work; and
6. Provide the assigned safety manager and supervisor with a current phone number, even an unlisted one, and address; and
7. Cooperate with the assigned safety manager, their supervisor, human resource manager, and/or SAIF Corporation in efforts to identify appropriate modified duty assignments and/or available and suitable work, and report for duty to such assignments; and
8. Be subject to initiation of employment disciplinary processes through failure to cooperate in this program as outlined in this policy.

G. Supervisors will:

1. Investigate all accidents and/or incidents with the aid of the affected employee and/or the assigned safety manager; and
2. Complete the "Oregon Department of Corrections Supervisor's Analysis of the Incident/Near-Miss/Injury/Illness" form CD 1381 (5/02) as soon as it is completed by the employee and provided to the supervisor, and distribute as noted on the form; and
3. Forward the SAIF 801 form to the assigned safety manager for completion (if delivered to the supervisor); and
4. Review the ERTW process with the employee; and
5. Immediately contact the assigned safety manager to initiate the ERTW program when the treating physician releases the on-the-job injured/ill employee to temporary modified work.

H. Assigned Unit Safety Managers will:

1. Complete the SAIF 801 form, forwarding it to SAIF Corporation within five days of knowledge of a claim, and provide a copy to the Department's Administrator of Safety & Risk; and
2. Initiate the ERTW process following the SAIF Claims Management Flow Chart (Attachment A); and
3. Work with the injured worker's supervisor to locate and provide temporary modified transitional work when available and appropriate; and
4. Maintain and provide copies of all approved physician signed job descriptions and letters of job offer to the Department's Administrator of Safety and Risk; and
5. Notify the East or West FMLA/OFLA coordinator when a claim results in time-loss; and
6. Be the liaison between the treating physician and the department; and
7. Be the liaison between SAIF Corporation and the department; and
8. Notify the Department's Administrator of Safety and Risk when an employee who has sustained a compensable injury and is disabled and/or permanently restricted from performing the duties of the worker's position at time of injury; and
9. Utilize the Workers' Compensation Division's Employee-At-Injury-Program (EAIP) in all applicable situations; and
10. Review the "Oregon Department of Corrections Supervisor's Analysis of the Incident/Near-Miss/Injury/Illness" form CD 1381 (5/02), working with the supervisor to prevent re-occurrences and/or to correct hazardous conditions; and

11. Consult with the Department's Administrator of Safety & Risk in working with the Preferred Worker Program.

IV. POLICY CLARIFICATION

A. Early-Return-To Work and Off-the-Job Injuries:

1. Transitional work assignments or temporary modified work provisions as outlined in Ill Policy, A, Early Return to Work (ERTW), 2, 3, may be used for off-the-job injured employees if it is possible and/or appropriate to return the off-the-job injured employee to temporary modified work.
 2. Employees seeking temporary transitional work or modified duty for an off-the-job injury/illness will provide an "Employee Medical Release Authorization" (within ODOC Medical Status Report, or similar document) prior to any temporary work job offer. This release shall not be construed as a general release of medical information but as an authorization that the employee and treating physician can provide only information necessary to return the off-the-job injured employee to a temporary transitional modified work assignment.
 3. The on-the-job injured employee has a higher priority for placement in transitional assignments or temporary modified work and could displace an off-the-job injured employee if there is not sufficient work for both.
 4. The rate of compensation (pay) for an off-the-job injured employee working in transitional work or modified duty shall be determined by the assigned Human Resources Manager in consultation with the employee's supervisor.
- B. The Department of Corrections has neither the duty nor legal authority to create a position for returning an injured employee back to work.
- C. Employees have the legal right not to file a claim for workers' compensation benefits if they so choose. Refusal to sign or file a claim form for an on-the-job injury will be documented by the assigned safety manager and the employee's supervisor. Note: The Department of Corrections encourages all employees who suspect that they were injured on-the-job to file a claim for workers' compensation benefits.

V. IMPLEMENTATION

This policy will be adopted immediately without further modification.

Certified: Signature on File
Birdie Worley, Rules Coordinator

Approved: Signature on File
Mitch Morrow, Deputy Director

Request for Self-Identification of Race/Ethnicity, and Veteran Status for Affirmative Action/Equal Opportunity Employment

“Insert Date”

Employee Name

Address

State, OR 12345

Re: Request for Self-Identification of Race/Ethnicity, and Veteran Status for Affirmative Action/Equal Opportunity Employment (EEO) Data Reporting

Dear Employee,

As you may know, the Oregon is required to report EEO data to the federal government. To date, we have asked employees to self-identify their race/ethnicity, and have given the option for employees to decline to self-identify. We have recently learned that in order to be in compliance with federal EEO reporting requirements, agencies are required to provide race/ethnic information for all employees, even those who wish not to self-disclose. You have received this letter because your employee record on the statewide personnel data system indicates that we either do not have race/ethnic data recorded for you, or that you have declined to self-identify in the past.

In light of this new information, we are giving employees who have previously declined to self-identify an opportunity to do so now. The conditions under which this data is collected and used is explained on the attached “Self-Identification Form.” Submission of this information is voluntary; refusal to provide it will not subject you to any adverse treatment. The information obtained will be kept confidential and may only be used in accordance with the provisions of applicable federal laws, executive orders, and regulations, including those which require the information to be summarized and reported to the federal government for civil rights-enforcement purposes. We hope you will consider completing the attached form. Completed forms may be returned to me via inter-office shuttle at: agency contact/address.

Please keep in mind that if you choose not to identify your race/ethnicity at this time, the federal government requires the state to determine this information by visual assessment: As you might imagine, this rarely results in accurate information. Agencies are required to update their records by Insert Date. If you intend to send in your Self-Identification Form, please do so prior to this date.

We appreciate your consideration. Please feel free to contact me with any questions via email or phone at: contact info.

Sincerely,

HR Manager
Attachment

Voluntary Self-Identify Race/Ethnicity and Veteran Status for Affirmative Action/Equal Opportunity Employment (EEO) Data Reporting

The information below will be use for statistical purposes to comply with federal reporting requirements and to help in developing and monitoring our Affirmative Action Plan and diversity initiatives. Thank you for your participation.

Sex

- Male Female

Race/Ethnicity

Please check one or more of the following categories to identify your race/ethnicity.

- American-Indian or Alaskan Native:** All persons having origins in any of the original peoples of North America, and who maintain cultural identification through tribal affiliation or community recognition.
- Asian:** All persons having origins in any of the originals peoples of the Far East, Southeast Asia or the Indian subcontinent. This area includes, for example, China, Japan and Korea.
- Black or African-Ame rican:** All persons having origins in any of the black ethnic groups.
- Hispanic or Latino:** All persons having origins in any of the Mexican, Puerto Rican, Cuban, Central or South America, or other Spanish cultures, regardless of race.
- Native-Hawaiian or Other Pacific Islander:** All persons having origins in any of the original peoples of the Pacific Islands. This area includes, for example, Hawaii, the Philippine Islands and Samoa.
- White (Not of Hispanic origin):** All persons having origins in any of the original peoples of Europe, North African or the Middle East.
- Two or More Races:** All persons claiming origins in more than one of the above racial/ethnic categories.
- Decline to answer

Veteran

Are you a Veteran of the United States Armed Forces?

