December 16, 2016

Serena Stoudamire Wesley
Governor’s Diversity and Inclusion Office
255 Capitol Street NE, Suite 126
Salem, OR 97301

Re: Bureau of Labor and Industries 2017-2019 Affirmative Action Plan

Dear Ms. Stoudamire Wesley:

The Bureau of Labor and Industries’ (BOLI) Civil Rights Division, Wage and Hour Division, Apprenticeship and Training Division, Administrative Prosecution Unit, and Technical Assistance for Employers Unit serve employees and employers in a variety of ways. We are committed to protect employment rights, advance employment opportunities, and protect access to housing and public accommodations, keeping them free from discrimination.

Enclosed is the 2017-2019 Affirmative Action Plan for the Bureau of Labor and Industries. The plan highlights our accomplishments in affirmative action and diversity and inclusion, as well as our goals for continuing to attract and maintain a diverse workforce.

Our accomplishments in the 2015-2017 biennium included networking with members of diverse organizations to disseminate information about the services BOLI provides to Oregonians, what job openings are available, and what kinds of career services assistance we offer to applicants. New goals for 2017-2019 include providing career development assistance, such as informational interviews, mock interviews, and application assistance to people of color, people with disabilities, veterans and women, as well as employees at BOLI who want to further their careers.

The efforts outlined in this Affirmative Action Plan reflect the strategies and our ongoing work of outreach to create opportunities for education, skills development, and career goal attainment.

In addition to our commitment to having a diverse workforce and a welcoming environment, we continue to support the work of the Governor’s Diversity and Inclusion Office to promote diversity, equity, and inclusion statewide.

If you have questions about the plan or need more information, please feel free to contact Veronica Murray, our agency diversity outreach coordinator, at 503-947-7283 or me.

Sincerely,

Brad Avakian
Affirmative Action Plan
2017 - 2019 Biennium

Brad Avakian, Commission of Labor
800 NE Oregon Street, Suite 1045
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I. Agency Description

The 1903 Oregon Legislature created the Bureau of Labor and Industries (BOLI). The first Labor Commissioner, O.P. Hoff, was also the bureau’s first and only employee. Hoff was responsible for enforcing child labor laws, the 10-hour working day for women, and the factory inspection law.

Today, the bureau’s Civil Rights Division, Wage and Hour Division, Apprenticeship and Training Division, Administrative Prosecution Unit, and the Technical Assistance for Employers Unit serve employees and employers in a variety of ways. The bureau has approximately 100 employees located in offices in Portland, Salem, Eugene, Bend, and Medford.

Civil Rights Division (CRD) enforces laws granting individuals equal access to jobs, career schools, promotions, and a work environment free from discrimination and harassment. These laws ensure that workers’ jobs are protected when they report worksite safety violations and use family leave or the workers' compensation system. Civil rights laws also provide protection for those seeking housing or using public facilities such as retail establishments, or transportation.

CRD fields approximately 40,000 inquiries from potential complainants each year and investigates approximately 1,700 claims of discrimination each year.

Wage and Hour Division serves Oregon wage earners by enforcing laws covering state minimum wage and overtime requirements, working conditions, child labor, farm and forest labor contracting, prevailing wage rates, and wage collection. The division also regulates the payment of prevailing wage rates required to be paid to construction workers on public works projects. The Wage and Hour Division processes more than 1,200 wage claims and conducts about 140 prevailing wage, farm labor, and child labor investigations each year.

Apprenticeship and Training Division (ATD) regulates apprenticeship in a variety of occupations and trades and works with business, labor, government, and education to increase training and employment opportunities. Apprenticeship is occupational training that combines on-the-job experience with classroom instruction. Industry and individual employers design and control the training programs, and pay apprentices’ wages. The division registers occupational skill standards and agreements between apprentices and employers. It works with local apprenticeship committees across the state to ensure that apprenticeship programs provide quality training and equal employment opportunities, particularly for women and minorities in technical and craft occupations. The ATD currently monitors compliance of 140 active apprenticeship programs and the participation of more than 7,000 apprentices and 4,296 employers in Oregon.
Administrative Prosecution Unit (APU) prosecutes cases on behalf of the Civil Rights Division (CRD) or Wage and Hour Division (WHD) after the division has concluded its investigation. An investigative case becomes a contested case when the APU or WHD issue a “charging document” alleging that an individual, entity, or government agency (referred to as a “Respondent”) has violated laws that BOLI is authorized to enforce. Contest case proceedings are governed by the Oregon Administrative Procedures Act and administrative rules adopted by BOLI and the Oregon Department of Justice. Some cases referred to the APU are settled or are administratively closed before a charging document is issued.

BOLI’s APU includes case presenters and a chief prosecutor, who prepares and present contested cases. The chief prosecutor is also the manager of APU.

An administrative law judge (ALJ), who is employed by BOLI, but separate and independent of the APU, presides over all contested case proceedings.

The APU handles approximately 100 contested cases each year through the administrative law process.

Technical Assistance for Employers Program (TA) housed within the commissioner’s office, provides employers with a telephone information line, informational pamphlets and materials, and seminars and workshops to keep the business community informed about employment law compliance issues. The TA Program answers approximately 25,000 employer telephone and website inquiries each year, conducts about 200 public seminars and customized seminars each year, and maintains a website of fact sheets on employment law topics, including disabilities and employment rights, fair housing, protected classes, and veterans’ preference.

The Bureau’s Mission

The mission of BOLI is to protect employment rights, advance employment opportunities, and protect access to housing and public accommodations free from discrimination.

The four principal duties of BOLI are to:

1) Protect the rights of workers and citizens to equal, nondiscriminatory treatment through the enforcement of anti-discrimination laws that apply to workplaces, housing and public accommodations.

2) Encourage and enforce compliance with state laws relating to wages, hours, and terms and conditions of employment.
3) Educate and train employers to understand and comply with both wage and hour and civil rights law.

4) Promote the development of a highly skilled, competitive workforce in Oregon through the apprenticeship program and through partnerships with government, labor, business, and educational institutions.

Agency Commissioner

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Governor’s Policy Advisor

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BOLI Affirmative Action Representatives

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II. Affirmative Action Plan

**BOLI Affirmative Action Policy Statement**

The Oregon Bureau of Labor and Industries (BOLI) remains fully committed to providing individuals with fair and equal employment opportunity and equal access to its programs and services. The bureau enforces a zero-tolerance policy against any form of discrimination or harassment and has adopted an Affirmative Action Plan that sets forth the policies, practices and procedures that the bureau is committed to in order to ensure that its policy of nondiscrimination and affirmative action is accomplished. It is the policy of the bureau not to discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, national origin, age, marital status, genetic information, disability, or veterans status.

The bureau recognizes a diverse workforce is crucial to serve Oregonians. It is also the policy of the bureau to take affirmative action to employ and to advance in employment, all people regardless of race, color, religion, sex, sexual orientation, gender identity, national origin, age, marital status, genetic information, disability, or protected veterans status, and to base all employment decisions only on valid job requirements. This policy applies to all employment actions, including recruitment, hiring, promotion, job rotation, transfer, demotion, layoff, termination, job testing, and selection for training, at all levels of employment.

In addition to proactive recruiting efforts, the work environment is an important part in maintaining a diverse workforce. All bureau managers and supervisors will be accountable for creating and promoting a work environment that is free from any kind of hostility or unwelcome behavior. It is the responsibility of all bureau managers and supervisors to monitor their work environments to ensure that they are free from harassing types of behaviors. It is not acceptable to participate in such behaviors and it is not acceptable for any manager to remain silent about them.

It is the responsibility of every employee of the bureau to create and maintain an atmosphere that fosters the spirit of this Affirmative Action policy. This policy will be distributed to all employees, posted on the BOLI website, posted in public areas in each bureau office and break areas, and included in each new employee packet. Managers and supervisors will actively participate in affirmative action, recruitment, selection and all other employment processes, and will become familiar with their role in achieving the goals and objectives of the Affirmative Action Plan.

Implementation of this plan is the responsibility of Brad Avakian, Commissioner, and the Affirmative Action representatives, available at 971-673-0785 or 503-947-7283.

Brad Avakian, Commissioner
Bureau of Labor and Industries
Diversity and Inclusion Statement

The Bureau of Labor and Industries (BOLI) is committed to protecting all Oregonians’ employment rights and advancing employment opportunities and access to housing and public accommodations free from discrimination. In providing these services to Oregonians, BOLI employees will treat all people with dignity and respect and will not discriminate on the basis of race, color, ancestry, national origin, age, marital status, gender, sexual orientation, political or religious affiliation, or physical or mental disability.

BOLI recognizes a diverse workforce is crucial to serve all Oregonians. All employment decisions made at BOLI will be based on an individual’s relevant experience, education and training, and suitability relative to a position, without regard to race, color, ancestry, national origin, age, marital status, gender, sexual orientation, political or religious affiliation, or physical or mental disability.

