



Oregon Board of Psychologist Examiners

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Affirmative Action Plan

July 1, 2015 to – June 30, 2017

Oregon Board of Psychologist Examiners
Affirmative Action Plan
2015-2017 Biennium

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I. Description of Agency

A. *Mission and Objectives*

The Oregon Board of Psychologist Examiners (OBPE) was created for the purpose of examining and licensing all persons in Oregon who engage in the practice of psychology. The Board is also charged with safeguarding the people of the State of Oregon from the dangers of unqualified and improper practice of psychology.

Practicing psychology means rendering or offering to render supervision, consultation, evaluation or therapy services to individuals, groups or organizations for the purpose of diagnosing or treating behavioral, emotional or mental disorders.

It is unlawful to practice psychology or represent oneself as a psychologist without first being properly licensed by the OBPE. To "represent oneself as a psychologist" means to use any terminology, title or description of services incorporating the words "psychology," "psychological," "psychotherapy," or "psychologist," or to offer or render to individuals or to groups of individuals services included in the practice of psychology.

The Board consists of nine members- six are licensed psychologists, and three are from the general public, not associated with the profession. All members are appointed by the Governor to three-year terms and confirmed by the Senate. The Board hires staff to administer all official business. The Board meets approximately every six to eight weeks, typically at its offices in Salem. The Board is funded solely from fees derived from the licenses it issues, applications and exams, and collection of fines and penalties assessed for violations of statute or rule. Decisions are made in open public meetings where guests are encouraged to attend.

The Board carries out its mission through three major programs areas: Examination of Applicants; Licensure and Continuing Education; and Consumer Protection. Through the examination of applicants, the Board accomplishes its legislative mandate to establish standards of service and training and educational qualifications for the rendering of ethical psychological services in Oregon. Because the Board believes that regular continuing education ensures the highest quality of professional services to the public, the Board requires that all licensed Psychologists and Psychologist Associates complete forty hours of continuing education biennially, with a minimum of four in the professional ethics. In addition, the Board is currently proposing a requirement for 4 hours of diversity training each period. The Board protects consumers by promptly investigating all complaints made concerning either the unethical or unlicensed practice of psychology in Oregon.

The statutory authority of the Board is contained in Oregon Revised Statutes Chapters 675 (Psychologists) and 676 (Health Professions Generally). The Board's Oregon Administrative Rules are located in Chapter 858. Licensed psychologists and psychologist associates, as public officials, are required to follow state requirements for reporting the abuse of children, the elderly, and adults with mental illness, and the unprofessional conduct of other health care professionals, subject to psychotherapist-patient privilege as established by Oregon law.

B. Agency Director

Randy Harnisch
Interim Executive Director
3218 Pringle Road SE, Suite 130
Salem, OR 97302-6309
503-373-1163

C. Governor's Policy Advisor

Sean Kolmer
900 Court Street NE
160 State Capitol
Salem, OR
503-378-6549

D. Affirmative Action Representative

Agency Board and Staff Development
Executive Director¹
3218 Pringle Road SE, Suite 130
Salem, OR 97302-6309
503-373-1155

Human Resources & Employee Recruitment:

Cyndi Smith
HR Shared Client Services
Department of Administrative Services
155 Cottage St
Salem, OR 97301
503-378-2298

Board Recruitment

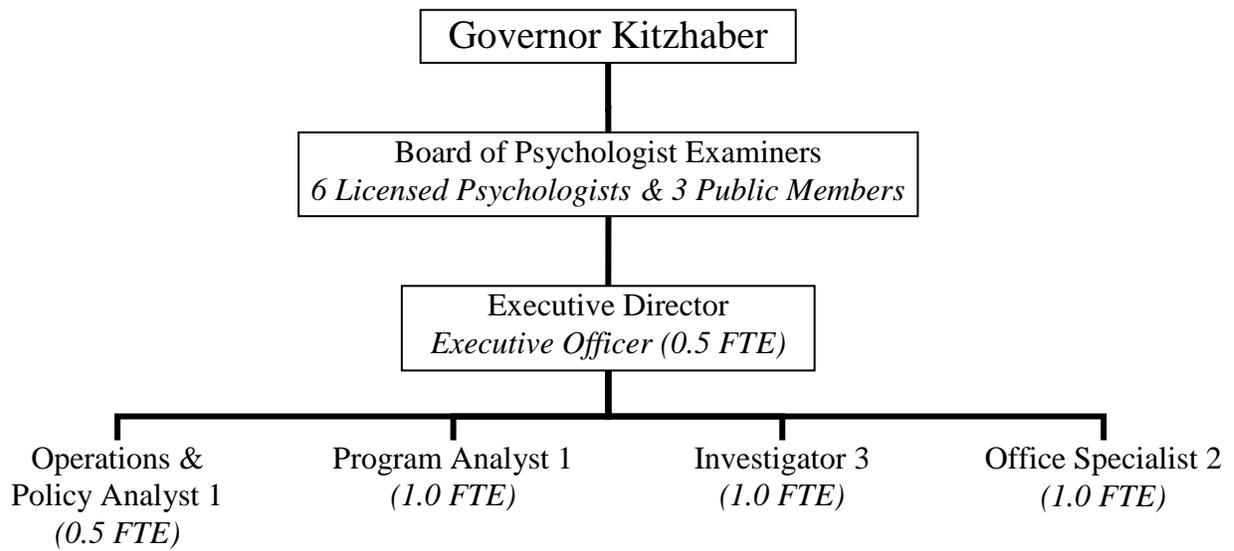
Kendall Clawson
Appointments, Governor's Office
900 Court Street
Salem, OR 97301
503-378-8471

E. Diversity & Inclusion Representative

Executive Director¹
3218 Pringle Road SE, Suite 130
Salem, OR 97302-6309
503-373-1155

¹ The Board is currently recruiting for a permanent full-time executive director who will assume this role.

F. *Agency Organizational Chart*



II. Affirmative Action Plan

The purpose of this plan is to update and maintain the previously initiated affirmative action program for the Oregon Board of Psychologist Examiners, in keeping with the directive of the Governor, state and federal laws and regulations, executive orders of the President of the United States of America concerning affirmative action, discrimination/non-discrimination guidelines appropriate under the Civil Rights Acts, equal employment opportunity (EEO) policies, and the Americans with Disabilities Act by which our good faith efforts must be directed.

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

Accordingly, the Board shall:

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

A. Agency Affirmative Action Policy Statement

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

1. Agency Affirmative Action Policy Statement for Individuals with Disabilities

The Board of Psychologist Examiners will not discriminate, nor tolerate discrimination, against any applicant or employee because of physical or mental

disability in regard to any position for which the known applicant for employment is qualified.

The Board agrees to take affirmative action to employ, advance in employment, and otherwise treat known qualified individuals with disabilities without regard to their physical or mental disabilities in all human resources selection and decision practices, such as: advertising, benefits, compensation, discipline (including probation, suspension, and/or termination for cause or layoff), employee facilities, performance evaluation, recruitment, social/recreational programs, and training. The Board will also continue to administer these practices without regard to race, color, religion, gender, sexual orientation, national origin, age, marital status or disability. Additionally, all applicants and employees are protected from coercion, intimidation, interference, or discrimination for filing a complaint or assisting in an investigation under this policy.