- Yes No

Employee Signature: _____ Date: _____

Employee Print Name: _____

Section VII.

Appendix B

Federal Laws

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

2011-2013 Affirmative Action Plan
Department of Corrections

Prohibited Employment Policies/Practices

Prohibited Employment Policies/Practices

Under the laws enforced by EEOC, it is illegal to discriminate against someone (applicant or employee) because of that person's race, color, religion, sex (including pregnancy), national origin, age (40 or older), disability or genetic information. It is also illegal to retaliate against a person because he or she complained about discrimination, filed a charge of discrimination, or participated in an employment discrimination investigation or lawsuit.

The law forbids discrimination in every aspect of employment.

The laws enforced by EEOC prohibit an employer or other covered entity from using neutral employment policies and practices that have a disproportionately negative effect on applicants or employees of a particular race, color, religion, sex (including pregnancy), or national origin, or on an individual with a disability or class of individuals with disabilities, if the policies or practices at issue are not job-related and necessary to the operation of the business.

The laws enforced by EEOC also prohibit an employer from using neutral employment policies and practices that have a disproportionately negative impact on applicants or employees age 40 or older, if the policies or practices at issue are not based on a reasonable factor other than age.

Job Advertisements

It is illegal for an employer to publish a job advertisement that shows a preference for or discourages someone from applying for a job because of his or her race, color, religion, sex (including pregnancy), national origin, age (40 or older), disability or genetic information.

For example, a help-wanted ad that seeks "females" or "recent college graduates" may discourage men and people over 40 from applying and may violate the law.

Recruitment

It is also illegal for an employer to recruit new employees in a way that discriminates against them because of their race, color, religion, sex (including pregnancy), national origin, age (40 or older), disability or genetic information.

For example, an employer's reliance on word-of-mouth recruitment by its mostly Hispanic work force may violate the law if the result is that almost all new hires are Hispanic.

Application & Hiring

It is illegal for an employer to discriminate against a job applicant because of his or her race, color, religion, sex (including pregnancy), national origin, age (40 or older), disability or genetic information. For example, an employer may not refuse to give employment applications to people of a certain race.

An employer may not base hiring decisions on stereotypes and assumptions about a person's race, color, religion, sex (including pregnancy), national origin, age (40 or older), disability or genetic information.

If an employer requires job applicants to take a test, the test must be necessary and related to the job and the employer may not exclude people of a particular race, color, religion, sex (including pregnancy), national origin, or individuals with disabilities. In addition, the employer may not use a test that excludes applicants age 40 or older if the test is not based on a reasonable factor other than age.

If a job applicant with a disability needs an accommodation (such as a sign language interpreter) to apply for a job, the employer is required to provide the accommodation, so long as the accommodation does not cause the employer significant difficulty or expense.

Job Referrals

It is illegal for an employer, employment agency or union to take into account a person's race, color, religion, sex (including pregnancy), national origin, age (40 or older), disability or genetic information when making decisions about job referrals.

Job Assignments & Promotions

It is illegal for an employer to make decisions about job assignments and promotions based on an employee's race, color, religion, sex (including pregnancy), national origin, age (40 or older), disability or genetic information. For example, an employer may not give preference to employees of a certain race when making shift assignments and may not segregate employees of a particular national origin from other employees or from customers.

An employer may not base assignment and promotion decisions on stereotypes and assumptions about a person's race, color, religion, sex (including pregnancy), national origin, age (40 or older), disability or genetic information.

If an employer requires employees to take a test before making decisions about assignments or promotions, the test may not exclude people of a particular race, color, religion, sex (including pregnancy), or national origin, or individuals with disabilities, unless the employer can show that the test is necessary and related to the job. In addition, the employer may not use a test that excludes employees age 40 or older if the test is not based on a reasonable factor other than age.

Pay And Benefits

It is illegal for an employer to discriminate against an employee in the payment of wages or employee benefits on the bases of race, color, religion, sex (including pregnancy), national origin, age (40 or older), disability or genetic information. Employee benefits include sick and vacation leave, insurance, access to overtime as well as overtime pay, and retirement programs. For example, an employer may not pay Hispanic workers less than African-American workers because of their national origin, and men and women in the same workplace must be given equal pay for equal work.

In some situations, an employer may be allowed to reduce some employee benefits for older workers, but only if the cost of providing the reduced benefits is the same as the cost of providing benefits to younger workers.

Discipline & Discharge

An employer may not take into account a person's race, color, religion, sex (including pregnancy), national origin, age (40 or older), disability or genetic information when making decisions about discipline or discharge. For example, if two employees commit a similar offense, an employer may not discipline them differently because of their race, color, religion, sex (including pregnancy), national origin, age (40 or older), disability or genetic information.

When deciding which employees will be laid off, an employer may not choose the oldest workers because of their age.

Employers also may not discriminate when deciding which workers to recall after a layoff.

Employment References

It is illegal for an employer to give a negative or false employment reference (or refuse to give a reference) because of a person's race, color, religion, sex (including pregnancy), national origin, age (40 or older), disability or genetic information.

Reasonable Accommodation & Disability

The law requires that an employer 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 workplace (or in the ways 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, providing a ramp for a wheelchair user or providing a reader or interpreter for a blind or deaf employee or applicant.

Reasonable Accommodation & Religion

The law requires an employer to reasonably accommodate an employee's religious beliefs or practices, unless doing so would cause difficulty or expense for the employer. This means an employer may have to make reasonable adjustments at work that will allow the employee to practice his or her religion, such as allowing an employee to voluntarily swap shifts with a co-worker so that he or she can attend religious services.

Training & Apprenticeship Programs

It is illegal for a training or apprenticeship program to discriminate on the bases of race, color, religion, sex (including pregnancy), national origin, age (40 or older), disability or genetic information. For example, an employer may not deny training opportunities to African-American employees because of their race.

In some situations, an employer may be allowed to set age limits for participation in an apprenticeship program.

Harassment

It is illegal to harass an employee because of race, color, religion, sex (including pregnancy), national origin, age (40 or older), disability or genetic information.

It is also illegal to harass someone because they have complained about discrimination, filed a charge of discrimination, or participated in an employment discrimination investigation or lawsuit.

Harassment can take the form of slurs, graffiti, offensive or derogatory comments, or other verbal or physical conduct. Sexual harassment (including unwelcome sexual advances, requests for sexual favors, and other conduct of a sexual nature) is also unlawful. Although the law does not prohibit simple teasing, offhand comments, or isolated incidents that are not very serious, harassment is illegal if it is so frequent or severe that it creates a hostile or offensive work environment or if 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.

Harassment outside of the workplace may also be illegal if there is a link with the workplace. For example, if a supervisor harasses an employee while driving the employee to a meeting.

Read more about [harassment](#).

Terms & Conditions Of Employment

The law makes it illegal for an employer to make any employment decision because of a person's race, color, religion, sex (including pregnancy), national origin, age (40 or older), disability or genetic information. That means an employer may not discriminate when it comes to such things as hiring, firing, promotions, and pay. It also means an employer may not discriminate, for example, when granting breaks, approving leave, assigning work stations, or setting any other term or condition of employment - however small.

Pre-Employment Inquiries (General)

As a general rule, the information obtained and requested through the pre-employment process should be limited to those essential for determining if a person is qualified for the job; whereas, information regarding race, sex, national origin, age, and religion are irrelevant in such determinations.