The bureau works to achieve and maintain diversity. These efforts include:

- Holding all managers and employees accountable for creating and promoting a work environment that is welcoming and free from hostility or unwelcome behavior.
- Enforcing a zero-tolerance policy against any form of discrimination or harassment.
- Maintaining a copy of the BOLI Affirmative Action Plan on its website, posted in public areas in each bureau office and break areas, and included in each new employee packet.
- Evaluating managers and supervisors on their effectiveness in promoting diversity and a welcoming environment for BOLI.
- Reaching out to the broadest possible labor market when recruiting for positions.

BOLI is working to build an organization that uses the concepts of diversity and inclusion to create a workplace that is stronger, better functioning, dynamic, and can achieve the agency’s mission of protecting Oregonians from discrimination.

Training, Education and Developmental Plan

i. Employees

The Bureau of Labor and Industries is committed to the principle that training and development of employees are integral components of work performance, and are inherently tied to our mission, vision, principles, strategic planning, workforce planning, and the provision of quality services to Oregonians. Training and development are focused on helping employees achieve proficiency in their current positions as well as obtain proficiencies that complement bureau goals. All BOLI training supports honoring and respecting the differences inherent to a multicultural, multigenerational, and multiable workforce.

Following are some examples of affirmative action/diversity-related trainings attended by staff:
• The Civil Rights Division administrator and Intake/Support manager attended the EEOC’s Annual FEPA (Fair Practice Employment Agency) training in New Orleans. This is a national training event that featured case law updates, a focus on transgender issues in the workplace, litigation priorities, and unveiling of EEOC’s strategies for systemic litigation. There were more than 500 attendees from around the country and U.S. territories of Guam and Puerto Rico.

• BOLI staff members and managers are active members of the NW EEO Affirmative Action Association, which provided the following affirmative action-related trainings attended by BOLI staff in 2015-2016:
  o Defining, Developing, and Implementing an Effective Diversity/Inclusion Program
  o Understanding Rights and Responsibilities: Disability, Religion, and Accommodation
  o The Shifting Sands of Affirmative Action Compliance
  o Implicit Bias and Mindfulness
  o The 1964 Civil Rights Act: Dreams of an Equitable Future, Then and Now
  o The Workforce of the Future is Today!
  o Dare to Dream: Breakfast with Dr. Geneva Craig
  o NW EEO Employment Law Update
  o Celebrating Black History Month
  o More Shifting Sands of Affirmative Action Compliance
  o Oregon Labor and Industries Commission Brad Avakian
  o Best Practices for the Transgender-friendly Workplace
  o Religious Accommodation in the Workplace

The bureau’s Executive Management Team (EMT) and training committee, made up of management and staff, work together to identify and plan for the agency’s training needs on an ongoing basis, including affirmative action/diversity-related training. The agency’s Technical Assistance for Employers Program (TA) has and continues to provide affirmative action/diversity-related seminars and training for both employers and BOLI staff in the following areas:

  • Workplace harassment and discrimination
  • New supervisor training (includes information on workplace harassment and discrimination, legal hiring practices, and equal pay best practices)
  • Religious accommodation
  • Reasonable accommodations
  • Subtle and not-so-subtle discrimination
  • Dealing with transgender issues in the workplace
  • Pay equity and equal pay
  • Employment law updates

Additional training TA provides to employers is in the Community Outreach section.
Orientation to all new employees, managers, and supervisors provides information about the bureau’s Affirmative Action Plan, accomplishments and goals, and other policies to eliminate discrimination or harassment of any employee regardless of protected class or any reason prohibited by state and federal statute. The content of the new employee orientation is regularly reviewed by the agency’s executive management team, training committee and Joint Labor Management Committee.

Meetings with employees are another way training and pertinent information is disseminated. The bureau holds weekly Executive Management Team meetings and all-staff meetings biannually. Individual divisions and units within the bureau hold monthly and quarterly meetings.

ii. Volunteers

The bureau will provide any volunteers with the training needed to effectively perform the duties. In addition, policies that apply to employees, such as Discrimination and Harassment Free Workplace, Maintaining a Professional Workplace and the BOLI Affirmative Action Plan will be given to the volunteer by the responsible manager, who will communicate the rights, responsibilities, expectations, and duties of the volunteer in the workplace.

iii. Contractors/Vendors

All contractors and vendors are required to understand and adhere to all relevant agency policies. This includes the bureau’s Affirmative Action Plan, and DAS policy 50.010.01 Discrimination and Harassment Free Workplace.

iv. Board/Committee Members

Any new committee, commission, or board members will receive a copy of the Affirmative Action Policy Statement, DAS policy 50.010.01, Discrimination and Harassment Free Workplace and DAS policy 50.010.03 Maintaining a Professional Workplace.

In October 2013, the agency’s Joint Labor Management Team developed and adopted an agency internal career development policy, which provides career development opportunities for staff and a process whereby employees who are interested in learning more about particular positions in BOLI may obtain information about positions of interest and request job shadow experiences.

Programs

i. Apprenticeship Program

Apprenticeship is a partnership of employers, workers, the State of Oregon, and a variety of schools and community colleges. Apprenticeship is occupational skill training that combines on-the-job experience with classroom instruction; most
apprenticeship programs lasting two to four years. There are nearly 80 apprenticeable occupations, ranging from baker to heavy equipment operator, from tool and die maker to high tech programmer. Employers and skilled workers design training programs that meet the individual and changing needs of Oregon industries and technology.

As of June 2016, there were 7,187 apprentices. Of that number, 1,269 (17.66 percent) are people of color and 455 (6.33 percent) are women.

In addition, ATD staffs the BOLI-ODOT Heavy Highway Supportive Services Program, which focuses on providing assistance to female and minority apprentices to enable them to be successful in completing their apprenticeship programs. The program provided assistance to over 850 apprentices in FY 2016. This includes supporting summer construction camps for youth; three state-approved pre-apprenticeship programs for potential applicants, fuel assistance for travel to and from job sites and required classes; lodging and per diem for apprentices working more than 60 miles from home; job readiness supplies (work tools, work clothing, and personal protective equipment); child care subsidies; and mentoring assistance for registered apprentices.

In addition, the BOLI-ODOT Heavy Highway Supportive Services Program recently initiated funding for and development of a Bystanders Harassment Intervention Training Program for employees and supervisors and a Cultural Competency Training Program for registered apprentices.

ii. Internship Program

BOLI regularly provides internship opportunities for students from various college programs. In FY 2015-2016, 10 interns were hosted by BOLI; eight of whom were female, and one who was disabled. It is anticipated that opportunities for internships will continue to be made available during the 2017-2019 biennium. When an inquiry for an internship is received from a college or a student, BOLI will make every effort to find the best position to offer a quality learning experience.

iii. Community Outreach

Bureau of Labor and Industries Commissioner Brad Avakian regularly speaks to groups about BOLI activities, current issues, and policies. Examples of events during the past year in which Commissioner Avakian has spoken regarding civil rights and affirmative action issues include:

- Voz keynote address
- Teamsters Convention keynote
- NWEO Equal Pay presentation
- Pacific NW Apprenticeship Education Conference
- Labor and Employment Relations Association presentation
- Siletz Council meeting
• Oregon Association of Student Councils speech
• Portland City Club presentation
• Roseburg Chamber of Commerce
• Beaverton School District presentation
• NW Labor Council Labor Day picnic
• Beaverton Human Rights Advisory Commission keynote
• Oregon State Building Trades Convention

The administrator of the Civil Rights Division was a guest speaker on civil rights at a forum sponsored by the Black Chapter of PFLAG, an advocacy group for parents, friends, and allies of the LGBTQ community and participated in the annual Black Parent Initiative, a nonprofit advocacy organization that educates and mobilizes parents and caregivers of black and multiethnic children to ensure they achieve success. As part of her participation with the initiative, the CRD administrator also participated in follow-up outreach meetings with BPI's executive director and individual board members.

Through its Technical Assistance for Employers Program (TA), BOLI provides Oregon employers with education and training resources, including free telephone and web-based assistance and answers to compliance questions, centralized access to required workplace postings, low-cost informational handbooks on lawful employment practices, and general and customized seminars and workshops on employment law and management practices.

The TA program:

• Answers approximately 25,000 employer telephone and website inquiries each year.
• Conducts an average of 200 public seminars and customized seminars each year.
• Hosts an annual two-day employment law conference for employers at the Portland Convention Center, which includes affirmative action/diversity-related training. Last year's (2015) conference was attended by 425 employers.
• Publishes eight updated employer handbooks each biennium.
• Creates and publishes several posters, including multiple composite posters (in English and Spanish), which satisfy employer posting requirements under state and federal laws.
• Maintains a website of fact sheets on employment law topics, including disabilities and employment rights, fair housing, protected classes, and veterans' preference.

TA's webpage also includes the following links as resources:

  o Americans with Disabilities Act Home Page
  o Equal Employment Opportunity Commission (EEOC)
  o Oregon Disabilities Commission
Veteran Benefits
Women’s Bureau Home Page

iv. Diversity Awareness Program

The bureau’s discrimination and harassment presentations and training sessions around the state create much interest in working for the bureau. Diversity outreach efforts include:

- Employees working with our interns who come from different backgrounds.
- Posting the notices, announcements and proclamations supporting cultural diversity in the bureau’s offices.
- Training all staff and reinforcing an environment of respect and professionalism with all staff and customers.