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

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

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

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

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

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

a. Internal Dissemination

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

- i. Be aware of the plan and can avail themselves of its benefit; and

- ii. Be aware of individual responsibility for effective implementation of the plan.
- iii. Conduct special meetings in which the Executive Director shall explain the intent of the Affirmative Action Plan and clearly communicate the Executive Director's personal commitment to and support of equal employment opportunity;
- iv. Include the Affirmative Action Policy Statement, Affirmative Action Plan and Grievance Procedure as part of each new employee's orientation;
- v. Post the agency's Affirmative Action Policy Statement and Grievance Procedure on the employee's bulletin board; and
- vi. Post the agency's Affirmative Action Policy Statement, Affirmative Action Plan, and Grievance Procedure on Board's website.
- vii. Distribute the agency's Affirmative Action Policy Statement, Affirmative Action Plan and Grievance Procedure to any employee upon request.

b. External Dissemination

- i. All recruitment announcements, applications for employment, and newspaper will contain the phrase, "THE BOARD OF PSYCHOLOGIST EXAMINERS IS AN EQUAL OPPORTUNITY, AFFIRMATIVE ACTION EMPLOYER COMMITTED TO WORK FORCE DIVERSITY."
- ii. The Board's Affirmative Action Plan is posted on the Board's website and made available to the public upon request.
- iii. The Board will provide copies of the agency's Affirmative Action Policy Statement, Affirmative Action Plan and Grievance Procedure to any person, including job applicants, upon request.
- iv. The Board will notify all bidders, contractors, subcontractors and suppliers of the agency's affirmative action policy. Notices shall include a statement that the agency will not knowingly do business with any bidder, contractor, subcontractor, or supplier of materials that discriminates against members of any protected class.

4. Monitoring and Reporting System

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

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

5. Complaint Process regarding Discrimination or Harassment

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

- a. Informal Complaint Process

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

 - i. The employee may ask the Affirmative Action Representative to keep the matter and identity of the employee confidential. (The agency will comply with the request, if possible.)
 - ii. The employee will sign documentation stating that he/she wishes his/her identity to remain confidential.

- iii. The discussion will be documented.
- iv. The Affirmative Action Representative will review the information and maintain confidentiality of the employee's identity when it is determined that action is necessary to correct the problem or to prevent a reoccurrence in similar situations.

b. Internal Complaint Process

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

c. External Complaint Process

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

Oregon Bureau of Labor and Industries - Civil Rights Division
800 NE Oregon St., Suite 1045
Portland, OR 97232
Phone Number: 971-673-0764

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

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

Governor’s Affirmative Action Office

255 Capitol Street NE, Suite 126
 Salem, OR 97301
 Phone Number: 503-986-6524
 Website: <http://www.oregon.gov/gov/GovAA/Pages/index.aspx>

U.S. Equal Employment Opportunity Commission

Seattle Field office EEOC Office/ Federal Office Building
 909 First Avenue, Suite 400
 Seattle, WA 98104
 Phone Number: 206-220-6883; TPP Phone Number: 206-220-6882
 The EEOC does not maintain an office in Oregon. The Seattle Field Office is open Monday – Friday from 8 a.m. – 4:30pm.
 File a Charge of Discrimination: <http://www.eeocomplaint.com/>

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

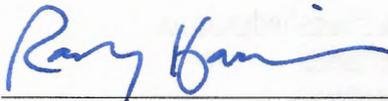
1315 SW Fifth Avenue, Suite 1030
 Portland, OR 97201
 Phone Number: 503-326-4112

The U.S. Department of Labor
Pacific Regional Office 71 Stevenson Street, Suite 1700
San Francisco, CA94105
Phone Number: 503-848-6969

The Civil Rights Office of Health & Human Services
Office of Civil Rights, Region D
2201 Six Avenue, Mail Stop RX-11
Seattle, WA 98121
Phone Number: 206-615-2290; TDD Phone Number: 206-615.2296

**Board of Psychologist Examiners Affirmative Action
-Representative/Director**
Becky Eklund
Executive Director
3218 Pringle Road SE, Suite 130
Salem, OR 97302-6309
Phone Number: 503-373-1155

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



Randy Harnisch, Interim Executive Director

12/19/14

Date

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

Randy Harnisch, Interim Executive Director
The Board of Psychologist Examiners
503-373-1155
randy.harnisch@state.or.us

B. *Agency Diversity & Inclusion Statement*

The Board of Psychologist Examiners provides a leadership culture that fosters and embeds diversity and inclusion throughout its operations, both internally with staff and externally with public members, stakeholders and partners by increasing diverse and multicultural perspectives, improving business and service delivery outcomes, increasing certified firm contracting inclusion, improving individual and organizational cultural competencies, improving organizational accountability, maximizing taxpayer dollars, and improving public confidence and community relations.

C. *Training, Education and Development Plan (TEDP)*

1. Staff

The affirmative action and equal employment opportunity policies are made known internally by distribution of the policy to all employees via email. All current employees have access to email, however if an employee did not have email access, distribution would be via hardcopy. The Affirmative Action Plan and the Equal Employment Opportunity policy are also available on the Board's website. New employees are trained at orientation regarding their rights and responsibilities under the Board's affirmative action plan and other Board policies to eliminate discrimination or harassment on the basis of age, color, marital status, mental or physical disability, national origin, race, religion, sex, sexual orientation, or other any reason prohibited by state or federal statute. They are provided a copy of the Board's Affirmative Action and Equal Employment Opportunity Policy and Plan and encouraged to review and discuss questions or concerns with the Executive Director. Additionally, the Affirmative Action Plan and equal employment opportunity policies are made available through the internal Agency Operations Manual.

All employees are made aware of any training and information via state e-mail or a staff distribution list on topics related to maintaining a discrimination, harassment, and violence-free workplace and work process. Agency staff will attend training in the areas of AA/EEO, Valuing Diversity and Harassment. Training may be in the form of guest speakers during all-staff meetings, formal classes, sharing of information from the Governor's Affirmative Action Office, and/or one-on-one discussions.

Employee performance evaluations are administered by the Executive Director annually per the SEIU Local 503 union agreement. The Executive Director (the Board's sole management personnel) will be evaluated by the Board annually for adherence to this Affirmative Action Plan.

The Board's recruitment announcements and advertisements identify the Agency as an Equal Opportunity/Affirmative Action employer and include the statement, "THE BOARD OF PSYCHOLOGIST EXAMINERS IS AN EQUAL OPPORTUNITY, AFFIRMATIVE ACTION EMPLOYER COMMITTED TO WORK FORCE DIVERSITY."

Because the Agency's staff consists of 4.0 FTE, possibilities for advancement within the Agency are limited due to qualification requirements. Despite these limitations, the Agency will make efforts to ensure that all employees are afforded advancement opportunities by planning for succession. The Executive Director is working to identify people that could move into key positions. In addition, because of the very small size of the agency, much cross-training has been implemented to accommodate key employee absence. This is facilitated through efforts by the Executive Director to incorporate special project assignments in order for employees to acquire new skills. It is the Board's policy to continue and expand this practice for purposes of succession planning, and to provide resources for employees to encourage their career development in state service, as is reasonably practicable to do. To accomplish this, the Board may provide opportunities for training to employees for developing proficiency, enhancing skills and encouraging development in areas for potential advancement. Staff shall be eligible for mandated and required training. Suggested training opportunities will be considered by the Executive Director for approval. In addition, the Agency utilizes all available state resources for recruiting vacancies.

The Agency holds regular staff meetings on the first Monday of each month, and all staff are required to attend. If a staff member is unable to attend in person or by phone, the Executive Director will fill that person in on the subject matter covered, either in person or through email using notes taken during the meeting.

2. Board Members

The Agency provides new Board Members with a copy of the Affirmative Action Plan. Board Members are invited to participate in cultural diversity training sessions. The Board also prioritizes sending new members to an annual or semi-annual meeting of the Association of State and Provincial Psychology Boards (ASPPB), which includes a new board member orientation training and many other opportunities to learn about current events and policy topics in the field of psychology.

3. Volunteers

Volunteer training includes a component wherein issues related to ADA accommodations and cultural competency and awareness issues are described and discussed. Volunteers are provided with a copy of the Affirmative Action Plan or directed to the Board's website where the Plan is available for public viewing. In addition, volunteers have access to the affirmative action and equal employment opportunity policies via the internal Agency operations manual.

The Board has not utilized any volunteers during the last two biennium, and it is unclear whether any will be utilized during 2015-2017. Volunteers would be included in the Board's periodic reviews of the Affirmative Action Policy Statement and any regular staff discussion of the Affirmative Action Plan in addition to their initial training.

4. Contractors/Vendors

When contracts are established or renewed, the Board provides contractors/vendors with a copy of the Affirmative Action Plan or directs them to the Board's website where the Plan is available for public viewing.