Employers are explicitly prohibited from making pre-employment inquiries about disability.

Although state and federal equal opportunity laws do not clearly forbid employers from making pre-employment inquiries that relate to, or disproportionately screen out members based on race, color, sex, national origin, religion, or age, such inquiries may be used as evidence of an employer's intent to discriminate unless the questions asked can be justified by some business purpose.

Therefore, inquiries about organizations, clubs, societies, and lodges of which an applicant may be a member or any other questions, which may indicate the applicant's race, sex, national origin, disability status, age, religion, color or ancestry if answered, should generally be avoided.

Similarly, employers should not ask for a photograph of an applicant. If needed for identification purposes, a photograph may be obtained after an offer of employment is made and accepted.

Pre-Employment Inquiries and:

[Race](#)

[Height & Weight](#)

[Credit Rating Or Economic Status](#)

[Religious Affiliation Or Beliefs](#)

[Citizenship](#)

[Marital Status, Number Of Children](#)

[Gender](#)

[Arrest & Conviction](#)

[Security/Background Checks For Certain Religious Or Ethnic Groups](#)

[Disability](#)

[Medical Questions & Examinations](#)

Dress Code

In general, an employer may establish a dress code which applies to all employees or employees within certain job categories. There are a few possible exceptions.

A dress code must not treat some employees less favorably because of their national origin. For example, a dress code that prohibits certain kinds of ethnic dress, such as traditional African or East Indian attire, but otherwise permits casual dress would treat some employees less favorably because of their national origin.

An employer may require all workers to follow a uniform dress code even if the dress code conflicts with some workers' ethnic beliefs or practices.

If the dress code conflicts with an employee's religious practices and the employee requests an accommodation, the employer must modify the dress code or permit an exception to the dress code unless doing so would result in undue hardship. Similarly, if an employee requests an accommodation to the dress code because of his disability, the employer must modify the dress code or permit an exception to the dress code, unless doing so would result in undue hardship.

If an employee needs to modify a dress requirement because of a disability, the employer may need to grant that employee a reasonable accommodation.

Constructive Discharge/Forced To Resign

Discriminatory practices under the laws EEOC enforces also include constructive discharge or forcing an employee to resign by making the work environment so intolerable a reasonable person would not be able to stay.

Age Discrimination

Age Discrimination

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

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

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

Apprenticeship Programs

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

Job Notices and Advertisements

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

Pre-Employment Inquiries

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

Benefits

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

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

Waivers of ADEA Rights

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

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

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



U.S. Equal Employment Opportunity Commission FACT SHEET

Age Discrimination

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

FIND THIS ARTICLE ON THE WEB AT:

Facts About Age Discrimination FSE/9
<http://www.eeoc.gov/eeoc/publications/age.ctm>

SEE ALSO:

Filing a Charge of Discrimination
<http://www.eeoc.gov/employees/charge.ctm>

This document was last modified on December 28, 2009.

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■ 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

Disability Discrimination

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](#)

[Veterans with Service-Connected Disabilities in the Workplace and the ADA](#)

[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 with Service-Connected Disabilities in the Workplace 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 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 \(ADA\)](#)

Facts About the Americans with Disabilities Act

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.

Equal Pay Act of 1963

The Equal Pay Act of 1963

EDITOR'S NOTE: The following is the text of the Equal Pay Act of 1963 (Pub. L. 88-38) (EPA), as amended, as it appears in volume 29 of the United States Code, at section 206(d). The EPA, which is part of the Fair Labor Standards Act of 1938, as amended (FLSA), and which is administered and enforced by the EEOC, prohibits sex-based wage discrimination between men and women in the same establishment who perform jobs that require substantially equal skill, effort and responsibility under similar working conditions. Cross references to the EPA as enacted appear in italics following the section heading. Additional provisions of the Equal Pay Act of 1963, as amended, are included as they appear in volume 29 of the United States Code.

MINIMUM WAGE

SEC. 206. [Section 6]

(d) Prohibition of sex discrimination

(1) No employer having employees subject to any provisions of this section shall discriminate, within any establishment in which such employees are employed, between employees on the basis of sex by paying wages to employees in such establishment at a rate less than the rate at which he pays wages to employees of the opposite sex in such establishment for equal work on jobs the performance of which requires equal skill, effort, and responsibility, and which are performed under similar working conditions, except where such payment is made pursuant to (i) a seniority system; (ii) a merit system; (iii) a system which measures earnings by quantity or quality of production; or (iv) a differential based on any other factor other than sex: *Provided*, That an employer who is paying a wage rate differential in violation of this subsection shall not, in order to comply with the provisions of this subsection, reduce the wage rate of any employee.

(2) No labor organization, or its agents, representing employees of an employer having employees subject to any provisions of this section shall cause or attempt to cause such an employer to discriminate against an employee in violation of paragraph (1) of this subsection.

(3) For purposes of administration and enforcement, any amounts owing to any employee which have been withheld in violation of this subsection shall be deemed to be unpaid minimum wages or unpaid overtime compensation under this chapter.

(4) As used in this subsection, the term "labor organization" means any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.

ADDITIONAL PROVISIONS OF EQUAL PAY ACT OF 1963

An Act

To prohibit discrimination on account of sex in the payment of wages by employers engaged in commerce or in the production of goods for commerce.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Equal Pay Act of 1963."

DECLARATION OF PURPOSE

Not Reprinted in U.S. Code [Section 2]

(a) The Congress hereby finds that the existence in industries engaged in commerce or in the production of goods for commerce of wage differentials based on sex-

(1) depresses wages and living standards for employees necessary for their health and efficiency;

(2) prevents the maximum utilization of the available labor

resources;

(3) tends to cause labor disputes, thereby burdening, affecting, and obstructing commerce;

(4) burdens commerce and the free flow of goods in commerce; and

(5) constitutes an unfair method of competition.

(b) It is hereby declared to be the policy of this Act, through exercise by Congress of its power to regulate commerce among the several States and with foreign nations, to correct the conditions above referred to in such industries.

[Section 3 of the Equal Pay Act of 1963 amends section 6 of the Fair Labor Standards Act by adding a new subsection (d). The amendment is incorporated in the revised text of the Fair Labor Standards Act.]

EFFECTIVE DATE

Not Reprinted in U.S. Code *[Section 4]*

The amendments made by this Act shall take effect upon the expiration of one year from the date of its enactment: Provided, That in the case of employees covered by a bona fide collective bargaining agreement in effect at least thirty days prior to the date of enactment of this Act entered into by a labor organization (as defined in section 6(d)(4) of the Fair Labor Standards Act of 1938, as amended) *[subsection (d)(4) of this section]*, the amendments made by this Act shall take effect upon the termination of such collective bargaining agreement or upon the expiration of two years from the date of enactment of this Act, whichever shall first occur.

Approved June 10, 1963, 12 m.

[In the following excerpts from the Fair Labor Standards Act of 1938, as amended, authority given to the Secretary of Labor is exercised by the Equal Employment Opportunity Commission for purposes of enforcing the Equal Pay Act of 1963.]