Executive Order 16-09

i. Respectful Leadership Training (Diversity, Equity and Inclusion)

As part of the training strategies for the 2017-2019 biennium, BOLI will continue to conduct trainings to remind our employees to focus on effective communication and being respectful of people from diverse backgrounds and various social and economic backgrounds. This focus assists our employees in not only relating well with the Oregonians we serve, but also with co-workers and other state agency representatives. Examples of staff training planned for 2016 include Dealing with Customers with Disabilities and Transgender Awareness.

ii. Statewide Exit Interview Survey

The bureau believes it is important to receive information from departing employees, and invites and encourages departing employees, including temporary employees, to complete an exit interview before their departure. If an employee wants a face-to-face meeting to express concerns or accomplishments, a meeting will be scheduled. Information is shared regularly with the division administrators and commissioner.

iii. Performance Evaluations for Management Personnel

The bureau includes in the performance evaluation of management personnel an assessment of the manager or supervisor’s effectiveness in achieving the bureau’s affirmative action objectives. In addition to recruitment and interviewing practices, managers are reviewed on their respect for the diversity of opinions, ideas, life-experiences, and cultural differences, all of which contribute to a welcoming workplace.
Status of Contracts to Minority-Owned Business

We have no contracts so far this biennium with minority, disadvantaged, and women-owned businesses.
III. Roles for Implementation of Affirmative Action Plan

Responsibility for achieving the Affirmative Action goals for the 2017-2019 biennium is shared by all managers and employees at BOLI. The following individuals will provide the leadership for BOLI to have a workforce rich in diversity and free of discrimination.

Commissioner and Deputy Commissioner

- Foster and promote to all employees and managers the importance of a diverse and discrimination and harassment free workplace.
- Select one of its managers every year to attend the year-long state Leadership Oregon program, which provides professional and personal affirmative action and diversity development training.
- Ensure division administrators understand their role and responsibility to promote affirmative action activities and a welcoming environment. Include in performance reviews how effective the division administrators have been in achieving BOLI affirmative action goals and objectives, and their contribution to promoting a welcoming and respectful work environment.
- Direct division administrators that performance reviews for subordinate managers include ratings on the manager’s support and effectiveness of the bureau’s Affirmative Action Plan goals and objectives and their contribution to promoting a welcoming and respectful work environment.
- Participate in, and encourage the participation of subordinate managers in events supporting multicultural education and celebration.
- Meet with affirmative action representatives to review workforce representation statistics and work environment progress and issues. Approve planned strategies for meeting goals.

Administrators and Managers

- Foster and promote to subordinate managers and employees the importance of a diverse and discrimination and harassment free workplace.
- Conduct annual performance reviews for subordinate managers include ratings on the manager’s support and effectiveness of the bureau’s Affirmative Action Plan goals and objectives and their contribution to promoting a welcoming and respectful work environment.
- Ensure all subordinate managers receive an orientation on the bureau’s affirmative action goals and responsibilities, and understand their own role and responsibility for insuring the Bureau meets the goals and objectives.
- Inform employees of the goals and objectives for the BOLI Affirmative Action Plan.
- Display the bureau’s Affirmative Action Policy Statement in prominent areas across the offices.
- Attend, and encourage staff to attend, diversity-related activities and training. Share information received with managers and staff who were unable to attend.
Follow the procedures outlined in DAS 50.010.01, Discrimination and Harassment Free workplace, and contact DCBS Employee Services, if manager/supervisor becomes aware of a department employee engaging in any type of harassment or discriminatory behavior.

Work with DCBS Employee Services to use State of Oregon procedures and rules in filling vacancies.

Affirmative Action Representatives or Designee

- Foster and promote to managers/supervisors and employees the importance of a diverse and discrimination and harassment free workplace.
- Work with bureau managers and supervisors to make sure they understand their responsibility for promoting a diverse and inclusive and welcoming workforce environment, and attaining the affirmative action goals.
- Present quarterly workforce representation report to bureau management.
- Ensure recruitments include outreach to minority and women-specific websites, community agencies and organizations for the recruitment of people of color, persons with disabilities, veterans, and women. Discuss with hiring manager the advertising strategies to attract a diverse pool of candidates.
- Train managers in interviewing skills, including having diverse interview panels, developing job-related interview questions, and applying veteran’s preference.
- Provide career development assistance to BOLI employees, including mock interviews, application material reviews, and career exploration, as requested.
- Attend, and encourage staff to attend, diversity-related activities and training. Share information received with managers and staff who were unable to attend.
- Discuss the BOLI Affirmative Action Plan and Policy Statement at new employee orientation.
- Ensure the BOLI Affirmative Action Plan and Policy Statement is maintained on the BOLI website and is accessible by all employees.
- Attend and support statewide meetings with the Governor’s Diversity and Inclusion Office and other agency representatives.
IV. July 1, 2015, to June 30, 2017
Accomplishments and Progress

The purpose, mission and vision of the Bureau of Labor and Industries are dedicated to the principles of affirmative action and diversity and inclusion as stated in the agency’s mission statement:

\[ \text{BOLI protects employment rights, advances employment opportunities, and ensures access to housing and public accommodations free from discrimination.} \]

Through enforcement of Oregon’s civil rights laws, BOLI’s Civil Rights Division protects all Oregonians from unlawful discrimination, investigating allegations of civil rights violations in workplaces, career schools, housing, and public accommodations.

The Civil Rights Division has responsibility for enforcing laws prohibiting unlawful discrimination in employment, housing, public accommodation and career schools. The division is the only agency in the state that has the authority to investigate complaints of unlawful discrimination brought by Oregonians where they live, work, and participate in society.

Accomplishments and Progress

Some of the accomplishments and progress toward our goals during the July 2015 – June 2017 period include:

- Continued strong executive and management commitment to providing excellent affirmative action/diversity-related training, consultation, and regulation services to all Oregonians.
- The agency supports and participates in the annual State of Oregon Diversity Conference by financially contributing to the conference and sending staff to attend the conference.
- Ten BOLI staff members and managers are active members of the NW EEO Affirmative Action Association, a nonprofit organization dedicated to providing education and informational resources to individuals, groups, or institutions in their efforts to carry out their goals in regard to equal employment opportunity, diversity, and affirmative action. A BOLI Civil Rights Division manager currently serves on the NW EEO/AA Association Board of Directors.
- The Apprenticeship and Training Division (ATD) of BOLI exceeded its goal of 15 percent of new apprentices being minorities for the fifth consecutive year in FY 2016, and achieved an all-time high of 20.72 percent of new apprentices being minorities; 6.3 percent of all registered apprentices are female (compared to 3.2 percent in the construction trades nationally).
- ATD staffs the BOLI-ODOT Heavy Highway Supportive Services Program, which provided assistance to more than 850 apprentices in FY 2016. This includes
supporting summer construction camps for youth; three state-approved pre-apprenticeship programs for potential applicants; fuel assistance for travel to and from job sites and required classes; lodging and per diem for apprentices working more than 60 miles from home; job readiness supplies (work tools, work clothing, and personal protective equipment); and child care subsidies and mentoring assistance for registered apprentices, most of whom are women and racial minorities.

- In addition, the BOLI-ODOT Heavy Highway Supportive Services Program recently initiated funding for and development of a Bystanders Harassment Intervention Training Program for employees and supervisors and a Cultural Competency Training Program for registered apprentices.
- BOLI sponsored and staffed the 2016 Urban League of Portland’s Career Connections Job Fair.
- BOLI reviewed and revised its comprehensive Access to BOLI Services policy and procedures, the stated purpose of which is “The Bureau of Labor and Industries will not discriminate against an individual because the individual has a disability. The bureau is committed to making bureau services, programs, and activities accessible to individuals with disabilities.”
- BOLI has formalized its new employee orientation process to include a requirement that all new employees read the agency Discrimination and Harassment Policy (and sign an acknowledgement that they have done so) and provision of the BOLI Employee Handbook, which is also available online and includes a section on Diversity/Affirmative Action, the agency’s Affirmative Action and Diversity Policy and Inclusion Policy Statement, and a link to BOLI’s Affirmative Action Plan. The handbook also has sections on the agency’s Code of Conduct and Respectful Workplace Policy, as well as Harassment in the Workplace.
- The agency currently employs 20 bilingual employees (representing more than 20 percent of BOLI’s current staff), who speak several foreign languages to serve its customers.
- BOLI regularly provides internship opportunities to participants in Portland Community College’s paralegal program. In FY 2015-2016, 10 interns were hosted by BOLI; eight of whom were female, and one who was disabled.
- BOLI has provided work out of class opportunities to four minority staff members in FY 2015-2016; three of whom are women.
- During the 2015-2017 biennium, BOLI assisted the Oregon Council on Civil Rights in implementing recommendations from the OCCR’s 2014 Pay Inequality in Oregon Report, including drafting and publishing the following Six Best Practices Employer Guides:
  - Fair Recruiting and Promotion of Women
  - Fair Compensation and Initial Salary
  - Joint Evaluation and Pay for Performance
  - Encouraging Mentorships and Role Models
  - Accommodating Pregnant Employees
  - On-Site Child Care

These free publications were made available at BOLI’s Annual Employment Law Conference for Employers, which was attended by 425 employers. The publications
are distributed in employer seminars provided by BOLI’s Technical Assistance for Employers Program, and are available on the agency website.