D. Programs

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

1. Internship Program(s)

a) Formal

The Agency does not currently have a formal internship program. However, the Agency previously employed an intern for the Summer of 2007 through the State of Oregon Professional and Managerial Internships in State Employment (PROMISE) Program. This intern was subsequently hired as a permanent employee. The Board recognizes the importance of enhancing work-based learning opportunities through creating and maintaining relationships with public and private schools that promote an effective and efficient workforce in state government and would consider employing another college or high school level student intern on an as-needed basis through a program such as the School-to-Work: Career Related Learning Program, Willamette University MBA Program's Practical Application for Careers and Enterprises Consulting in Non-Profit and Public Organizations (PACE) Program, Salem-Keizer School District's Ready to Learn, Ready to Work Program, or other programs.

The Board shall periodically evaluate the need for an intern as determined by the business needs of the organization. If and when a need is determined, the agency shall commit to establish a work-based learning program that is mutually beneficial to state employees, students, and educators. The Board will attempt to recruit an intern whose career goals are aligned with the needs of the specified project. The position should offer progressive skill mastery, broad instruction in a variety of elements, workplace mentoring, and instruction in general workplace competencies. In addition, if the opportunity is available, the Board will offer employment within the agency after the program is completed.

b) Informal

The Agency does not currently have an informal internship program, but will periodically evaluate the need for an intern as determined by the business needs of the organization.

2. Mentorship Program(s)

The Agency does not currently have a formal mentorship program, however informal mentorship is strong within the agency and between the other small agencies housed in

the building. Enthusiasm to guide and share knowledge and experience with fellow staff is a part of the agency's culture, and is supported by management and HR.

3. Community Outreach Program(s)

The Board of Psychologist Examiners utilizes community programs such as the National Alliance on Mental Illness, the Association of State and Provincial Psychology Boards, the American Psychological Association, the American Board of Professional Psychologists, the Oregon Psychological Association, and local university psychology programs for soliciting participation and feedback on initiatives affecting consumers and others.

The Board's greatest strength is the quality of and diversity of our employees who differ in age, race, nationality, ability and religious beliefs and operates across multiple cultures and languages. The Board encourages its employees to participate in various organizations within their community. The Board is committed to fostering a collaborative working relationship with organizations through various initiatives, such as:

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

c) Career Fairs

If vacancies occur, the Agency will explore new and different venues to promote a diverse pool of applicants, including attending job fairs and trade shows.

d) Community Events/Festivals

The Agency will provide information for staff to participate in community and multi-cultural events and festivals, and seek new opportunities for working with local ethnic groups.

e) Trade-Specific Events

The agency will consider participation in trade-specific events considering availability, business needs of the agency, and available resources.

4. Diversity Awareness Program

The Board is committed to taking steps to establish and embrace relationships with people representing different cultures by:

- Increasing knowledge of the characteristics, experiences, and common beliefs shared by people of different cultures, and disseminating that within the group or community.
- Establishing or embracing relationships with people representing different cultures.
- Fostering respect for diverse ways of doing things.
- Working together with people of other cultures in the State to reach common goals.
- Identifying the benefits of multiple perspectives in achieving the Agency's vision and seeking out potential productive partnerships with those who have such perspectives.
- Acknowledging that each person is unique and brings a unique set of beliefs and experiences. Consequently, identifying the many cultures that each person belongs within results in a complex and rich set of perspectives and histories. In promoting cultural competence, we are embracing:
 - The difference in people.
 - Respect for all and their individual dignity.
 - Culture(s) as core to who one is.

a) *Agency-Wide Diversity Council*

As a small agency of 4.0 FTE, the agency considers all staff members to be a part of the diversity council. The agency's Executive Director, who also serves as the Affirmative Action Representative, leads the Board's initiatives and activities to promote diversity, which include:

- Communicating to all staff in a variety of mediums the importance of diversity;
- Asking staff to focus on the organization and provide suggestions on ways to improve our diversity performance;
- Ensuring that employees are an integral part in the design of Board's efforts to plan and conduct affirmative action/equal employment opportunity and diversity activities;
- Widely disseminating the Board's Affirmative Action Plan goals throughout the agency;

b) *Employee Resource Groups (ERGs)/Affinity Groups*

The three non-management staff of the agency regularly collaborate to help foster a diverse, inclusive workplace aligned with organizational mission, values, goals, business practices, and objectives.

c) *Diversity Presentations and/or Activities*

The Board's initiatives for diversity presentations and/or activities include:

- Making presentations to community organizations such as Oregon Psychological Association conferences and higher educational facilities about the work of the Agency which in turn creates interest in our jobs;
- Assigning adequate resources to the affirmative action/equal employment opportunity activities. The Board will continue to revisit its budget to identify resources for its affirmative action/equal employment opportunity activities;
- Evaluating training resources in intercultural communication to address the communication style across cultures and generational differences within the Board;
- Drawing upon different sources to advertise our recruitments;
- Promoting a respectful workplace by offering training on diversity awareness, improving communications, conflict management, and fostering an open atmosphere to talk about problems and ideas;
- Creating a welcoming environment by fostering an acceptance of peoples' differences and treating everyone with respect and professionalism whether they are staff members, licensees or applicants, consumers, or vendors;
- Posting notices and forwarding e-mails that talk about cultural activities and other information that supports diversity and tolerance; and
- Displaying the agency's commitment to the Affirmative Action Plan by publicizing it on the Board website and providing digital and hard copies;
- Providing the State Diversity Survey to applicants and licensees and tracking the racial and ethnic makeup of these individuals so that Board staff may provide referrals reflective of consumers' language and cultural needs.

5. Leadership Development/Training Program

Because the Agency's staff consists of 4.0 FTE, there are limited internal opportunities. Despite these limitations, the Agency will make efforts to ensure that all employees are afforded opportunities for developing proficiency, enhancing skills and encouraging development in areas for potential advancement. With the agency, much cross-training has been implemented to accommodate key employee absence. This is facilitated through efforts by the Executive Director to incorporate special project assignments in order for employees to acquire new skills. It is the Board's policy to continue and expand this practice for purposes of succession planning, and to provide resources for employees to encourage their career development in state service, as is reasonably practicable to do. Staff shall be eligible for mandated and required training. Suggested training opportunities will be considered by the Executive Director for approval.

- d) *EEO data of trainees*
All of the Board's non-managerial staff are afforded training opportunities; 100% of these are individuals from protected classes.
- e) *Results of development/training program*
50% of non-managerial agency staff, each representing protected classes, began working at the agency either through internship or temporary employment, received significant training, and were subsequently hired as permanent staff.

E. Update: Executive Order 08-18

1. Cultural Competency Assessment and Implementation Services

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

As part of the Board's 2015-2017 Affirmative Action Plan, the agency will continue to maintain multicultural training through its monthly staff meetings and strive to seek diversity and cultural competency within our staff and Board Members. The Board will work towards implementing a Cultural Competency Assessment within the existing budget limitation. It is anticipated that this assessment will help determine where the Board's culture lies in the spectrum from culturally unaware to culturally competent. A culturally competent organization is able to use the policies, people and resources it has to systematically anticipate, recognize and respond to varying expectations of customers and employees. A culturally competent organization values individuals for their differences instead of expecting individuals to adapt to the organizations culture. The Board, its employees and customers will immediately benefit from their movement along the spectrum towards cultural competence.

The Board will develop a plan to enhance its cultural competence over the 2015-2017 Biennium. Implementation of the plan will result in:

- People of diverse backgrounds and experience effectively working together;
- People understanding and appreciating one another's differences; and
- People effectively communicating with and being respectful of those differences.

The plan will focus on:

- Stakeholder understanding and appreciation of the value of the Board's requirements;

- Greater awareness among staff;
- Possible changes to policies and procedures that will enhance effective communication and utilize differing strengths;
- Identifying training events that all employees will enjoy and participate in; and
- An increased respect for and understanding of diverse cultures within the workforce.