ATTENDANCE OF WITNESSES

SEC. 209 *[Section 9]*

For the purpose of any hearing or investigation provided for in this chapter, the provisions of sections 49 and 50 of title 15 *[Federal Trade Commission Act of September 16, 1914, as amended (U.S.C., 1934 edition)]* (relating to the attendance of witnesses and the production of books, papers, and documents), are made applicable to the jurisdiction, powers, and duties of the Administrator, the Secretary of Labor, and the industry committees.

COLLECTION OF DATA

SEC. 211 *[Section 11]*

(a) Investigations and inspections

The Administrator or his designated representatives may investigate and gather data regarding the wages, hours, and other conditions and practices of employment in any industry subject to this chapter, and may enter and inspect such places and such records (and make such transcriptions thereof), question such employees, and investigate such facts, conditions, practices, or matters as he may deem necessary or appropriate to determine whether any person has violated any provision of this chapter, or which may aid in the enforcement of the provisions of this chapter. Except as provided in section 212 *[section 12]* of this title and in subsection (b) of this section, the Administrator shall utilize the bureaus and divisions of the Department of Labor for all the investigations and inspections necessary under this section. Except as provided in section 212 *[section 12]* of this title, the Administrator shall bring all actions under section 217 *[section 17]* of this title to restrain violations of this chapter.

(b) State and local agencies and employees

With the consent and cooperation of State agencies charged with the administration of State labor laws, the Administrator and the Secretary of Labor may, for the purpose of carrying out their respective functions and duties under this chapter, utilize the services of State and local agencies and their employees and, notwithstanding any other provision of law, may reimburse such State and local agencies and their employees for services rendered for such purposes.

(c) Records

Every employer subject to any provision of this chapter or of any order issued under this chapter shall make, keep, and preserve such records of the persons employed by him and of the wages, hours, and other conditions and practices of employment maintained by him, and shall preserve such records for such periods of time, and shall make such reports therefrom to the Administrator as he shall prescribe by regulation or order as necessary or appropriate for the enforcement of the provisions of this chapter or the regulations or orders thereunder. The employer of an employee who performs substitute work described in section 207(p)(3) [section 7(p)(3)] of this title may not be required under this subsection to keep a record of the hours of the substitute work.

(d) Homework regulations

The Administrator is authorized to make such regulations and orders regulating, restricting, or prohibiting industrial homework as are necessary or appropriate to prevent the circumvention or evasion of and to safeguard the minimum wage rate prescribed in this chapter, and all existing regulations or orders of the Administrator relating to industrial homework are continued in full force and effect.

EXEMPTIONS

SEC. 213 [Section 13]

(a) Minimum wage and maximum hour requirements

The provisions of sections 206 [section 6] (except subsection (d) in the case of paragraph (1) of this subsection) and section 207 [section 7] of this title shall not apply with respect to-

(1) any employee employed in a bona fide executive, administrative, or professional capacity (including any employee employed in the capacity of academic administrative personnel or teacher in elementary or secondary schools), or in the capacity of outside salesman (as such terms are defined and delimited from time to time by regulations of the Secretary, subject to the provisions of subchapter II of chapter 5 of Title 5 [the Administrative Procedure Act], except that an employee of a retail or service establishment shall not be excluded from the definition of employee employed in a bona fide executive or administrative capacity because of the number of hours in his workweek which he devotes to activities not directly or closely related to the performance of executive or administrative activities, if less than 40 per centum of his hours worked in the workweek are devoted to such activities); or

(2) [Repealed]

[Note: Section 13(a)(2) (relating to employees employed by a retail or service establishment) was repealed by Pub. L. 101-157, section 3(c)(1), November 17, 1989.]

(3) any employee employed by an establishment which is an amusement or recreational establishment, organized camp, or religious or non-profit educational conference center, if (A) it does not operate for more than seven months in any calendar year, or (B) during the preceding calendar year, its average receipts for any six months of such year were not more than 33 1/3 per centum of its average receipts for the other six months of such year, except that the exemption from sections 206 and 207 [sections 6 and 7] of this title provided by this paragraph does not apply with respect to any employee of a private entity engaged in providing services or facilities (other than, in the case of the exemption from section 206 [section 6] of this title, a private entity engaged in providing services and facilities directly related to skiing) in a national park or a national forest, or on land in the National Wildlife Refuge System, under a contract with the Secretary of the Interior or the Secretary of Agriculture; or

(4) [Repealed]

[Note: Section 13(a)(4) (relating to employees employed by an establishment which qualified as an exempt retail establishment) was repealed by Pub. L. 101-157, Section 3(c)(1), November 17, 1989.]

(5) any employee employed in the catching, taking, propagating, harvesting, cultivating, or farming of any kind of fish, shellfish, crustacea, sponges, seaweeds, or other aquatic forms of animal and vegetable life, or in the first processing, canning or packing such marine products at sea as an incident to, or in conjunction with, such fishing operations, including the going to and returning from work and loading and unloading when performed by any such employee; or

(6) any employee employed in agriculture (A) if such employee is employed by an employer who did not, during any calendar quarter during the preceding calendar year, use more than five hundred man-days of agricultural labor, (B)

if such employee is the parent, spouse, child, or other member of his employer's immediate family, (C) if such employee (i) is employed as a hand harvest laborer and is paid on a piece rate basis in an operation which has been, and is customarily and generally recognized as having been, paid on a piece rate basis in the region of employment, (ii) commutes daily from his permanent residence to the farm on which he is so employed, and (iii) has been employed in agriculture less than thirteen weeks during the preceding calendar year, (D) if such employee (other than an employee described in clause (C) of this subsection) (i) is sixteen years of age or under and is employed as a hand harvest laborer, is paid on a piece rate basis in an operation which has been, and is customarily and generally recognized as having been, paid on a piece rate basis in the region of employment, (ii) is employed on the same farm as his parent or person standing in the place of his parent, and (iii) is paid at the same piece rate as employees over age sixteen are paid on the same farm, or (E) if such employee is principally engaged in the range production of livestock; or

(7) any employee to the extent that such employee is exempted by regulations, order, or certificate of the Secretary issued under section 214 [section 14] of this title; or

(8) any employee employed in connection with the publication of any weekly, semiweekly, or daily newspaper with a circulation of less than four thousand the major part of which circulation is within the county where published or counties contiguous thereto; or

(9) [Repealed]

[Note: Section 13(a)(9) (relating to motion picture theater employees) was repealed by section 23 of the Fair Labor Standards Amendments of 1974. The 1974 amendments created an exemption for such employees from the overtime provisions only in section 13(b)(27).]

(10) any switchboard operator employed by an independently owned public telephone company which has not more than seven hundred and fifty stations; or

(11) [Repealed]

[Note: Section 13(a)(11) (relating to telegraph agency employees) was repealed by section 10 of the Fair Labor Standards Amendments of 1974. The 1974 amendments created an exemption from the overtime provisions only in section 13(b)(23), which was repealed effective May 1, 1976.]

(12) any employee employed as a seaman on a vessel other than an American vessel; or

(13) [Repealed]

[Note: Section 13(a)(13) (relating to small logging crews) was repealed by section 23 of the Fair Labor Standards Amendments of 1974. The 1974 amendments created an exemption for such employees from the overtime provisions only in section 13(b)(28).]