BOLI has continued its efforts to improve workplace diversity. As of June 30, 2016, the statistics show a total employee count of 95. The percent of workforce for people of color, people with disabilities and women follows.

BOLI Workforce Representation
as of June 30, 2016

<table>
<thead>
<tr>
<th>Group</th>
<th>Actual Number for Group</th>
<th>Percent of Group</th>
</tr>
</thead>
<tbody>
<tr>
<td>People of Color</td>
<td>20</td>
<td>21%</td>
</tr>
<tr>
<td>Women</td>
<td>63</td>
<td>66.3%</td>
</tr>
<tr>
<td>People with Disabilities</td>
<td>6</td>
<td>6.3%</td>
</tr>
</tbody>
</table>

BOLI Workforce Representation
Three-Year Comparison

<table>
<thead>
<tr>
<th>Year</th>
<th>People of Color</th>
<th>Women</th>
<th>People with Disabilities</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td># in Group</td>
<td>%</td>
<td># in Group</td>
</tr>
<tr>
<td>June 30, 2016 (95 total BOLI employees)</td>
<td>20</td>
<td>21%</td>
<td>63</td>
</tr>
<tr>
<td>June 30, 2015 (91 total BOLI employees)</td>
<td>22</td>
<td>24.2%</td>
<td>58</td>
</tr>
<tr>
<td>June 30, 2014 (90 total BOLI employees)</td>
<td>22</td>
<td>24.4%</td>
<td>55</td>
</tr>
</tbody>
</table>

The three-year comparison shows that since 2014, workforce declined by two people of color but increased by eight women, telling us we need to do more work to meet parity in all EEO categories for people of color. Since the disclosure of disabilities is voluntary for employees, the data historically has been underreported, and the bureau will explore other ways to gather this information. The idea of an annual survey explaining the importance of this information will be reviewed to determine if it will be effective to collect the data.
BOLI Workforce Representation Report  
as of June 30, 2016

Affirmative Action Analysis as of June 30, 2016

<table>
<thead>
<tr>
<th>EEO Categories</th>
<th>WOMEN (W)</th>
<th>PEOPLE OF COLOR (P)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Total Emp</td>
<td>Actual</td>
</tr>
<tr>
<td>A01) Middle Management</td>
<td>7</td>
<td>4</td>
</tr>
<tr>
<td>A02) Upper Management</td>
<td>10</td>
<td>6</td>
</tr>
<tr>
<td>B02) Communication/Editor</td>
<td>1</td>
<td>0</td>
</tr>
<tr>
<td>B10) Personnel/Employment</td>
<td>13</td>
<td>6</td>
</tr>
<tr>
<td>B11) Inspector/Compliance/Investgtr</td>
<td>32</td>
<td>24</td>
</tr>
<tr>
<td>B12) Computer Analyst</td>
<td>2</td>
<td>0</td>
</tr>
<tr>
<td>B13) Attorney/Hearings Officer</td>
<td>2</td>
<td>1</td>
</tr>
<tr>
<td>B15) Accounting/Finance/Revenue</td>
<td>2</td>
<td>1</td>
</tr>
<tr>
<td>B16) Program Coordinator/Analyst</td>
<td>2</td>
<td>1</td>
</tr>
<tr>
<td>C04) Computer</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>F00) Administrative Support</td>
<td>24</td>
<td>20</td>
</tr>
<tr>
<td></td>
<td>95</td>
<td>63</td>
</tr>
</tbody>
</table>

Affirmative Action Statistics are voluntary and may not accurately reflect the actual diversity of the agency.

* May be duplication in counts of individuals within the W, P and D categories

People with Disabilities

<table>
<thead>
<tr>
<th>Total</th>
<th>Parity</th>
<th>Total Group</th>
<th>Group %</th>
</tr>
</thead>
<tbody>
<tr>
<td>95</td>
<td>6%</td>
<td>6</td>
<td>6.32%</td>
</tr>
</tbody>
</table>

Total Hires for (Last Three Months)  
18
V. July 1, 2017 – June 30, 2019
Goals for BOLI Affirmative Action Plan

BOLI has a diverse workforce that represents its customers. We will continue to pursue goals that help us increase our representation of people of color, people with disabilities, veterans, and women within the BOLI workforce. The new benchmark will be the workforce representation statistics achieved in June 2016.

One of the four BOLI principal duties is protecting the rights of workers to nondiscriminatory treatment through the enforcement of anti-discrimination laws that apply to workplaces. BOLI will continue the efforts toward building a work environment that is respectful and accepting of employees' differences, making it attractive not only to our current employees, but to a diverse pool of applicants as well.

Goals

In the 2017-2019 biennium, BOLI will pursue the following goals:

1. Provide career development assistance, such as informational interviews, mock interviews, and application assistance, to people of color, people with disabilities, veterans and women, as well as employees at BOLI who want to further their career.

2. Broaden the number of recruitment notices sent to communication organizations likely to refer minorities, women, and individuals with disabilities to ensure that a diverse audience is encouraged to apply for our job openings.

3. Ensure all managers and employees help achieve, maintain, and support an inclusive and welcoming work environment that is accepting and respectful of others' differences and recognizes the value of each individual's unique contribution.

4. Train all managers on effective recruiting and interviewing practices to promote and increase diversity in the bureau's workforce.

5. Report quarterly workforce representation numbers with BOLI managers and employees to bring awareness of the diversity of the workforce.

6. Develop and implement an exit interview program to capture opportunities to develop a stronger, more diverse, and inclusive work environment.

Strategies

To accomplish the above goals, BOLI plans the following actions and strategies for the 2017-2019 biennium:

- Executive management meetings will have diversity and inclusion as a regular agenda item.
• Educating BOLI Managers and Employees. BOLI managers will participate in courses, including Cultural Competency, Transgender Awareness, Dealing with Customers with Disabilities, Difficult People/Communication Techniques, Veterans Hiring Preference, Hiring the Best, and Respectful Workplace. BOLI employees will participate in courses, including Cultural Competency, Dealing with Difficult People/Communication Techniques, and Respectful Workplace.

• The BOLI Training Committee reviews and recommends training topics to provide to managers and staff. Applicable training for both managers and employees will help BOLI achieve and maintain a welcoming environment that is inclusive, accepting, and respectful of others’ differences and recognizes the value of each individual’s unique contribution. A welcoming environment is also important in attracting a diverse pool of applicants.

• Displays and Events. BOLI will post information about diversity-related topics, including posters, proclamations, pictures, and articles on the employee bulletin board in the Portland and BOLI field offices.

• The diversity outreach coordinator will share monthly diversity and inclusion-themed emails with staff and management to raise awareness.

• Creative Recruitment Marketing Strategies. All vacant positions will be sent to diverse organizations, such as NAACP, Hispanic Services Roundtable, Partners in Diversity, Oregon Association of Minority Entrepreneurs, Oregon Native American Chamber, and the Oregon Advocacy Commission for posting or sharing with their members. For hard-to-fill positions, the manager’s name and contact information will be added to the job announcement so that candidates with questions can talk directly with the manager instead of a contact in HR who may not know the specific answers.

• Rapid Response Recruitment Methodology (RRRM). The Department of Consumer and Business Services developed RRRM, which is intended to streamline and speed up the selection process, thereby losing fewer candidates through selection delays. BOLI plans on trying out the RRRM on selected recruitments to see if it helps with their selection process.

• Career and Professional Development. Career and professional development counseling assistance is available to BOLI employees and non-state applicants and includes assistance in career exploration, review of application materials, informational interviews, and mock interviews.

• Networking. There are free networking events, such as Say Hey and Breakfast for Champions, Hispanic Services Roundtable, and Asian Pacific American Network of Oregon held in Portland that will be occasionally attended by the affirmative action representatives. The statewide diversity and inclusion meetings
will be attended regularly and are a great opportunity to meet other HR professionals to share accomplishments and gain new ideas to use at BOLI.

- Develop a procedure to ensure employees who are leaving are invited to complete an exit interview (BOLI or DAS); include diversity and inclusion issues in questions on BOLI exit interview.