The Board will benefit from this plan by:

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

2. Statewide Exit Interview Survey

The Board of Psychologist Examiners has had five employee separations in the past five years. If and when the Board has employee separations, it offers an exit interview. The interview includes discussion and follow-up with the Executive Director on any concerns or trends. The Board will ensure that each separating employee is sent the link to the State's exit interview survey as required by Executive Order 08-18, and will encourage employees to complete the survey prior to separation. The survey will allow the employee to share their honest opinions regarding their work experience with the agency. As employees change agencies or separate from state employment, the Board is interested in how employees view their tenure and what information and suggestions they can provide related to their experience. The survey covers issues such as: benefits; working conditions; opportunities for career advancement; the quality and quantity of the workload; and relationships with co-workers and supervisors.

The Board will periodically review the results collected and perform a data analysis. The data will provide an understanding of how much of the voluntary turnover is preventable. If the analysis identifies a negative opinion regarding the agency's workplace environment, the Board will use this information as an opportunity to make changes to improve the work environment for the current employees, and improve job satisfaction.

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

1. Assess workplace deficiencies;
2. Enhance the work place;
3. Improve employee retention;

4. Achieve a diverse workforce through workforce planning; and
5. Improve any negative feedback from the survey.

Trend analysis is unnecessary due to the limited agency turnover. Instead, exit surveys are viewed in a qualitative manner (as described above) and considered when reviewing position job description and general agency practices.

3. Performance Evaluations of all Management Personnel

The Board of Psychologist Examiners remains committed to compliance with the Governor's executive orders requiring the inclusion of diversity and affirmative action requirements in position descriptions and annual performance evaluations. The Executive Director is the Agency's sole management personnel. Performance accountability in the areas of Affirmation Action and Diversity will be reviewed during annual evaluations.² Any goals or work plans for future performance will be outlined in the evaluation.

Executive Director's affirmative action duty descriptions:

- a) Understand Equal Employment Opportunity (EEO), Affirmative Action (AA), Diversity and Cultural Competency principles, and the agency's AA Plan goals and objectives. Develop and implement strategies to meet goals and objectives; and report annual efforts, successes and/or accomplishments during the period.
- b) Review hiring, transfers, promotional, developmental/rotational or training practices and procedures to identify and remove barriers in the attainment of the agency's affirmative action goals and objectives.
- c) Make hiring, transfer and promotional decisions in support of agency's affirmative action goals and objectives. Engage in appropriate recruitment efforts designed to reach agency's affirmative action goals and objectives.
- d) Promote and foster a positive work environment within the agency programs concerning EEO, AA, Diversity and Cultural Competencies by ensuring employees are aware and follow agency policies and procedures, and address work-related issues and/or concerns immediately and take appropriate action if necessary.
- e) Attend EEO, AA, and other diversity-related training to provide leadership to staff by being aware of diversity and cultural issues. This also includes supporting employees to attend such programs for further professional development.
- f) Ensure information regarding EEO, AA and Americans with Disabilities (ADA)

² *To achieve the public policy of the State of Oregon for persons in the state to attain employment and advancement without discrimination because of race, religion, color, sex, marital status, national origin, handicap or age, every state agency shall be required to include in the evaluation of all management personnel the manager's or supervisor's effectiveness in achieving affirmative action objectives as a key consideration of the manager's or supervisor's performance.* Executive Order 08-18.

information is properly displayed on the appropriate boards at the worksites(s).³

F. *Status of Contracts to Minority Businesses (ORS 659.015)*

a) *Number of Contracts with Minority or Women-Owned Businesses*

The Board does not currently have any contracts that exceed \$5,000 with minority or women-owned business.

b) *If zero contracts were awarded to minority or women-owned businesses, explain why.*

The Board rarely contracts for services besides information technology and subject matter experts that are called upon for single-need issues.

III. Roles for Implementation of Affirmative Action Plan

A. *Responsibilities and Accountabilities*

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

1. Executive Director

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

1. Foster and promote the importance of a diverse, and discrimination and harassment free workplace to Agency members and employees. Participate in cultural diversity trainings, orientations, and be an example of cultural sensitivity;

³ **659A.012 State agencies to carry out policy against discrimination in employment; evaluation of supervisors; affirmative action reports.** (1) To achieve the public policy of the State of Oregon for persons in the state to attain employment and advancement without discrimination because of race, religion, color, sex, marital status, national origin, disability or age, every state agency shall be required to include in the evaluation of all management personnel the manager’s or supervisor’s effectiveness in achieving affirmative action objectives as a key consideration of the manager’s or supervisor’s performance.

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

2. Review equal employment opportunity, affirmative action, and diverse work environment progress and problems at least annually. Approve strategies and timetables for meeting goals; and
3. Ensure that employees receive an orientation on the Agency's affirmative action goals and responsibilities and understand their own responsibilities for helping promote the affirmative action goals and objectives in the Agency.

Annual performance reviews will include ratings on the Executive Director's support and the effectiveness of the agency's Affirmative Action Plan.

2. Employees

Employees have an overall responsibility for complying with the Affirmative Action Plan and all applicable federal and state laws, rules and regulations. Duties also include:

1. Individually model awareness and tolerance of a diverse, and discrimination and harassment free workplace and work process; and
2. Act in a responsible manner if they become aware of any Board member or employee engaging in any type of harassment or insensitivity towards internal or external customers and co-workers.

3. Affirmative Action Representative

The Board entrusts and delegates to the Executive Director the responsibility for implementation and adherence to the Affirmative Action goals to which the Board is committed. Additional duties within this capacity include:

1. Work with Board members and staff to make sure they understand their responsibilities for promoting a diverse workforce environment and helping attain the goals of the Agency;
2. Ensure recruitment includes contacting recruitment sources such as minority and women-specific web sites, community agencies, community leaders and schools for the recruitment of people of color, persons with disabilities and women. Emphasize the Agency's support of equal employment opportunity, affirmative action, and a diverse workforce;
3. Ensure that all newspaper advertisements and announcements of employment opportunities contain the notice that the Agency is an Equal Opportunity/Affirmative Action Employer;
4. Discuss the State of Oregon/Department Affirmative Action Plan and Policy in New Employee Orientation. Include in the discussion:
 - a. A general overview of the relevant state and federal laws and regulations;
 - b. The role the Agency plays in providing equal employment opportunity; and
 - c. The location of the Agency's Affirmative Action Plan and how it can be utilized;
5. Train and inform all new employees during orientation about their rights and responsibilities under the Agency's affirmative action policy, and other Agency

policies to eliminate any harassment based on race, sex, age, religion, sexual orientation, or disability;

6. Review all exit interviews received. If it appears that discrimination or harassment was a factor in employee separation, conduct an investigation and take appropriate action;
7. Evaluate revised and new policies for possible adverse impact on the Agency's commitment to affirmative action and equal employment opportunity; and
8. Serve as a liaison between the Agency and the state and federal agencies that protect civil rights.

Annual performance reviews will include ratings on the Executive Director's support and effectiveness of the agency's Affirmative Action Plan.

IV. July 1, 2012 – June 30, 2014

A. *Accomplishment*

- The Agency employs a total of 4.0 FTE, including individuals from protected classes. This represents an increase of 0.5 FTE from last biennium.
- The Board's Education Committee has been collaborating with the Oregon Health Authority (OHA) as it implements House Bill 2611, which was passed during the 2013 legislative session. The new law will provide that certain agencies, including the Board, may adopt rules requiring licensees to receive cultural competency CE. The Board, already having the authority to require such trainings, has decided to be proactive and propose to add a requirement that psychologist and psychologist associate licensees complete four hours of education dedicated to the topic of diversity in each biennial reporting period. The Board is actively exploring methods of tracking and documenting licensees' participation in order to report biennially to OHA. The notice of public hearing for this administrative rulemaking was filed on November 14, 2014, and the Board is currently collecting public input on the proposal.
- The Agency surveys all licensees and applicants for tracking and reporting language and race statistics. Applicant surveys are included in application packets, and licensee survey statistics are included in the Agency newsletter annually. Diversity data is stored in the Agency database and can be queried for various types of information. This has enabled the Agency staff to assist consumers in searching for culturally competent services or healthcare providers who speak particular languages or belong to specific racial or ethnic groups.