(14) [Repealed]

[Note: Section 13(a)(14) (relating to employees employed in growing and harvesting of shade grown tobacco) was repealed by section 9 of the Fair Labor Standards Amendments of 1974. The 1974 amendments created an exemption for certain tobacco producing employees from the overtime provisions only in section 13(b)(22). The section 13(b)(22) exemption was repealed, effective January 1, 1978, by section 5 of the Fair Labor Standards Amendments of 1977.]

(15) any employee employed on a casual basis in domestic service employment to provide babysitting services or any employee employed in domestic service employment to provide companionship services for individuals who (because of age or infirmity) are unable to care for themselves (as such terms are defined and delimited by regulations of the Secretary); or

(16) a criminal investigator who is paid availability pay under section 5545a of Title 5 [Law Enforcement Availability Pay Act of 1994]; or

(17) any employee who is a computer systems analyst, computer programmer, software engineer, or other similarly skilled worker, whose primary duty is—

(A) the application of systems analysis techniques and procedures, including consulting with users, to determine hardware, software, or system functional specifications;

(B) the design, development, documentation, analysis, creation, testing, or modification of computer systems or programs, including prototypes, based on and related to user or system design specifications;

(C) the design, documentation, testing, creation, or modification of computer programs related to machine operating systems; or

(D) a combination of duties described in subparagraphs (A), (B), and (C) the performance of which requires the same level of skills, and

who, in the case of an employee who is compensated on an hourly basis, is compensated at a rate of not less than \$27.63 an hour.

(g) Certain employment in retail or service establishments, agriculture

The exemption from section 206 [section 6] of this title provided by paragraph (6) of subsection (a) of this section shall not apply with respect to any employee employed by an establishment (1) which controls, is controlled by, or is under common control with, another establishment the activities of which are not related for a common business purpose to, but materially support the activities of the establishment employing such employee; and (2) whose annual gross volume of sales made or business done, when combined with the annual gross volume of sales made or business done by each establishment which controls, is controlled by, or is under common control with, the establishment employing such employee, exceeds \$10,000,000 (exclusive of excise taxes at the retail level which are separately stated).

PROHIBITED ACTS

SEC. 215 [Section 15]

(a) After the expiration of one hundred and twenty days from June 25, 1938 [the date of enactment of this Act], it shall be unlawful for any person-

(1) to transport, offer for transportation, ship, deliver, or sell in commerce, or to ship, deliver, or sell with knowledge that shipment or delivery or sale thereof in commerce is intended, any goods in the production of which any employee was employed in violation of section 206 [section 6] or section 207 [section 7] of this title, or in violation of any regulation or order of the Secretary issued under section 214 [section 14] of this title, except that no provision of this chapter shall impose any liability upon any common carrier for the transportation in commerce in the regular course of its business of any goods not produced by such common carrier, and no provision of this chapter shall excuse any common carrier from its obligation to accept any goods for transportation; and except that any such transportation, offer, shipment, delivery, or sale of such goods by a purchaser who acquired them in good faith in reliance on written assurance from the producer that the goods were produced in compliance with the requirements of this chapter, and who acquired such goods for value without notice of any such violation, shall not be deemed unlawful;

(2) to violate any of the provisions of section 206 [section 6] or section 207 [section 7] of this title, or any of the provisions of any regulation or order of the Secretary issued under section 214 [section 14] of this title;

(3) to discharge or in any other manner discriminate against any employee because such employee has filed any complaint or instituted or caused to be instituted any proceeding under or related to this chapter, or has testified or is about to testify in any such proceeding, or has served or is about to serve on an industry committee;

(4) to violate any of the provisions of section 212 [section 12] of this title;

(5) to violate any of the provisions of section 211(c) [section 11(c)] of this title, or any regulation or order made or continued in effect under the provisions of section 211(d) [section 11(d)] of this title, or to make any statement, report, or record filed or kept pursuant to the provisions of such section or of any regulation or order thereunder, knowing such statement, report, or record to be false in a material respect.

(b) For the purposes of subsection (a)(1) of this section proof that any employee was employed in any place of employment where goods shipped or sold in commerce were produced, within ninety days prior to the removal of the goods from such place of employment, shall be prima facie evidence that such employee was engaged in the production of such goods.

PENALTIES

SEC. 216 [Section 16]

(a) Fines and imprisonment

Any person who willfully violates any of the provisions of section 215 [section 15] of this title shall upon conviction thereof be subject to a fine of not more than \$10,000, or to imprisonment for not more than six months, or both. No person shall be imprisoned under this subsection except for an offense committed after the conviction of such person for a prior offense under this subsection.

(b) Damages; right of action; attorney's fees and costs; termination of right of action

Any employer who violates the provisions of section 206 [section 6] or section 207 [section 7] of this title shall be liable to the employee or employees affected in the amount of their unpaid minimum wages, or their unpaid overtime compensation, as the case may be, and in an additional equal amount as liquidated damages. Any employer who violates the provisions of section 215(a)(3) [section 15(a)(3)] of this title shall be liable for such legal or equitable relief as may be appropriate to effectuate the purposes of section 215(a)(3) [section 15(a)(3)] of this title, including without limitation employment, reinstatement, promotion, and the payment of wages lost and an additional equal amount as liquidated damages. An action to recover the liability prescribed in either of the preceding sentences may be maintained against any employer (including a public agency) in any Federal or State court of competent jurisdiction by any one or more employees for and in behalf of himself or themselves and other employees similarly situated. No employee shall be a party plaintiff to any such action unless he gives his consent in writing to become such a party and such consent is filed in the court in which such action is brought. The court in such action shall, in addition to any judgment awarded to the plaintiff or plaintiffs, allow a reasonable attorney's fee to be paid by the defendant, and costs of the action. The right provided by this subsection to bring an action by or on behalf of any employee, and the right of any employee to become a party plaintiff to any such action, shall terminate upon the filing of a complaint by the Secretary of Labor in an action under section 217 [section 17] of this title in which (1) restraint is sought of any further delay in the payment of unpaid minimum wages, or the amount of unpaid overtime compensation, as the case may be, owing to such employee under section 206 [section 6] or section 207 [section 7] of this title by an employer liable therefor[sic] under the provisions of this subsection or (2) legal or equitable relief is sought as a result of alleged violations of section 215(a)(3) [section 15(a)(3)] of this title.

(c) Payment of wages and compensation; waiver of claims; actions by the Secretary; limitation of actions

The Secretary is authorized to supervise the payment of the unpaid minimum wages or the unpaid overtime compensation owing to any employee or employees under section 206 [section 6] or section 207 [section 7] of this title, and the agreement of any employee to accept such payment shall upon payment in full constitute a waiver by such employee of any right he may have under subsection (b) of this section to such unpaid minimum wages or unpaid overtime compensation and an additional equal amount as liquidated damages. The Secretary may bring an action in any court of competent jurisdiction to recover the amount of the unpaid minimum wages or overtime compensation and an equal amount as liquidated damages. The right provided by subsection (b) of this section to bring an action by or on behalf of any employee to recover the liability specified in the first sentence of such subsection and of any employee to become a party plaintiff to any such action shall terminate upon the filing of a complaint by the Secretary in an action under this subsection in which a recovery is sought of unpaid minimum wages or unpaid overtime compensation under sections 206 and 207 [sections 6 and 7] of this title or liquidated or other damages provided by this subsection owing to such employee by an employer liable under the provisions of subsection (b) of this section, unless such action is dismissed without prejudice on motion of the Secretary. Any sums thus recovered by the Secretary of Labor on behalf of an employee pursuant to this subsection shall be held in a special deposit account and shall be paid, on order of the Secretary of Labor, directly to the employee or employees affected. Any such sums not paid to an employee because of inability to do so within a period of three years shall be covered into the Treasury of the United States as miscellaneous receipts. In determining when an action is commenced by the Secretary of Labor under this subsection for the purposes of the statutes of limitations provided in section 255(a) of this title [section 6(a) of the Portal-to-Portal Act of 1947], it shall be considered to be commenced in the case of any individual claimant on the date when the complaint is filed if he is specifically named as a party plaintiff in the complaint, or if his name did not so appear, on the subsequent date on which his name is added as a party plaintiff in such action.