BOLI will continue its efforts to maintain a diverse workforce, representing the diversity of the Oregonians we serve. We remain committed to reaching and surpassing our goal of people of color, people with disabilities, and women in our workforce. Through the leadership of our commissioner and deputy commissioner, it is expected that the BOLI management team and staff will treat all customers, vendors, the public, and other employees with respect and provide the best customer service possible.
VI. Appendix A – State Policy Documentation
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.
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%
State of Oregon
DEPARTMENT OF ADMINISTRATIVE SERVICES
Human Resource Services Division

State Policy: 50.045.01 Employee Development and Implementation of Oregon Benchmarks for Workforce Development

APPLICABILITY: Classified (where not in conflict with the collective bargaining contract), management service, executive service and unclassified unrepresented employees

REFERENCE: ORS 240.145(3)(4); 240.250; Oregon Benchmarks

(1) Policy: Oregon state government shall be a leader in achieving or exceeding the Oregon workforce development benchmarks of developing the best trained workforce in the U.S. by the year 2000 and in the world by the year 2010.

(a) For each biennium, an agency head shall develop a written agency training plan to require a minimum of 20 hours of education and training related to work skills and knowledge for at least 50% of their permanent employees in each fiscal year.

(b) Supervisors, in discussion with their employees, shall develop and update annually a written development plan for each employee that provides for the continuous improvement of the employee's job related knowledge and skills.

(c) An agency head shall maintain written documentation of agency workforce development hours and expenditures per instructions from Department of Administrative Services regarding expenditures and account numbers related to training and travel.

(d) When opportunities permit, agencies shall invite other state agencies to fill staff development openings and share training facilities and other employee development resources.

(e) An agency head may provide educational assistance to employees when it directly relates to their job responsibility and can be accommodated within the agency budget:

(A) When an employee is assigned to attend courses, the agency shall reimburse all of the costs of course registration fees, course materials, and necessary travel.

(B) When an employee makes a request to attend a class(s), either during or after working hours, the agency may reimburse all or part of the costs attendant to the class(s).

(C) Educational assistance to employees may include paid leave. Provisions of the paid leave agreement between the agency and the employee shall be documented and maintained in the agency file.

(2) Policy Clarification:

(a) The written agency training plan is intended to relate individual employee development plans and agency workforce development priorities to the agency mission.

(b) Training or education related to work skills and knowledge includes formal instructions or a structured learning plan related to:

(A) employee's competence to perform a specific job,

(B) employee's state government career, or

(C) Employee's work environment.
(c) Modes of training delivery may be formal education, on the job training, supervised learning activities, and other specific training approved by the employee's supervisor as job related.

(1) **Performance Measure:** Percentage of agency employees who received 20 or more hours of job related training in each fiscal year.

   **Performance Standard:** 50%

(2) **Performance Measure:** A current, completed written agency training plan for each biennium.

   **Performance Standard:** 100%

(3) **Performance Measure:** Percentage of agency employees with current written individual development plans.

   **Performance Standard:** 100%
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
105-040-0001

Equal Employment Opportunity and Affirmative Action

(1) The State of Oregon is committed to achieving a workforce that represents the diversity of the Oregon community and being a leader in providing its citizens with fair and equal employment opportunities. Accordingly:

(a) State agency heads shall insure:

(A) Equal employment opportunities are afforded to all applicants and employees by making employment related decisions that are non-discriminatory;

(B) Employment practices are consistent with the state's Affirmative Action Guidelines under ORS 659A.012–659A.015 and federal laws to:

(i) Promote good faith efforts to achieve established affirmative action objectives; and

(ii) Take proactive steps to develop diverse applicant pools for position vacancies.

(b) The Department of Administrative Services shall:

(A) Maintain an automated affirmative action tracking system which uses a uniform methodology for communicating affirmative action objectives for each state agency.

(B) Produce periodic reports showing hiring opportunities and each agency's progress toward achieving established affirmative action objectives as identified in the state wide automated system.

(c) Persons, who believe they have been subjected to discrimination by an agency in violation of this rule, may file a complaint with the agency's affirmative action representative within 365 calendar days of the alleged act or upon knowledge of the occurrence.

(2) Employment related decisions include, but are not limited to: hiring, promotion, demotion, transfer, termination, layoff, training, compensation, benefits, and performance evaluations;

(3) Diverse applicant pools are developed by using proactive outreach strategies.

(4) This rule does not preclude any person from filing a formal complaint in accordance with a collective bargaining agreement, or with appropriate state or federal agency under the applicable law.

Stats. Implemented: ORS 240.306, 243.305 & 659A.012 - 659A.015
Hist.: PD 2-1994, f. & cert. ef. 8-1-94; HRSD 11-2003, f. 7-15-03, cert. ef. 7-21-03; HRSD 2-2008, f. & cert. ef. 11-4-08
EXECUTIVE ORDER 16-09

RELATING TO AFFIRMATIVE ACTION AND DIVERSITY & INCLUSION

On January 26, 2005, former Governor Kulongoski issued Executive Order 05-01, relating to affirmative action. That Executive Order directed Agency Directors and Administrators to review and discuss their affirmative action plans, to initiate training on affirmative action issues, to include affirmative action responsibilities in key job descriptions, and to conduct Cultural Competency Assessment and Training.

Since the issuance of Executive Order 05-01 and Amendment 08-18, many state agencies have met with the Governor's Affirmative Action Office (GAAO) to review and discuss their affirmative action plans. The Department of Administrative Services (DAS) has concluded an audit of position descriptions for the inclusion of affirmative action duties and DAS has shared audit results with GAAO. In addition, a number of state agencies have completed Cultural Competency Assessment and Training.

Despite these gains, much more can be accomplished. The State of Oregon remains committed to the right of all persons to work and advance on the basis of merit, ability, and potential. In order to continue implementation of the goals and policies set forth in Executive Orders 05-01 and 08-18, I extend these orders as follows:

NOW THEREFORE, IT IS HEREBY DIRECTED AND ORDERED:

1. The GAAO and each Agency Director and Administrator shall review and discuss each agency's affirmative action plan and affirmative action goals to identify resources for improving the hiring and developmental opportunities of underrepresented persons.

2. To continue the State of Oregon's progress in promotion of diversity in the workplace, as well as the elimination of the effects of past and present discrimination, intended or unintended, Agency Directors and Administrators shall:

   a. Provide ongoing leadership in implementing each agency's affirmative action plan;

   b. Ensure incorporation of affirmative action, diversity, and inclusion responsibilities in executive and/or management job descriptions, as appropriate;
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c. Ensure that Affirmative Action Representatives attend GAAO's informational trainings to assist Representatives in fulfilling their affirmative action responsibilities;

d. Post each agency's affirmative action policy statement in a visible area. The policy statement shall include contact information for the agency's Affirmative Action Representative;

e. Communicate to all employees about the Affirmative Action resources available within each agency and the important role of Affirmative Action Representatives in responding to employees' concerns of discrimination in the areas of hiring, retention, promotion, and career development;

f. Evaluate and assess any trends showing an increase or decrease in discrimination and/or harassment claims; and

g. Work to improve implementation of the agency's affirmative action plan through the use of performance assessments and/or performance evaluations.

3. Under ORS 659A.012, state agencies are "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." Periodically, DAS shall conduct audits of agencies to determine whether management personnel are being evaluated based on effectiveness in achieving affirmative action objectives. Results of this audit shall be provided to GAAO.

4. GAAO will continue to coordinate with DAS in the development and presentation of training designed to improve employees' skills and competency in managing affirmative action and diversity issues.

5. GAAO will continue to monitor agencies' implementation of Cultural Competency Assessment and Implementation Services. Agency Directors and Administrators are strongly encouraged to utilize Cultural Competency Assessment and Implementation Services within their agencies if, in the opinion of GAAO and the Agency Director or Administrator, it is beneficial and appropriate for the agencies to do so.
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6. DAS, in conjunction with GAAO and the Oregon Department of Justice, has developed a confidential web-based exit interview survey tool. Agency Directors and Administrators shall allow employees to utilize state equipment to access the Exit Interview survey and shall encourage all employees to complete the survey prior to their transfer or departure.

7. This Executive Order will expire on December 31, 2020.

Done at Salem, Oregon, this 5th day of April, 2016.

Kate Brown
GOVERNOR

ATTEST:

Jeanne P. Atkins
SECRETARY OF STATE
VII. Appendix A – Federal Policy Documentation
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.

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**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)

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.
Title VII of the Civil Rights Act of 1964

EDITOR'S NOTE: The following is the text of Title VII of the Civil Rights Act of 1964 (Pub. L. 88-352) (Title VII), as amended, as it appears in volume 42 of the United States Code, beginning at section 2000e. Title VII prohibits employment discrimination based on race, color, religion, sex and national origin. The Civil Rights Act of 1991 (Pub. L. 102-166) (CRA) and the Lily Ledbetter Fair Pay Act of 2009 (Pub. L. 111-2) amend several sections of Title VII. In addition, section 102 of the CRA (which is printed elsewhere in this publication) amends the Revised Statutes by adding a new section following section 1977 (42 U.S.C. 1981), to provide for the recovery of compensatory and punitive damages in cases of intentional violations of Title VII, the Americans with Disabilities Act of 1990, and section 501 of the Rehabilitation Act of 1973. Cross references to Title VII as enacted appear in italics following each section heading. Editor's notes also appear in italics.