B. *Progress made or lost since previous biennium*

- The proportion of people of color, people with disabilities, and women employed at the Agency has not changed since last biennium. The agency's current staffing level consists of three permanent employees; three are women, one is a person of color, and one is a person with disabilities. At this time there are two half-time vacancies.

- For the 2015-2017 biennium, the Agency has successfully increased a position filled by a person from a protected class from part-time to full-time.
- Cross-training and career developmental opportunities continued to be encouraged. The Agency's goal is to retain employees by keeping them challenged and giving them room for growth. However, the agency did experience a staffing turnover of two employees (1.0 FTE) during the 2013-2015 biennium. Both of these employees were individuals from protected classes. The Board's current recruitment efforts, in close partnership with the Oregon Department of Administrative Services, Enterprise Human Resource Services unit, are consistent with the agency's affirmative action goals and objectives.
- The Board's retention strategy is to:
 - Value our employees and urge them to participate in decisions that affect their work;
 - Treat our employees with respect and dignity;
 - Show our employees the benefits of working for the State of Oregon from pay to health insurance to location;
 - Support our employees in their learning and personal development plans;
 - Carefully maintain the Board's reputation for professionalism by making it a business people are proud to work for;
 - Communicate well and often. Let people know what is happening in the organization;
 - Make wise hiring decisions and continually evaluate our hiring practices;
 - Hold people accountable for adhering to our respectful workplace and harassment-free policy;
 - Encourage employees to avail themselves of promotional and job developmental opportunities within Oregon State Government;
 - Educate all employees and members in their responsibility to promote a working environment free from discrimination;
 - Comply with all federal rules and state laws and regulations regarding the employment of individuals with disabilities; and
 - Facilitate work environment that is attractive to a diverse pool of applicants, retains employees, and is accepting and respectful of employees' differences.
- Agency strengths:
 - The Agency has historically enjoyed a high level of staff retention.
 - Small agency size creates greater ease of communication. It is easy to ensure that everyone is involved in the policies and initiatives of the organization.

- The Agency maintains an internal Operations Policy that is updated regularly. This facilitates the passing of knowledge within the agency and mitigates the risk associated with an unexpected/sudden employee departure.
- Some challenges identified:
 - Recently, the Board has experienced high levels of turnover, including the Executive Director position multiple times. Oregon Department of Administrative Services, Enterprise Human Resource Services Unit provided the agency’s separating employees with the link to the State’s exit interview survey, however no responses were received. The Board is also participating in a pilot project whereby it shares an Executive Director and Operations and Policy Analyst with the Board of Licensed Professional Counselors and Therapists. This has created some shifts in staff duties and organizational operations.
 - Limited agency size – a fluid retention strategy is somewhat difficult because of the nature of a very small agency. Over the years, the Board has seen a dramatic increase in the number of applicants, licensees, and consumer complaints. The Board has, however, increased from 3.5 to 4.0 FTE since the last report.
 - Each staff member employs a specialized function and is key to the Agency. Thus ensuring staff coverage during staff vacations, holidays and staff illnesses can be challenging.
- If the above challenges are not faced, or if the agency does not maintain a comprehensive retention strategy, we could potentially lose the skill and talent of key employees. Because of the small agency size, each staff member employs a specialized function and is key to the Agency.
- The Agency identified that three generations of employees existing within the Agency: the “Baby Boom” generation (born 1946-1964); “Generation X” (born 1965-1982); and “Generation Y” (born 1983-2002).
- The Agency was unable to send a representative to the AA Workgroup due to scheduling conflicts, limited staff, and unusually high levels of staff turnover. The Agency has made it a priority to attend the next workgroup in order to learn new strategies to retain/promote employees of protected classes.
- The Executive Director performs an ongoing review and evaluation of the Agency’s hiring practices.

V. July 1, 2015 – June 30, 2017

A. Goals

The State Board of Psychologist Examiners Affirmative Action goals for the 2015-2017 biennium are:

1. Continue to provide information and opportunities for staff to participate in diversity training and multi-cultural events, and seek new opportunities for working with higher education and local ethnic groups. The Board will continue to develop strategies to recruit, retain and promote a diverse staff. The Board recognizes the value of individual and cultural difference and creates a work environment where talents and abilities are valued. If vacancies occur, the Agency will explore new and different venues to promote a diverse pool of applicants, including attending job fairs and trade shows.
2. Revise, as needed, recruitment and promotion policies and criteria for exceptions that provide the opportunity for the Board to recruit a more diverse population and also provide appropriate advancement opportunities for incumbents, including a focus on the retention of women and minorities.
3. Continue to communicate the importance of diversity in staff meetings and include diversity discussions with staff. The Board utilizes diversity within the workforce by incorporating diverse perspectives into business decisions. The Executive will attend required training to participate in the development and implementation of a program that fosters cultural competency and multi-cultural organizational development. The Board will continue to communicate cultural events throughout the area via posting on the employee bulletin board.
4. Work closely with the Department of Administrative Services to determine appropriate recruitment and training opportunities to develop higher levels of cultural competency.
5. Continue the focus on developing a work environment that is attractive to a diverse pool of applicants, retains employees, and is accepting and respectful of employees' differences. A welcoming environment is created a number of ways - by sharing e-mail activity notices from the Governor's Affirmative Action Office, posting posters on the employee bulletin board, encouraging employees to share their thoughts and ideas, responding to issues quickly and efficiently, etc. Respectful workplace behaviors will be expected and enforced.
6. Encourage employees to avail themselves of promotional and job developmental opportunities within Oregon State Government.
7. The Executive Director will be evaluated by the Board annually for adherence to this Affirmative Action Plan and on the basis of involvement in achieving the affirmative action objectives.

B. *Strategies and Timelines for Implementation*

The Affirmative Action strategies of the State Board of Psychologist Examiners for the 2015-2017 biennium are to:

1. Continue to work collaboratively in identifying open and competitive recruitment strategies and venues for attracting qualified candidates to achieve a diverse workforce utilizing this Affirmative Action Plan. *Timeline: Ongoing*

2. Continue to work with the Department of Administrative Services to ensure an effective use of a variety of recruitment venues to attract qualified and diverse candidates. *Timeline: Ongoing*
3. Educate all employees and members in their responsibility to promote a working environment free from discrimination. Encourage employees to promote a working environment free from discrimination. *Timeline: Ongoing*
4. Disseminate policies to all employees and members, and make policies accessible through a variety of sources. *Timeline: Ongoing*
5. Continue to track applicant and licensee race and language statistics and provide assistance to citizens searching for culturally competent services and/or specific languages. *Timeline: Ongoing*
6. Provide hiring personnel the tools and support needed to make good hiring decisions to attract qualified candidates and achieve affirmative action goals. *Timeline: Ongoing*
7. Comply with all federal and state laws and regulations regarding the employment of individuals with disabilities. *Timeline: Ongoing*
8. Assess the performance of the Executive Director based on their good faith efforts to support and promote the affirmative action plan. *Timeline: In progress*
9. Continue the focus on developing a work environment that is attractive to a diverse pool of applicants, retains employees, and is accepting and respectful of employees' differences. Continue to keep cultural diversity in the forefront of all employees by sending out information sent to us by the Governor's Affirmative Action Office and showing the Executive Director's commitment to cultural diversity by being an example of patience, tolerance and respect. *Timeline: Ongoing*
10. Support employees to attend EEO, AA, and other diversity-related training to provide leadership to staff by being aware of diversity and cultural issues and to further professional development. Encourage staff to sign up for the Cultural-Health E-Newsletter, which is designed to update members on various multicultural health issues affecting communities. *Timeline: Ongoing*
11. Continue to encourage employees to avail themselves of promotional and job developmental opportunities within Oregon State Government. *Timeline: Ongoing*
12. Review all selection, promotional, and training procedures to ensure non-discriminations in practice. Review equal employment opportunity, affirmative action, and diverse work environment progress and problems. *Timeline: Annually or As Needed*
13. Continue to encourage the Board's policy of cross-training and career developmental opportunities. The Agency's goal is to retain employees by keeping them challenged and giving them room for growth. *Timeline: Ongoing*

SUBJECT: ADA and Reasonable Accommodation in Employment	NUMBER: 50.020.10
DIVISION: Human Resource Services Division	EFFECTIVE DATE: 6/7/10
APPROVED: Signature on file with Human Resource Services Division	

POLICY STATEMENT:

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

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

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

AUTHORITY:

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

APPLICABILITY:

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

ATTACHMENTS:

ADA Accommodation Tool Kit

DEFINITIONS:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

POLICY

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

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

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

AUTHORITY: ORS 174.100, 240.086(1); 240.145(3); 240.250; 240.316(4); 240.321; 240.555; 240.560; 659A.029; 659A.030; Title VII; Civil Rights Act of 1964; Executive Order EO-93-05; Rehabilitation Act of 1973; Employment Act of 1967; Americans with Disabilities Act of 1990; and 29 CFR §37.