(d) Savings provisions

In any action or proceeding commenced prior to, on, or after August 8, 1956 [the date of enactment of this subsection], no employer shall be subject to any liability or punishment under this chapter or the Portal-to-Portal Act of 1947 [29 U.S.C. 251 et seq.] on account of his failure to comply with any provision or provisions of this chapter or such Act (1) with respect to work heretofore or hereafter performed in a workplace to which the exemption in section 213(f) [section 13(f)] of this title is applicable, (2) with respect to work performed in Guam, the Canal Zone or Wake Island before the effective date of this amendment of subsection (d), or (3) with respect to work performed in a

possession named in section 206(a)(3) [section 6(a)(3)] of this title at any time prior to the establishment by the Secretary, as provided therein, of a minimum wage rate applicable to such work.

(e)(1)(A) Any person who violates the provisions of sections 212 or 213(c) [sections 12 or 13(c)] of this title, relating to child labor, or any regulation issued pursuant to such sections, shall be subject to a civil penalty of not to exceed—

(i) \$11,000 for each employee who was the subject of such a violation; or

(ii) \$50,000 with regard to each such violation that causes the death or serious injury of any employee under the age of 18 years, which penalty may be doubled where the violation is a repeated or willful violation.

(B) For purposes of subparagraph (A), the term "serious injury" means—

(i) permanent loss or substantial impairment of one of the senses (sight, hearing, taste, smell, tactile sensation);

(ii) permanent loss or substantial impairment of the function of a bodily member, organ, or mental faculty, including the loss of all or part of an arm, leg, foot, hand or other body part; or

(iii) permanent paralysis or substantial impairment that causes loss of movement or mobility of an arm, leg, foot, hand or other body part.

(2) Any person who repeatedly or willfully violates section 206 or 207 [section 6 or 7], relating to wages, shall be subject to a civil penalty not to exceed \$1,100 for each such violation.

(3) In determining the amount of any penalty under this subsection, the appropriateness of such penalty to the size of the business of the person charged and the gravity of the violation shall be considered. The amount of any penalty under this subsection, when finally determined, may be—

(A) deducted from any sums owing by the United States to the person charged;

(B) recovered in a civil action brought by the Secretary in any court of competent jurisdiction, in which litigation the Secretary shall be represented by the Solicitor of Labor; or

(C) ordered by the court, in an action brought for a violation of section 215(a)(4) [section 15(a)(4)] of this title or a repeated or willful violation of section 215(a)(2) [section 15(a)(2)] of this title, to be paid to the Secretary.

(4) Any administrative determination by the Secretary of the amount of any penalty under this subsection shall be final, unless within 15 days after receipt of notice thereof by certified mail the person charged with the violation takes exception to the determination that the violations for which the penalty is imposed occurred, in which event final determination of the penalty shall be made in an administrative proceeding after opportunity for hearing in accordance with section 554 of Title 5 [Administrative Procedure Act], and regulations to be promulgated by the Secretary.

(5) Except for civil penalties collected for violations of section 212 [section 12] of this title, sums collected as penalties pursuant to this section shall be applied toward reimbursement of the costs of determining the violations and assessing and collecting such penalties, in accordance with the provision of section 9a of Title 29 [An Act to authorize the Department of Labor to make special statistical studies upon payment of the cost thereof and for other purposes]. Civil penalties collected for violations of section 212 [section 12] of this title shall be deposited in the general fund of the Treasury.

INJUNCTION PROCEEDINGS

SEC. 217 [Section 17]

The districts courts, together with the United States District Court for the District of the Canal Zone, the District Court of the Virgin Islands, and the District Court of Guam shall have jurisdiction, for cause shown, to restrain violations of section 215 [section 15] of this title, including in the case of violations of section 215(a)(2) of this title the restraint of any withholding of payment of minimum wages or overtime compensation found by the court to be due to employees under this chapter (except sums which employees are barred from recovering, at the time of the commencement of the action to restrain the violations, by virtue of the provisions of section 255 of this title [section 6 of the Portal-to-Portal Act of 1947]).

RELATION TO OTHER LAWS

SEC. 218 [Section 18]

(a) No provision of this chapter or of any order thereunder shall

excuse noncompliance with any Federal or State law or municipal ordinance establishing a minimum wage higher than the minimum wage established under this chapter or a maximum work week lower than the maximum workweek established under this chapter, and no provision of this chapter relating to the employment of child labor shall justify noncompliance with any Federal or State law or municipal ordinance establishing a higher standard than the standard established under this chapter. No provision of this chapter shall justify any employer in reducing a wage paid by him which is in excess of the applicable minimum wage under this chapter, or justify any employer in increasing hours of employment maintained by him which are shorter than the maximum hours applicable under this chapter.

SEPARABILITY OF PROVISIONS

SEC. 219 [Section 19]

If any provision of this chapter or the application of such provision to any person or circumstance is held invalid, the remainder of this chapter and the application of such provision to other persons or circumstances shall not be affected thereby.

Approved June 25, 1938.

[In the following excerpts from the Portal-to-Portal Act of 1947, the authority given to the Secretary of Labor is exercised by the Equal Employment Opportunity Commission for purposes of enforcing the Equal Pay Act of 1963.]

PART IV - MISCELLANEOUS

STATUTE OF LIMITATIONS

SEC. 255 [Section 6]

Any action commenced on or after May 14, 1947 *[the date of the enactment of this Act]*, to enforce any cause of action for unpaid minimum wages, unpaid overtime compensation, or liquidated damages, under the Fair Labor Standards Act of 1938, as amended, [29 U.S.C. 201 et seq.], the Walsh-Healey Act [41 U.S.C. 35 et seq.], or the Bacon-Davis Act [40 U.S.C. 276a et seq.]—

(a) if the cause of action accrues on or after May 14, 1947 *[the date of the enactment of this Act]*—may be commenced within two years after the cause of action accrued, and every such action shall be forever barred unless commenced within two years after the cause of action accrued, except that a cause of action arising out of a willful violation may be commenced within three years after the cause of action accrued;

DETERMINATION OF COMMENCEMENT OF FUTURE ACTIONS

SEC. 256 [Section 7]

In determining when an action is commenced for the purposes of section 255 *[section 6]* of this title, an action commenced on or after May 14, 1947 *[the date of the enactment of this Act]* under the Fair Labor Standards Act of 1938, as amended, [29 U.S.C. 201 et seq.], the Walsh-Healey Act [41 U.S.C. 35 et seq.], or the Bacon-Davis Act [40 U.S.C. 276a et seq.], shall be considered to be commenced on the date when the complaint is filed; except that in the case of a collective or class action instituted under the Fair Labor Standards Act of 1938, as amended, or the Bacon-Davis Act, it shall be considered to be commenced in the case of any individual claimant—

(a) on the date when the complaint is filed, if he is specifically named as a party plaintiff in the complaint and his written consent to become a party plaintiff is filed on such date in the court in which the action is brought; or

(b) if such written consent was not so filed or if his name did not so appear—on the subsequent date on which such written consent is filed in the court in which the action was commenced.