An Act

To enforce the constitutional right to vote, to confer jurisdiction upon the district courts of the United States to provide injunctive relief against discrimination in public accommodations, to authorize the attorney General to institute suits to protect constitutional rights in public facilities and public education, to extend the Commission on Civil Rights, to prevent discrimination in federally assisted programs, to establish a Commission on Equal Employment Opportunity, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the “Civil Rights Act of 1964”.

* * *

DEFINITIONS

SEC. 2000e. [Section 701]

For the purposes of this subchapter-

(a) The term “person” includes one or more individuals, governments, governmental agencies, political subdivisions, labor unions, partnerships, associations, corporations, legal representatives, mutual companies, joint-stock companies, trusts, unincorporated organizations, trustees, trustees in cases under Title 11 [originally, bankruptcy ], or receivers.

(b) The term “employer” means a person engaged in an industry affecting commerce who has fifteen or more employees for each working day in each of twenty or more calendar weeks in the current or preceding calendar year, and any agent of such a person, but such term does not include (1) the United States, a corporation wholly owned by the Government of the United States, an Indian tribe, or any department or agency of the District of Columbia subject by statute to procedures of the competitive service (as defined in section 2102 of Title 5 [United States Code]), or

(2) a bona fide private membership club (other than a labor organization) which is exempt from taxation under section 501(c) of Title 26 [the Internal Revenue Code of 1986], except that during the first year after March 24, 1972 [the date of enactment of the Equal Employment Opportunity Act of 1972], persons having fewer than twenty-five employees (and their agents) shall not be considered employers.

(c) The term “employment agency” means any person regularly undertaking with or without compensation to procure employees for an employer or to procure for employees opportunities to work for an employer and includes an agent of such a person.

(d) The term “labor organization” means a labor organization engaged in an industry affecting commerce, and any agent of such an organization, and includes any organization of any kind, any agency, or employee representation committee, group, association, or plan so engaged in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours, or other terms or conditions of employment, and any conference, general committee, joint or system board, or joint council so engaged which is subordinate to a national or international labor organization.

(e) A labor organization shall be deemed to be engaged in an industry affecting commerce if (1) it maintains or operates a hiring hall or hiring office which procures employees for an employer or procures for employees opportunities to work for an employer, or (2) the number of its members (or, where it is a labor organization composed of other labor organizations or their representatives, if the aggregate number of the members of such other labor organization) is (A) twenty-five or more during the first year after March 24, 1972 [the date of enactment of the Equal Employment Opportunity Act of 1972], or (B)
Title VII of the Civil Rights Act of 1964

(1) is the certified representative of employees under the provisions of the National Labor Relations Act, as amended [29 U.S.C. 151 et seq.], or the Railway Labor Act, as amended [45 U.S.C. 151 et seq.];

(2) although not certified, is a national or international labor organization or a local labor organization recognized or acting as the representative of employees of an employer or employers engaged in an industry affecting commerce; or

(3) has chartered a local labor organization or subsidiary body which is representing or actively seeking to represent employees of employers within the meaning of paragraph (1) or (2); or

(4) has been chartered by a labor organization representing or actively seeking to represent employees within the meaning of paragraph (1) or (2) as the local or subordinate body through which such employees may enjoy membership or become affiliated with such labor organization; or

(5) is a conference, general committee, joint or system board, or joint council subordinate to a national or international labor organization, which includes a labor organization engaged in an industry affecting commerce within the meaning of any of the preceding paragraphs of this subsection.

(f) The term “employee” means an individual employed by an employer, except that the term “employee” shall not include any person elected to public office in any State or political subdivision of any State by the qualified voters thereof, or any person chosen by such officer to be on such officer’s personal staff, or an appointee on the policy making level or an immediate adviser with respect to the exercise of the constitutional or legal powers of the office. The exemption set forth in the preceding sentence shall not include employees subject to the civil service laws of a State government, governmental agency or political subdivision. With respect to employment in a foreign country, such term includes an individual who is a citizen of the United States.

(g) The term “commerce” means trade, traffic, commerce, transportation, transmission, or communication among the several States; or between a State and any place outside thereof; or within the District of Columbia, or a possession of the United States; or between points in the same State but through a point outside thereof.

(h) The term “industry affecting commerce” means any activity, business, or industry in commerce or in which a labor dispute would hinder or obstruct commerce or the free flow of commerce and includes any activity or industry “affecting commerce” within the meaning of the Labor-Management Reporting and Disclosure Act of 1959 [29 U.S.C. 401 et seq.], and further includes any governmental industry, business, or activity.

(i) The term “State” includes a State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, Guam, Wake Island, the Canal Zone, and Outer Continental Shelf lands defined in the Outer Continental Shelf Lands Act [43 U.S.C. 1331 et seq.].

(j) The term “religion” includes all aspects of religious observance and practice, as well as belief, unless an employer demonstrates that he is unable to reasonably accommodate to an employee’s or prospective employee’s religious observance or practice without undue hardship on the conduct of the employer’s business.

(k) The terms “because of sex” or “on the basis of sex” include, but are not limited to, because of or on the basis of pregnancy, childbirth, or related medical conditions; and women affected by pregnancy, childbirth, or related medical conditions shall be treated the same for all employment-related purposes, including receipt of benefits under fringe benefit programs, as other persons not so affected but similar in their ability or inability to work, and nothing in section 2000e-2(h) of this title [section 703(h)] shall be interpreted to permit otherwise. This subsection shall not require an employer to pay for health insurance benefits for abortion, except where the life of the mother would be endangered if the fetus were carried to term, or except where medical complications have arisen from an abortion: Provided, That nothing herein shall preclude an employer from providing abortion benefits or otherwise affect bargaining agreements in regard to abortion.

(l) The term “complaining party” means the Commission, the Attorney General, or a person who may bring an action or proceeding under this subchapter.

(m) The term “demonstrates” means meets the burdens of production and persuasion.

(n) The term “respondent” means an employer, employment agency, labor organization, joint labor management committee controlling apprenticeship or other training or retraining program, including an on-the-job training program, or Federal entity subject to section 2000e-16 of this title.

APPLICABILITY TO FOREIGN AND RELIGIOUS EMPLOYMENT

SEC. 2000e-1. [Section 702]

(a) Inapplicability of subchapter to certain aliens and employees of religious entities

This subchapter shall not apply to an employer with respect to the employment of aliens outside any State, or to a religious corporation, association, educational institution, or society with respect to the employment of individuals of a particular religion to perform work connected with the carrying on by such corporation, association, educational institution, or society of its activities.
(b) Compliance with statute as violative of foreign law

It shall not be unlawful under section 2000e-2 or 2000e-3 of this title [section 703 or 704] for an employer (or a corporation controlled by an employer), labor organization, employment agency, or joint labor-management committee controlling apprenticeship or other training or retraining (including on-the-job training programs) to take any action otherwise prohibited by such section, with respect to an employee in a workplace in a foreign country if compliance with such section would cause such employer (or such corporation), such organization, such agency, or such committee to violate the law of the foreign country in which such workplace is located.

(c) Control of corporation incorporated in foreign country

(1) If an employer controls a corporation whose place of incorporation is a foreign country, any practice prohibited by section 2000e-2 or 2000e-3 of this title [section 703 or 704] engaged in by such corporation shall be presumed to be engaged in by such employer.

(2) Sections 2000e-2 and 2000e-3 of this title [sections 703 and 704] shall not apply with respect to the foreign operations of an employer that is a foreign person not controlled by an American employer.

(3) For purposes of this subsection, the determination of whether an employer controls a corporation shall be based on-

(A) the interrelation of operations;

(B) the common management;

(C) the centralized control of labor relations; and

(D) the common ownership or financial control, of the employer and the corporation.

UNLAWFUL EMPLOYMENT PRACTICES

SEC. 2000e-2. [Section 703]

(a) Employer practices

It shall be an unlawful employment practice for an employer -

(1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual’s race, color, religion, sex, or national origin; or

(2) to limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual’s race, color, religion, sex, or national origin.

(b) Employment agency practices

It shall be an unlawful employment practice for an employment agency to fail or refuse to refer for employment, or otherwise to discriminate against, any individual because of his race, color, religion, sex, or national origin, or to classify or refer for employment any individual on the basis of his race, color, religion, sex, or national origin.

(c) Labor organization practices

It shall be an unlawful employment practice for a labor organization-­

(1) to exclude or to expel from its membership, or otherwise to discriminate against, any individual because of his race, color, religion, sex, or national origin;

(2) to limit, segregate, or classify its membership or applicants for membership, or to classify or fail or refuse to refer for employment any individual, in any way which would deprive or tend to deprive any individual of employment opportunities, or would limit such employment opportunities or otherwise adversely affect his status as an employee or as an applicant for employment, because of such individual’s race, color, religion, sex, or national origin; or

(3) to cause or attempt to cause an employer to discriminate against an individual in violation of this section.

(d) Training programs

It shall be an unlawful employment practice for any employer, labor organization, or joint labor-management committee controlling apprenticeship or other training or retraining, including on-the-job training programs to discriminate against any individual because of his race, color, religion, sex, or national origin in admission to, or employment in, any program established to provide apprenticeship or other training.