APPLICABILITY: All employees, state temporary employees and volunteers.

ATTACHMENTS: None

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

POLICY

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

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

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

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

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

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

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

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

(ii) the name of the complainant;

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

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

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

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

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

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

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

- (f) **Investigation.** The agency, board, or commission Human Resource section, Executive Director, or chair, as applicable, will coordinate and conduct or delegate responsibility for coordinating and conducting an investigation.
- (A) All complaints will be taken seriously and an investigation will be initiated as quickly as possible.
 - (B) The agency, board or commission may need to take steps to ensure employees are protected from further potential discrimination or harassment.
 - (C) Complaints will be dealt with in a discreet and confidential manner, to the extent possible.
 - (D) All parties are expected to cooperate with the investigation and keep information regarding the investigation confidential.
 - (E) The agency, board or commission will notify the accused and all witnesses that retaliating against a person for making a report of discrimination, workplace harassment or sexual harassment will not be tolerated.
 - (F) The agency, board or commission will notify the complainant and the accused when the investigation is concluded.
 - (G) Immediate and appropriate action will be taken if a complaint is substantiated.
 - (H) The agency, board or commission will inform the complainant if any part of a complaint is substantiated and that action has been taken. The complainant will not be given the specifics of the action.
 - (I) The complainant and the accused will be notified by the agency, board or commission if a complaint is not substantiated.
- (g) **Penalties.** Conduct in violation of this policy will not be tolerated.
- (A) Employees engaging in conduct in violation of this policy may be subject to disciplinary action up to and including dismissal.
 - (B) State temporary employees and volunteers who engage in conduct in violation of this policy may be subject to termination of their working or volunteer relationship with the agency, board or commission.
 - (C) An agency, board or commission may be liable for discrimination, workplace harassment or sexual harassment if it knows of or should know of conduct in violation of this policy and fails to take prompt, appropriate action.
 - (D) Managers and supervisors who know or should know of conduct in violation of this policy and who fail to report such behavior or fail to take prompt, appropriate action may be subject to disciplinary action up to and including dismissal.
 - (E) An employee who engages in harassment of other employees while away from the workplace and outside of working hours may be subject to the provisions of this policy if that conduct has a negative impact on the work environment and/or working relationships.
 - (F) If a complaint involves the conduct of a contracted employee or a contractor, the agency, board, or commission Human Resource section, Executive Director, chair, or designee must inform the contractor

of the problem behavior and require prompt, appropriate action.

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

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

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

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

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

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

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

(B) be given directions to read the policy;

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

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

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

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

Performance Standard: 100%

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

Performance Standard: 100%

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

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.

(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.

105-040-0015

Veteran's Preference in Employment

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

Other Agency Documentation in Support of its Affirmative Action Plan

Persons with Disabilities Policy and Complaint Procedure

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

The Board will make every effort to furnish appropriate and necessary auxiliary aids to ensure that individuals with disabilities will have equal opportunities to participate in activities and to receive the services of the department.

Definition of a Person with a Disability: A person who has a physical or mental impairment which substantially limits one or more major life activities, has a record of such impairment or is regarded as having such an impairment. The agency Executive Director is designated as the ADA Coordinator pursuant to Part 35.107 of the ADA.

In compliance with ADA guidelines, the Board will provide special materials, services or assistance to individuals with a disability upon sufficient notice to the Board office. For the hearing impaired, the Board may be contacted through Oregon Relay at 1-800-735-1232.

- An employee, volunteer, provider, or vendor who believes he/she has been discriminated against due to disability should contact the Executive Director. If the issue is not resolved to the person's satisfaction, they should file a complaint regarding employment with the Equal Employment Opportunity Commission; or a complaint regarding services with the U.S. Department of Justice, Civil Rights Division.

Harassment in the Workplace Policy and Complaint Procedure

(1) Discrimination Prohibited. It is the policy of the Board of Psychologist Examiners to provide a work environment free from unlawful discrimination on the basis of race, color, religion, gender, sexual orientation, marital status, national origin, disability, age (18 or older), or because of the race, color, religion, gender, sexual orientation, marital status, national origin, disability, or age of any other person with whom the individual associates, or any other factor that an employer is prohibited by law from considering when making employment decisions (protected class status). This policy applies to all matters relating to hiring, firing, transfer, promotion, benefits, compensation, and other terms and conditions of employment.

(2) Workplace Harassment Prohibited. It is also the policy of the Board that all employees should enjoy a work environment that is free from unlawful harassment (harassment based on the employee's protected class status). All employees are expected to refrain from sexual and other unlawful harassment.

(3) Retaliation Prohibited. This policy prohibits retaliation against employees who report violations or potential violations of this policy or assist the Board in investigating matters raised under this policy. It also prohibits retaliation for testifying, assisting or participating in an investigation, proceeding or hearing conducted by the Oregon Bureau of Labor and Industries (BOLI) or the Equal Employment Opportunity Commission (EEOC).

(4) Penalties. Conduct in violation of this policy will not be tolerated, and may result in disciplinary action up to and including dismissal. Also, managers and supervisors who know or should have known of conduct in violation of this policy and who fail to promptly report such behavior are subject to disciplinary action up to and including dismissal.

(5) Harassment Definition and Examples: Harassment is conduct or a display (verbal, physical or visual) that demeans or shows hostility or aversion toward an individual or group because of the person's or group's race, color, religion, gender, sexual orientation, marital status, national origin, disability, age, or other protected class status and that: (1) has the purpose or effect of creating an intimidating, hostile, or offensive working environment; (2) has the purpose or effect of unreasonably interfering with an individual's work performance; or (3) otherwise adversely affects an individual's employment opportunities.

- (a) Examples of prohibited harassment may include (these examples are not meant to be all-inclusive): epithets, jokes, slurs, negative stereotyping, demeaning comments or labels, or threatening, intimidating or hostile acts that relate to race, color, religion, gender, sexual orientation, marital status, national origin, disability, age, or other protected class status; written or graphic material that puts down or shows hostility or dislike towards an individual or group because of race, color, religion, gender, sexual orientation, marital status, national origin, disability, age, or other protected class status and is placed on walls, bulletin boards, computers or elsewhere on the employer's premises, or accessed or circulated in the workplace, electronically or otherwise.
- (b) Sexual harassment is a form of unlawful 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 used as a basis for any employment decision (e.g., granting a leave request, promotion, favorable performance appraisal); 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.
 - (3) Examples of prohibited sexual harassment may include (these examples are not intended to be all-inclusive): unwelcome touching or closeness of a personal nature, including sexual contact, leaning over, cornering, pinching, sexual innuendoes, teasing and other sexual talk such as jokes, intimate inquiries, persistent unwanted courting, sexist put-downs or insults, sexually suggestive comments, inappropriate use of state

communication systems including email, internet and telephone, and written or graphic material of a sexual or sexist nature. See also the examples under part (a) above.