RELIANCE IN FUTURE ON ADMINISTRATIVE RULINGS, ETC.

SEC. 259 [Section 10]

(a) In any action or proceeding based on any act or omission on or after May 14, 1947 [the date of the enactment of this Act], no employer shall be subject to any liability or punishment for or on account of the failure of the employer to pay minimum wages or overtime compensation under the Fair Labor Standards Act of 1938, as amended, [29 U.S.C. 201 et seq.], the Walsh-Healey Act [41 U.S.C. 35 et seq.], or the Bacon-Davis Act [40 U.S.C. 276a et seq.], if he pleads and proves that the act or omission complained of was in good faith in conformity with and in reliance on any written administrative regulation, order, ruling, approval, or interpretation, of the agency of the United States specified in subsection (b) of this section, or any administrative practice or enforcement policy of such agency with respect to the class of employers to which he belonged. Such a defense, if established, shall be a bar to the action or proceeding, notwithstanding that after such act or omission, such administrative regulation, order, ruling, approval, interpretation, practice, or enforcement policy is modified or rescinded or is determined by judicial authority to be invalid or of no legal effect.

(b) The agency referred to in subsection (a) shall be-

(1) in the case of the Fair Labor Standards Act of 1938, as amended [29 U.S.C. 201 et seq.] the Administrator of the Wage and Hour Division of the Department of Labor;

LIQUIDATED DAMAGES

SEC. 260 [Section 11]

In any action commenced prior to or on or after May 14, 1947 [the date of the enactment of this Act] to recover unpaid minimum wages, unpaid overtime compensation, or liquidated damages, under the Fair Labor Standards Act of 1938, as amended [29 U.S.C. 201 et seq.], if the employer shows to the satisfaction of the court that the act or omission giving rise to such action was in good faith and that he had reasonable grounds for believing that his act or omission was not a violation of the Fair Labor Standards Act of 1938, as amended [29 U.S.C. 201 et seq.], the court may, in its sound discretion, award no liquidated damages or award any amount thereof not to exceed the amount specified in section 216 [section 16] of this title.

DEFINITIONS

SEC. 262 [Section 13]

(a) When the terms "employer", "employee", and "wage" are used in this chapter in relation to the Fair Labor Standards Act of 1938, as amended [29 U.S.C. 201 et seq.], they shall have the same meaning as when used in such Act of 1938.

SEPARABILITY

Not Reprinted in U.S. Code [Section 14]

If any provision of this Act or the application of such provision to any person or circumstance is held invalid, the remainder of this Act and the application of such provision to other persons or circumstances shall not be affected thereby.

SHORT TITLE

Not Reprinted in U.S. Code [Section 15]

This Act may be cited as the 'Portal-to-Portal Act of 1947.'

Approved May 14, 1947.



U.S. Equal Employment Opportunity Commission FACT SHEET

Equal Pay and Compensation Discrimination

The right of employees to be free from discrimination in their compensation is protected under several federal laws, including the following enforced by the U.S. Equal Employment Opportunity Commission: 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.

FIND THIS ARTICLE ON THE WEB AT:

Facts About Equal Pay and Compensation Discrimination FSE/15
<http://www.eeoc.gov/eeoc/publications/index.cfm>

SEE ALSO:

Filing a Charge of Discrimination
<http://www.eeoc.gov/employees/charge.cfm>

This document was last modified on April 1, 2010

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- **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.

Genetic Information Discrimination

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

Under Title II of GINA, it is illegal to discriminate against employees or applicants because of genetic information. Title II of GINA prohibits the use of genetic information in making employment decisions, restricts acquisition of genetic information by employers and other entities covered by Title II, and strictly limits the disclosure of genetic information.

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

Definition of "Genetic Information"

Genetic information includes information about an individual's genetic tests and the genetic tests of an individual's family members, as well as information about any disease, disorder, or condition of an individual's family members (i.e. an individual's family medical history). Family medical history is included in the definition of genetic information because it is often used to determine whether someone has an increased risk of getting a disease, disorder, or condition in the future.

Discrimination Because of Genetic Information

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

Harassment Because of Genetic Information

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

Retaliation

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

Rules Against Acquiring Genetic Information

It will usually be unlawful for an employer to get genetic information. There are six narrow exceptions to this prohibition:

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

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

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

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

Acquisition through a genetic monitoring program that monitors the biological effects of toxic substances in the workplace is permitted where the monitoring is required by law or, under carefully defined conditions, where the program is voluntary.

Acquisition of genetic information of employees by employers who engage in DNA testing for law enforcement purposes as a forensic lab or for purposes of human remains identification is permitted, but the genetic information may only be used for analysis of DNA markers for quality control to detect sample contamination.

Confidentiality of Genetic Information

It is also unlawful for an employer to disclose genetic information about applicants or employees. Employers must keep genetic information confidential and in a separate medical file. (Genetic information may be kept in the same file as other medical information in compliance with the Americans with Disabilities Act.) There are limited exceptions to this non-disclosure rule.

National Origin Discrimination

National Origin Discrimination

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

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

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

National Origin Discrimination & Work Situations

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

National Origin & Harassment

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

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

National Origin & Employment Policies/Practices

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

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

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

Citizenship Discrimination & Workplace Laws

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

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

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

1-800-255-7888 (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>.



U.S. Equal Employment Opportunity Commission FACT SHEET

National Origin Discrimination

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

About National Origin Discrimination

It is unlawful to discriminate against any employee or applicant because of the individual's national origin. No one can be denied equal employment opportunity because of birthplace, ancestry, culture, linguistic characteristics common to a specific ethnic group, or accent. Equal employment opportunity cannot be denied because of marriage or association with persons of a national origin group; membership or association with specific ethnic promotion groups; attendance or participation in schools, churches, temples or mosques generally associated with a national origin group; or a surname associated with a national origin group. Examples of violations covered under Title VII include:

Employment Decisions

Title VII prohibits any employment decision, including recruitment, hiring, and firing or layoffs, based on national origin.

Harassment

Title VII prohibits offensive conduct, such as ethnic slurs, that creates a hostile work environment based on national origin. Employers are required to take appropriate steps to prevent and correct unlawful harassment. Likewise, employees are responsible for reporting harassment at an early stage to prevent its escalation.

Language

- **Accent discrimination**
An employer may not base a decision on an employee's foreign accent unless the accent materially interferes with job performance.
- **English fluency**
A fluency requirement is only permissible if required for the effective performance of the position for which it is imposed.