(e) Businesses or enterprises with personnel qualified on basis of religion, sex, or national origin; educational institutions with personnel of particular religion
Notwithstanding any other provision of this subchapter, (1) it shall not be an unlawful employment practice for an employer to hire and employ employees, for an employment agency to classify, or refer for employment any individual, for a labor organization to classify its membership or to classify or refer for employment any individual, or for an employer, labor organization, or joint labor management committee controlling apprenticeship or other training or retraining programs to admit or employ any individual in any such program, on the basis of his religion, sex, or national origin in those certain instances where religion, sex, or national origin is a bona fide occupational qualification reasonably necessary to the normal operation of that particular business or enterprise, and (2) it shall not be an unlawful employment practice for a school, college, university, or other educational institution or institution of learning to hire and employ employees of a particular religion if such school, college, university, or other educational institution or institution of learning is, in whole or in substantial part, owned, supported, controlled, or managed by a particular religion or by a particular religious corporation, association, or society, or if the curriculum of such school, college, university, or other educational institution or institution of learning is directed toward the propagation of a particular religion.

(f) Members of Communist Party or Communist-action or Communist-front organizations

As used in this subchapter, the phrase “unlawful employment practice” shall not be deemed to include any action or measure taken by an employer, labor organization, joint labor management committee, or employment agency with respect to an individual who is a member of the Communist Party of the United States or of any other organization required to register as a Communist-action or Communist-front organization by final order of the Subversive Activities Control Board pursuant to the Subversive Activities Control Act of 1950 [50 U.S.C. 781 et seq.].

(g) National security

Notwithstanding any other provision of this subchapter, it shall not be an unlawful employment practice for an employer to fail or refuse to hire and employ any individual for any position, for an employer to discharge any individual from any position, or for an employment agency to fail or refuse to refer any individual for employment in any position, or for a labor organization to fail or refuse to refer any individual for employment in any position, if-

1. the occupancy of such position, or access to the premises in or upon which any part of the duties of such position is performed or is to be performed, is subject to any requirement imposed in the interest of the national security of the United States under any security program in effect pursuant to or administered under any statute of the United States or any Executive order of the President; and

2. such individual has not fulfilled or has ceased to fulfill that requirement.

(h) Seniority or merit system; quantity or quality of production; ability tests; compensation based on sex and authorized by minimum wage provisions

Notwithstanding any other provision of this subchapter, it shall not be an unlawful employment practice for an employer to apply different standards of compensation, or different terms, conditions, or privileges of employment pursuant to a bona fide seniority or merit system, or a system which measures earnings by quantity or quality of production or to employees who work in different locations, provided that such differences are not the result of an intention to discriminate because of race, color, religion, sex, or national origin, nor shall it be an unlawful employment practice for an employer to give and to act upon the results of any professionally developed ability test provided that such test, its administration or action upon the results is not designed, intended or used to discriminate because of race, color, religion, sex or national origin. It shall not be an unlawful employment practice under this subchapter for any employer to differentiate upon the basis of sex in determining the amount of the wages or compensation paid or to be paid to employees of such employer if such differentiation is authorized by the provisions of section 206(d) of Title 29 [section 6(d) of the Labor Standards Act of 1938, as amended].

(i) Businesses or enterprises extending preferential treatment to Indians

Nothing contained in this subchapter shall apply to any business or enterprise on or near an Indian reservation with respect to any publicly announced employment practice of such business or enterprise under which a preferential treatment is given to any individual because he is an Indian living on or near a reservation.

(j) Preferential treatment not to be granted on account of existing number or percentage imbalance

Nothing contained in this subchapter shall be interpreted to require any employer, employment agency, labor organization, or joint labor-management committee subject to this subchapter to grant preferential treatment to any individual or to any group because of the race, color, religion, sex, or national origin of such individual or group on account of an imbalance which may exist with respect to the total number or percentage of persons of any race, color, religion, sex, or national origin employed by any employer, referred or classified for employment by any employment agency or labor organization, admitted to membership or classified by any labor organization, or admitted to, or employed in, any apprenticeship or other training program, in comparison with the total number or percentage of persons of such race, color, religion, sex, or national origin in any community, State, section, or other area, or in the available work force in any community, State, section, or other area.

(k) Burden of proof in disparate impact cases

1. An unlawful employment practice based on disparate impact is established under this subchapter only if-

   (i) a complaining party demonstrates that a respondent uses a particular employment practice that causes a
disparate impact on the basis of race, color, religion, sex, or national origin and the respondent fails to demonstrate that the challenged practice is job related for the position in question and consistent with business necessity; or

(ii) the complaining party makes the demonstration described in subparagraph (C) with respect to an alternative employment practice and the respondent refuses to adopt such alternative employment practice.

(B) (i) With respect to demonstrating that a particular employment practice causes a disparate impact as described in subparagraph (A)(i), the complaining party shall demonstrate that each particular challenged employment practice causes a disparate impact, except that if the complaining party can demonstrate to the court that the elements of a respondent's decisionmaking process are not capable of separation for analysis, the decisionmaking process may be analyzed as one employment practice.

(ii) If the respondent demonstrates that a specific employment practice does not cause the disparate impact, the respondent shall not be required to demonstrate that such practice is required by business necessity.

(C) The demonstration referred to by subparagraph (A)(ii) shall be in accordance with the law as it existed on June 4, 1989, with respect to the concept of "alternative employment practice".

(2) A demonstration that an employment practice is required by business necessity may not be used as a defense against a claim of intentional discrimination under this subchapter.

(3) Notwithstanding any other provision of this subchapter, a rule barring the employment of an individual who currently and knowingly uses or possesses a controlled substance, as defined in schedules I and II of section 102(6) of the Controlled Substances Act (21 U.S.C. 802(6)), other than the use or possession of a drug taken under the supervision of a licensed health care professional, or any other use or possession authorized by the Controlled Substances Act [21 U.S.C. 801 et seq.] or any other provision of Federal law, shall be considered an unlawful employment practice under this subchapter only if such rule is adopted or applied with an intent to discriminate because of race, color, religion, sex, or national origin.

(I) Prohibition of discriminatory use of test scores

It shall be an unlawful employment practice for a respondent, in connection with the selection or referral of applicants or candidates for employment or promotion, to adjust the scores of, use different cutoff scores for, or otherwise alter the results of, employment related tests on the basis of race, color, religion, sex, or national origin.

(m) Impermissible consideration of race, color, religion, sex, or national origin in employment practices

Except as otherwise provided in this subchapter, an unlawful employment practice is established when the complaining party demonstrates that race, color, religion, sex, or national origin was a motivating factor for any employment practice, even though other factors also motivated the practice.

(n) Resolution of challenges to employment practices implementing litigated or consent judgments or orders

(1) (A) Notwithstanding any other provision of law, and except as provided in paragraph (2), an employment practice that implements and is within the scope of a litigated or consent judgment or order that resolves a claim of employment discrimination under the Constitution or Federal civil rights laws may not be challenged under the circumstances described in subparagraph (B).

(B) A practice described in subparagraph (A) may not be challenged in a claim under the Constitution or Federal civil rights laws-

(i) by a person who, prior to the entry of the judgment or order described in subparagraph (A), had-

(I) actual notice of the proposed judgment or order sufficient to apprise such person that such judgment or order might adversely affect the interests and legal rights of such person and that an opportunity was available to present objections to such judgment or order by a future date certain; and

(II) a reasonable opportunity to present objections to such judgment or order; or

(ii) by a person whose interests were adequately represented by another person who had previously challenged the judgment or order on the same legal grounds and with a similar factual situation, unless there has been an intervening change in law or fact.

(2) Nothing in this subsection shall be construed to-

(A) alter the standards for intervention under rule 24 of the Federal Rules of Civil Procedure or apply to the rights of parties who have successfully intervened pursuant to such rule in the proceeding in which the parties intervened;

(B) apply to the rights of parties to the action in which a litigated or consent judgment or order was entered,
or of members of a class represented or sought to be represented in such action, or of members of a group
on whose behalf relief was sought in such action by the Federal Government;

(C) prevent challenges to a litigated or consent judgment or order on the ground that such judgment or order
was obtained through collusion or fraud, or is transparently invalid or was entered by a court lacking subject
matter jurisdiction; or

(D) authorize or permit the denial to any person of the due process of law required by the Constitution.

(3) Any action not precluded under this subsection that challenges an employment consent judgment or order described in
paragraph (1) shall be brought in the court, and if possible before the judge, that entered such judgment or order. Nothing
in this subsection shall preclude a transfer of such action pursuant to section 1404 of Title 28 [United States Code].

OTHER UNLAWFUL EMPLOYMENT PRACTICES
SEC. 2000e-3. [Section 704]

(a) Discrimination for making charges, testifying, assisting, or participating in enforcement proceedings

It shall be an unlawful employment practice for an employer to discriminate against any of his employees or applicants for
employment, for an employment agency, or joint labor-management committee controlling apprenticeship or other training
or retraining, including on—the-job training programs, to discriminate against any individual, or for a labor organization to
discriminate against any member thereof or applicant for membership, because he has opposed any practice made an
unlawful employment practice by this subchapter, or because he has made a charge, testified, assisted, or participated in
any manner in an investigation, proceeding, or hearing under this subchapter.