(6) Complaint Procedure:

(a) Complaint. An employee who is subject to or is aware of conduct which violates or might violate this policy should report that information immediately to the Executive Director or the Board Chair (if the complaint is against the Executive Director). If at all possible, the report should be made before the behavior becomes severe. The complaint should be reported verbally or in writing within 30 calendar days of the alleged act, preferably earlier. However, complaints filed late will still be investigated pursuant to this policy to the extent possible. Complaints should include the name of the complainant, the name(s) of the person(s) alleged to have been discriminated against or harassed (if different from the person bringing the complaint), the name(s) of the person(s) alleged to have engaged in the prohibited conduct, a specific and detailed description of the conduct that the employee believes is discrimination or harassment, and a description of the remedy the employee desires.

(b) Investigation. The complaint will be given prompt and thorough attention including an initial inquiry into whether the discrimination or harassment has occurred, steps to prevent any ongoing discrimination or harassment, and an impartial investigation. If the complaint is substantiated, prompt and appropriate corrective action will be taken. The affected parties will be informed that the investigation has concluded and, if the complaint is sustained, that appropriate corrective action will be or has been taken. All personnel can be assured that complaints will be taken seriously, will be investigation as necessary, and will to the extent possible consistent with applicable laws, rules, policies and investigatory needs, be dealt with in a confidential manner.

(c) Other Complaints and Grievances. Nothing in this policy precludes any person from filing a grievance in accordance with the SEIU Collective Bargaining Agreement, or a complaint with the BOLI and/or the EEOC, or a lawsuit. Timeliness for filing grievances, lawsuits, and/or complaints with BOLI/EEOC are different from those established in this policy. Employees should contact SEIU, private counsel, or BOLI/EEOC directly for specific guidance on filing deadlines and procedures.

“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: _____

The Age Discrimination in Employment Act of 1967

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

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

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

- **Apprenticeship Programs**

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

- **Job Notices and Advertisements**

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

- **Pre-Employment Inquiries**

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

- **Benefits**

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

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

- **Waivers of ADEA Rights**

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

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

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

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

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

An individual with a disability is a person who:

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

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

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

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

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

An employer generally does not have to provide a reasonable accommodation unless an individual with a disability has asked for one. If an employer believes that a medical condition is causing a performance or conduct problem, it may ask the employee how to solve the problem and if the employee needs a reasonable accommodation. Once a reasonable accommodation is requested, the employer and the individual should discuss the individual's needs and identify the appropriate reasonable accommodation. Where more than one accommodation would work, the employer may choose the one that is less costly or that is easier to provide.

Title I of the ADA also covers:

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

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

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

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

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

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

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

(such as Braille or large print), the purchase of adaptive equipment, the modification of existing equipment, or the removal of architectural barriers.

- **Work Opportunity Tax Credit (Internal Revenue Code Section 51)**
Employers who hire certain targeted low-income groups, including individuals referred from vocational rehabilitation agencies and individuals receiving Supplemental Security Income (SSI) may be eligible for an annual tax credit of up to \$2,400 for each qualifying employee who works at least 400 hours during the tax year. Additionally, a maximum credit of \$1,200 may be available for each qualifying summer youth employee.
- **Architectural/Transportation Tax Deduction (Internal Revenue Code Section 190 Barrier Removal):**
This annual deduction of up to \$15,000 is available to businesses of any size for the costs of removing barriers for people with disabilities, including the following: providing accessible parking spaces, ramps, and curb cuts; providing wheelchair-accessible telephones, water fountains, and restrooms; making walkways at least 48 inches wide; and making entrances accessible.

Disability Discrimination

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

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

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

The law also protects people from discrimination based on their relationship with a person with a disability (even if they do not themselves have a disability). For example, it is illegal to discriminate against an employee because her husband has a disability.

Note: Federal employees and applicants are covered by the Rehabilitation Act of 1973, instead of the Americans with Disabilities Act. The protections are mostly the same.

Disability Discrimination & Work Situations

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

Disability Discrimination & Harassment

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

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

Disability Discrimination & Reasonable Accommodation

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

A reasonable accommodation is any change in the work environment (or in the way things are usually done) to help a person with a disability apply for a job, perform the duties of a job, or enjoy the benefits and privileges of employment.

Reasonable accommodation might include, for example, making the workplace accessible for wheelchair users or providing a reader or interpreter for someone who is blind or hearing impaired.

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

Disability Discrimination & Reasonable Accommodation & Undue Hardship

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

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

Definition Of Disability

Not everyone with a medical condition is protected by the law. In order to be protected, a person must be qualified for the job and have a disability as defined by the law.

A person can show that he or she has a disability in one of three ways:

- A person may be disabled if he or she has a physical or mental condition that substantially limits a major life activity (such as walking, talking, seeing, hearing, or learning).
- A person may be disabled if he or she has a history of a disability (such as cancer that is in remission).

- A person may be disabled if he is believed to have a physical or mental impairment that is not transitory (lasting or expected to last six months or less) and minor (even if he does not have such an impairment).

Disability & Medical Exams During Employment Application & Interview Stage

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

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

Disability & Medical Exams After A Job Offer For Employment

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

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

Once a person is hired and has started work, an employer generally can only ask medical questions or require a medical exam if the employer needs medical documentation to support an employee's request for an accommodation or if the employer believes that an employee is not able to perform a job successfully or safely because of a medical condition.

The law also requires that employers keep all medical records and information confidential and in separate medical files.

Available Resources

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

- [Your Employment Rights as an Individual With a Disability](#)
- [Job Applicants and the ADA](#)
- [Understanding Your Employment Rights Under the ADA: A Guide for Veterans](#)
- [Questions and Answers: Promoting Employment of Individuals with Disabilities in the Federal Workforce](#)
- [The Family and Medical Leave Act, the ADA, and Title VII of the Civil Rights Act of 1964](#)
- [The ADA: A Primer for Small Business](#)
- [Your Responsibilities as an Employer](#)
- [Small Employers and Reasonable Accommodation](#)
- [Work At Home/Telework as a Reasonable Accommodation](#)
- [Applying Performance And Conduct Standards To Employees With Disabilities](#)
- [Obtaining and Using Employee Medical Information as Part of Emergency Evacuation Procedures](#)
- [Veterans and the ADA: A Guide for Employers](#)
- [Pandemic Preparedness in the Workplace and the Americans with Disabilities Act](#)

- [Employer Best Practices for Workers with Caregiving Responsibilities](#)
- [Reasonable Accommodations for Attorneys with Disabilities](#)
- [How to Comply with the Americans with Disabilities Act: A Guide for Restaurants and Other Food Service Employers](#)
- [Final Report on Best Practices For the Employment of People with Disabilities In State Government](#)
- [ABCs of Schedule A Documents](#)

The ADA Amendments Act

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

The Questions and Answers Series

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

Mediation and the ADA

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

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

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

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

Equal Pay Act

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

Skill

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

Effort

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

Responsibility

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

Working Conditions

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

Establishment

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

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

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

Title VII, ADEA, and ADA

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

- An employer pays an employee with a disability less than similarly situated employees without disabilities and the employer’s explanation (if any) does not satisfactorily account for the differential.
- An employer sets the compensation for jobs predominately held by, for example, women or African-Americans below that suggested by the employer’s job evaluation study, while the pay for jobs predominately held by men or whites is consistent with the level suggested by the job evaluation study.
- An employer maintains a neutral compensation policy or practice that has an adverse impact on employees in a protected class and cannot be justified as job-related and consistent with business necessity. For example, if an employer provides extra compensation to employees who are the “head of household,” i.e., married with dependents and the primary financial contributor to the household, the practice may have an unlawful disparate impact on women.