FIND THIS ARTICLE ON THE WEB AT:
Facts About National Origin Discrimination FSE/1
<http://www.eeoc.gov/eeoc/publications/index.cfm>

SEE ALSO:
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<http://www.eeoc.gov/employees/charge.cfm>

This document was last modified on March 30, 2010.

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- **English-only rules**

English-only rules must be adopted for nondiscriminatory reasons. An English-only rule may be used if it is needed to promote the safe or efficient operation of the employer's business.

- **Coverage of foreign nationals**

Title VII and the other antidiscrimination laws prohibit discrimination against individuals employed in the United States, regardless of citizenship. However, relief may be limited if an individual does not have work authorization. The Immigration Reform and Control Act of 1986 (IRCA) requires employers to prove all employees hired after November 6, 1986, are legally authorized to work in the United States. IRCA also prohibits discrimination based on national origin or citizenship.

Pregnancy Discrimination

Pregnancy Discrimination

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

Pregnancy Discrimination & Work Situations

The law forbids discrimination 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 the same as any other temporarily disabled employee. For example, the employer may have to provide modified tasks, alternative assignments, disability leave or unpaid leave.

Pregnancy Discrimination & Harassment

It is unlawful to harass a woman because of pregnancy, childbirth, or a medical condition related to pregnancy or childbirth.

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.

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. For more information on FMLA, contact the nearest office of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor. The Wage and Hour Division can be reached at:

202-693-0051 (voice),
202-693-7755 (TTY), or
at http://www.dol.gov/esa/public/whd_ora.htm.

Pregnancy, Maternity & Parental Leave

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

If an employer provides personal leave for other reasons, e.g., to take courses or other training, then the employer must grant personal leave for care of a new child.

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/dol/allcfr/ESA/Title_29/Part_825/29CFR825.110.htm.)



U.S. Equal Employment Opportunity Commission FACT SHEET

Pregnancy Discrimination

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

Title VII's pregnancy-related protections include:

- **Hiring**

An employer cannot refuse to hire a pregnant woman because of her pregnancy, because of a pregnancy-related condition, or because of the prejudices of co-workers, clients, or customers.

- **Pregnancy & Maternity Leave**

An employer may not single out pregnancy-related conditions for special procedures to determine an employee's ability to work. However, if an employer requires its employees to submit a doctor's statement concerning their inability to work before granting leave or paying sick benefits, the employer may require employees affected by pregnancy-related conditions to submit such statements.

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

Pregnant employees must be permitted to work as long as they are able to perform their jobs. If an employee has been absent from work as a result of a pregnancy-related condition and recovers, her employer may not require her to remain on leave until the baby's birth.

- **Health Insurance**

Any health insurance provided by an employer must cover expenses for pregnancy-

FIND THIS ARTICLE ON THE WEB AT:

Facts About Pregnancy Discrimination
<http://www.eeoc.gov/eeoc/publications/index.ctm>

SEE ALSO:

Filing a Charge of Discrimination
<http://www.eeoc.gov/employees/charge.ctm>

This document was last modified on March 31, 2010.

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related conditions on the same basis as costs for other medical conditions. An employer need not provide health insurance for expenses arising from abortion, except where the life of the mother is endangered.

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

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

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

■ Fringe Benefits

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

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

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

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

Race/Color Discrimination

Race/Color Discrimination

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

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

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

Race/Color Discrimination & Work Situations

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

Race/Color Discrimination & Harassment

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

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

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

Race/Color Discrimination & Employment Policies/Practices

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

Facts About Race/Color Discrimination

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

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

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

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

Race-Related Characteristics and Conditions

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

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

Color Discrimination

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

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

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

Title VII's protections include:

Recruiting, Hiring, and Advancement

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

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

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

Compensation and Other Employment Terms, Conditions, and Privileges

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

Harassment

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

Retaliation

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

Segregation and Classification of Employees

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

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

Pre-Employment Inquiries and Requirements

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

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

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

Religious Discrimination

Religious Discrimination

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 & 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.



U.S. Equal Employment Opportunity Commission FACT SHEET

Religious Discrimination

Title VII of the Civil Rights Act of 1964 prohibits employers from discriminating against individuals because of their religion in hiring, firing, and other terms and conditions of employment. The Act also requires employers to reasonably accommodate the religious practices of an employee or prospective employee, unless to do so would create an undue hardship upon the employer (see also 29 CFR 1605). A reasonable religious accommodation is any adjustment to the work environment that will allow the employee to practice his religion. Flexible scheduling, voluntary substitutions or swaps, job reassignments and lateral transfers are examples of accommodating an employee's religious beliefs.

Employers generally should not schedule examinations or other selection activities in conflict with a current or prospective employee's religious needs, inquire about an applicant's future availability at certain times, maintain a restrictive dress code, or refuse to allow observance of a Sabbath or religious holiday, unless the employer can show that not doing so would cause an undue hardship.

An employer can claim undue hardship when asked to accommodate an applicant's or employee's religious practices if allowing such practices requires more than ordinary administrative costs, diminishes efficiency in other jobs, infringes on other employees' job rights or benefits, impairs workplace safety, causes co-workers to carry the accommodated employee's share of potentially hazardous or burdensome work, or if the proposed accommodation conflicts with another law or regulation. Undue hardship also may be shown if the request for an accommodation violates the terms of a collective bargaining agreement or job rights established through a seniority system.

An employee whose religious practices prohibit payment of union dues to a labor organization cannot be required to pay the dues, but may pay an equal sum to a charitable organization.

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

FIND THIS ARTICLE ON THE WEB AT:

Facts About Religious Discrimination FSE/3
<http://www.eeoc.gov/eeoc/publications/index.cfm>

SEE ALSO:

Filing a Charge of Discrimination
<http://www.eeoc.gov/employees/charge.cfm>

This document was last modified on April 1, 2010.

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Retaliation

Retaliation

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

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

Retaliation & Work Situations

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

Facts About Retaliation

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

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

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

Adverse Action

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

employment actions such as termination, refusal to hire, and denial of promotion,

other actions affecting employment such as threats, unjustified negative evaluations, unjustified negative references, or increased surveillance, and

any other action such as an assault or unfounded civil or criminal charges that are likely to deter reasonable people from pursuing their rights.

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

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

Of course, employees are not excused from continuing to perform their jobs or follow their company's legitimate workplace rules just because they have filed a complaint with the EEOC or opposed discrimination.

For more information about adverse actions, see [EEOC's Compliance Manual Section 8, Chapter II, Part D](#).

Covered Individuals

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

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

Protected Activity

Protected activity includes:

Opposition to a practice believed to be unlawful discrimination

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

Examples of protected opposition include:

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

Examples of activities that are NOT protected opposition include:

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

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

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

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

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

Sex-Based Discrimination

Sex-Based Discrimination

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

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

Sex Discrimination & Work Situations

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

Sex Discrimination Harassment

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

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

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

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

Sex Discrimination & Employment Policies/Practices

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

Sexual Harassment

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

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

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

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

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



U.S. Equal Employment Opportunity Commission FACT SHEET

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.

FIND THIS ARTICLE ON THE WEB AT:

Facts About Sexual Harassment FSE/4
<http://www.eeoc.gov/facts/fs-sex.html>

SEE ALSO:

Filing a Charge of Discrimination
<http://www.eeoc.gov/employees/charge.cfm>

This document was last modified on December 14, 2009.

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