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

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

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

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

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

Definition of "Genetic Information"

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

Discrimination Because of Genetic Information

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

Harassment Because of Genetic Information

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

Retaliation

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

Rules Against Acquiring Genetic Information

- It will usually be unlawful for a covered entity to get genetic information. There are six narrow exceptions to this prohibition:
- Inadvertent acquisitions of genetic information do not violate GINA, such as in situations where a manager or supervisor overhears someone talking about a family member’s illness.
- Genetic information (such as family medical history) may be obtained as part of health or genetic services, including wellness programs, offered by the employer on a voluntary basis, if certain specific requirements are met.
- Family medical history may be acquired as part of the certification process for FMLA leave (or leave under similar state or local laws or pursuant to an employer policy), where an employee is asking for leave to care for a family member with a serious health condition.
- Genetic information may be acquired through commercially and publicly available documents like newspapers, as long as the employer is not searching those sources with the intent of finding genetic information or accessing sources from which they are likely to acquire genetic information (such as websites and on-line discussion groups that focus on issues such as genetic testing of individuals and genetic discrimination).
- Genetic information may be acquired through a genetic monitoring program that monitors the biological effects of toxic substances in the workplace where the monitoring is required by law or, under carefully defined conditions, where the program is voluntary.
- Acquisition of genetic information of employees by employers who engage in DNA testing for law enforcement purposes as a forensic lab or for purposes of human remains identification is permitted, but the genetic information may only be used for analysis of DNA markers for quality control to detect sample contamination.

Confidentiality of Genetic Information

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

National Origin Discrimination

National origin discrimination involves treating people (applicants or employees) unfavorably because they are from a particular country or part of the world, because of ethnicity or accent, or because they appear to be of a certain ethnic background (even if they are not).

National origin discrimination also can involve treating people unfavorably because they are married to (or associated with) a person of a certain national origin or because of their connection with an ethnic organization or group.

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

National Origin Discrimination & Work Situations

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

National Origin & Harassment

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

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

National Origin & Employment Policies/Practices

The law makes it illegal for an [employer or other covered entity](#) to use an employment policy or practice that applies to everyone, regardless of national origin, if it has a negative impact on people of a certain national origin and is not job-related or necessary to the operation of the business.

An employer can only require an employee to speak fluent English if fluency in English is necessary to perform the job effectively. An "English-only rule", which requires employees to speak only English on the job, is only allowed if it is needed to ensure the safe or efficient operation of the employer's business and is put in place for nondiscriminatory reasons.

An employer may not base an employment decision on an employee's foreign accent, unless the accent seriously interferes with the employee's job performance.

Citizenship Discrimination & Workplace Laws

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

I-9), based on the employee's national origin or citizenship status. It is the employee's choice which of the acceptable Form I-9 documents to show to verify employment eligibility.

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

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

1-800-255-7688 (voice for employees/applicants),

1-800-237-2515 (TTY for employees/applicants),

1-800-255-8155 (voice for employers), or

1-800-362-2735 (TTY for employers), or

<http://www.usdoj.gov/crt/osc>.

Pregnancy Discrimination

Pregnancy Discrimination

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

Pregnancy Discrimination & Work Situations

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

Pregnancy Discrimination & Temporary Disability

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

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

For more information about the ADA, see <http://www.eeoc.gov/laws/types/disability.cfm>.

For information about the ADA Amendments Act, see http://www.eeoc.gov/laws/types/disability_regulations.cfm.

Pregnancy Discrimination & Harassment

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

Pregnancy, Maternity & Parental Leave

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

An employer may not single out pregnancy-related conditions for special procedures to determine an employee's ability to work. However, if an employer requires its employees to submit a doctor's statement concerning their ability to work before granting leave or paying sick benefits, the employer may require employees affected by pregnancy-related conditions to submit such statements. Further, under the Family and Medical Leave Act (FMLA) of 1993, a new parent (including foster and adoptive parents) may be eligible for 12 weeks of leave (unpaid or paid if the employee has earned or

accrued it) that may be used for care of the new child. To be eligible, the employee must have worked for the employer for 12 months prior to taking the leave and the employer must have a specified number of employees. See <http://www.dol.gov/whd/regs/compliance/whdfs28.htm>.

Pregnancy & Workplace Laws

Pregnant employees may have additional rights under the Family and Medical Leave Act (FMLA), which is enforced by the U.S. Department of Labor. Nursing mothers may also have the right to express milk in the workplace under a provision of the Fair Labor Standards Act enforced by the U.S. Department of Labor's Wage and Hour Division.

See <http://www.dol.gov/whd/regs/compliance/whdfs73.htm>.

For more information about the Family Medical Leave Act or break time for nursing mothers, go to <http://www.dol.gov/whd>, or call 202-693-0051 or 1-866-487-9243 (voice), 202-693-7755 (TTY).

Race/Color Discrimination

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

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

Discrimination can occur when the victim and the person who inflicted the discrimination are the same race or color.

Race/Color Discrimination & Work Situations

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

Race/Color Discrimination & Harassment

It is unlawful to harass a person because of that person's race or color.

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

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

Race/Color Discrimination & Employment Policies/Practices

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

Facts About Race/Color Discrimination

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

It is unlawful to discriminate against any employee or applicant for employment because of race or color in regard to hiring, termination, promotion, compensation, job training, or any other term, condition, or privilege of employment. Title VII also prohibits employment decisions based on

stereotypes and assumptions about abilities, traits, or the performance of individuals of certain racial groups.

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

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

Race-Related Characteristics and Conditions

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

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

Color Discrimination

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

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

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

Title VII's protections include:

- **Recruiting, Hiring, and Advancement**

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

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

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

- **Compensation and Other Employment Terms, Conditions, and Privileges**

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

- **Harassment**

Harassment on the basis of race and/or color violates Title VII. Ethnic slurs, racial "jokes," offensive or derogatory comments, or other verbal or physical conduct based on an individual's race/color constitutes unlawful harassment if the conduct creates an intimidating, hostile, or offensive working environment, or interferes with the individual's work performance.

- **Retaliation**

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

- **Segregation and Classification of Employees**

Title VII is violated where minority employees are segregated by physically isolating them from other employees or from customer contact. Title VII also prohibits assigning primarily minorities to predominantly minority establishments or geographic areas. It is also illegal to exclude minorities from certain positions or to group or categorize employees or jobs so that certain jobs are generally held by minorities. Title VII also does not permit racially motivated decisions driven by business concerns – for example, concerns about the effect on employee relations, or the negative

reaction of clients or customers. Nor may race or color ever be a bona fide occupational qualification under Title VII.

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

- **Pre-Employment Inquiries and Requirements**

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

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

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

Religious Discrimination

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

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

Religious Discrimination & Work Situations

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

Religious Discrimination & Harassment

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

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

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

Religious Discrimination and Segregation

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

Religious Discrimination & Reasonable Accommodation

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

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

Religious Accommodation/Dress & Grooming Policies

Unless it would be an undue hardship on the employer's operation of its business, an employer must reasonably accommodate an employee's religious beliefs or practices. This applies not only to schedule changes or leave for religious observances, but also to such things as dress or grooming practices that an employee has for religious reasons. These might include, for example,

wearing particular head coverings or other religious dress (such as a Jewish yarmulke or a Muslim headscarf), or wearing certain hairstyles or facial hair (such as Rastafarian dreadlocks or Sikh uncut hair and beard). It also includes an employee's observance of a religious prohibition against wearing certain garments (such as pants or miniskirts).

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

Religious Discrimination & Reasonable Accommodation & Undue Hardship

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

Religious Discrimination And Employment Policies/Practices

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

Retaliation

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

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

Retaliation & Work Situations

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

Facts About Retaliation

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

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

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

Adverse Action

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

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

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

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

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

Covered Individuals

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

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

Protected Activity

Protected activity includes:

Opposition to a practice believed to be unlawful discrimination

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

Examples of protected opposition include:

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

Examples of activities that are NOT protected opposition include:

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

Participation in an employment discrimination proceeding.

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

Examples of participation include:

- Filing a charge of employment discrimination;
- Cooperating with an internal investigation of alleged discriminatory practices; or

- Serving as a witness in an EEO investigation or litigation.

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

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

Sex-Based Discrimination

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

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

Sex Discrimination & Work Situations

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

Sex Discrimination Harassment

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

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

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

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

Sex Discrimination & Employment Policies/Practices

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