(b) Printing or publication of notices or advertisements indicating prohibited preference, limitation, specification, or
discrimination; occupational qualification exception

It shall be an unlawful employment practice for an employer, labor organization, employment agency, or joint labor–
management committee controlling apprenticeship or other training or retraining, including on-the-job training programs, to
print or publish or cause to be printed or published any notice or advertisement relating to employment by such an
employer or membership in or any classification or referral for employment by such a labor organization, or relating to any
classification or referral for employment by such an employment agency, or relating to admission to, or employment in, any
program established to provide apprenticeship or other training by such a joint labor-management committee, indicating
any preference, limitation, specification, or discrimination, based on race, color, religion, sex, or national origin, except that
such a notice or advertisement may indicate a preference, limitation, specification, or discrimination based on religion, sex,
or national origin when religion, sex, or national origin is a bona fide occupational qualification for employment.

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
SEC. 2000e-4. [Section 705]

(a) Creation; composition; political representation; appointment; term; vacancies; Chairman and Vice Chairman; duties of
Chairman; appointment of personnel; compensation of personnel

There is hereby created a Commission to be known as the Equal Employment Opportunity Commission, which shall be
composed of five members, not more than three of whom shall be members of the same political party. Members of the
Commission shall be appointed by the President by and with the advice and consent of the Senate for a term of five years.
Any individual chosen to fill a vacancy shall be appointed only for the unexpired term of the member whom he shall
succeed, and all members of the Commission shall continue to serve until their successors are appointed and qualified,
except that no such member of the Commission shall continue to serve (1) for more than sixty days when the Congress is in
session unless a nomination to fill such vacancy shall have been submitted to the Senate, or (2) after the adjournment sine
die of the session of the Senate in which such nomination was submitted. The President shall designate one member to
serve as Chairman of the Commission, and one member to serve as Vice Chairman. The Chairman shall be responsible
on behalf of the Commission for the administrative operations of the Commission, and, except as provided in subsection (b)
of this section, shall appoint, in accordance with the provisions of Title 5 [United States Code] governing appointments in
the competitive service, such officers, agents, attorneys, administrative law judges [originally, hearing examiners], and
employees as he deems necessary to assist it in the performance of its functions and to fix their compensation in
accordance with the provisions of chapter 51 and subchapter III of chapter 53 of Title 5 [United States Code], relating to
classification and General Schedule pay rates: Provided, That assignment, removal, and compensation of administrative
law judges [originally, hearing examiners] shall be in accordance with sections 3105, 3344, 5372, and 7521 of Title 5
[United States Code].

(b) General Counsel; appointment; term; duties; representation by attorneys and Attorney General

(1) There shall be a General Counsel of the Commission appointed by the President, by and with the advice
and consent of the Senate, for a term of four years. The General Counsel shall have responsibility for the
conduct of litigation as provided in sections 2000e-5 and 2000e-6 of this title [sections 706 and 707]. The
General Counsel shall have such other duties as the Commission may prescribe or as may be provided by
law and shall concur with the Chairman of the Commission on the appointment and supervision of regional
attorneys. The General Counsel of the Commission on the effective date of this Act shall continue in such
position and perform the functions specified in this subsection until a successor is appointed and qualified.
(2) Attorneys appointed under this section may, at the direction of the Commission, appear for and represent the Commission in any case in court, provided that the Attorney General shall conduct all litigation to which the Commission is a party in the Supreme Court pursuant to this subchapter.

(c) Exercise of powers during vacancy; quorum

A vacancy in the Commission shall not impair the right of the remaining members to exercise all the powers of the Commission and three members thereof shall constitute a quorum.

(d) Seal; judicial notice

The Commission shall have an official seal which shall be judicially noticed.

(e) Reports to Congress and the President

The Commission shall at the close of each fiscal year report to the Congress and to the President concerning the action it has taken [originally, the names, salaries, and duties of all individuals in its employ] and the moneys it has disbursed. It shall make such further reports on the cause of and means of eliminating discrimination and such recommendations for further legislation as may appear desirable.

(f) Principal and other offices

The principal office of the Commission shall be in or near the District of Columbia, but it may meet or exercise any or all its powers at any other place. The Commission may establish such regional or State offices as it deems necessary to accomplish the purpose of this subchapter.

(g) Powers of Commission

The Commission shall have power-

(1) to cooperate with and, with their consent, utilize regional, State, local, and other agencies, both public and private, and individuals;

(2) to pay to witnesses whose depositions are taken or who are summoned before the Commission or any of its agents the same witness and mileage fees as are paid to witnesses in the courts of the United States;

(3) to furnish to persons subject to this subchapter such technical assistance as they may request to further their compliance with this subchapter or an order issued thereunder;

(4) upon the request of (i) any employer, whose employees or some of them, or (ii) any labor organization, whose members or some of them, refuse or threaten to refuse to cooperate in effectuating the provisions of this subchapter, to assist in such effectuation by conciliation or such other remedial action as is provided by this subchapter;

(5) to make such technical studies as are appropriate to effectuate the purposes and policies of this subchapter and to make the results of such studies available to the public;

(6) to intervene in a civil action brought under section 2000e-5 of this title [section 706] by an aggrieved party against a respondent other than a government, governmental agency or political subdivision.

(h) Cooperation with other departments and agencies in performance of educational or promotional activities; outreach activities

(1) The Commission shall, in any of its educational or promotional activities, cooperate with other departments and agencies in the performance of such educational and promotional activities.

(2) In exercising its powers under this subchapter, the Commission shall carry out educational and outreach activities (including dissemination of information in languages other than English) targeted to-

(A) individuals who historically have been victims of employment discrimination and have not been equitably served by the Commission; and

(B) individuals on whose behalf the Commission has authority to enforce any other law prohibiting employment discrimination, concerning rights and obligations under this subchapter or such law, as the case may be.

(i) Personnel subject to political activity restrictions

All officers, agents, attorneys, and employees of the Commission shall be subject to the provisions of section 7324 of Title 5 [originally, section 9 of the Act of August 2, 1939, as amended (the Hatch Act)], notwithstanding any exemption contained in such section.

(j) Technical Assistance Training Institute

(1) The Commission shall establish a Technical Assistance Training Institute, through which the Commission shall provide technical assistance and training regarding the laws and regulations enforced by the
(2) An employer or other entity covered under this subchapter shall not be excused from compliance with the requirements of this subchapter because of any failure to receive technical assistance under this subsection.

(3) There are authorized to be appropriated to carry out this subsection such sums as may be necessary for fiscal year 1992.

(k) EEOC Education, Technical Assistance, and Training Revolving Fund

(1) There is hereby established in the Treasury of the United States a revolving fund to be known as the “EEOC Education, Technical Assistance, and Training Revolving Fund” (hereinafter in this subsection referred to as the “Fund”) and to pay the cost (including administrative and personnel expenses) of providing education, technical assistance, and training relating to laws administered by the Commission. Monies in the Fund shall be available without fiscal year limitation to the Commission for such purposes.

(2)(A) The Commission shall charge fees in accordance with the provisions of this paragraph to offset the costs of education, technical assistance, and training provided with monies in the Fund. Such fees for any education, technical assistance, or training--

(i) shall be imposed on a uniform basis on persons and entities receiving such education, assistance, or training,

(ii) shall not exceed the cost of providing such education, assistance, and training, and

(iii) with respect to each person or entity receiving such education, assistance, or training, shall bear a reasonable relationship to the cost of providing such education, assistance, or training to such person or entity.

(B) Fees received under subparagraph (A) shall be deposited in the Fund by the Commission.

(C) The Commission shall include in each report made under subsection (e) of this section information with respect to the operation of the Fund, including information, presented in the aggregate, relating to--

(i) the number of persons and entities to which the Commission provided education, technical assistance, or training with monies in the Fund, in the fiscal year for which such report is prepared,

(ii) the cost to the Commission to provide such education, technical assistance, or training to such persons and entities, and

(iii) the amount of any fees received by the Commission from such persons and entities for such education, technical assistance, or training.

(3) The Secretary of the Treasury shall invest the portion of the Fund not required to satisfy current expenditures from the Fund, as determined by the Commission, in obligations of the United States or obligations guaranteed as to principal by the United States. Investment proceeds shall be deposited in the Fund.

(4) There is hereby transferred to the Fund $1,000,000 from the Salaries and Expenses appropriation of the Commission.

ENFORCEMENT PROVISIONS

SEC. 2000e-5. [Section 706]

(a) Power of Commission to prevent unlawful employment practices

The Commission is empowered, as hereinafter provided, to prevent any person from engaging in any unlawful employment practice as set forth in section 2000e-2 or 2000e-3 of this title [section 703 or 704].

(b) Charges by persons aggrieved or member of Commission of unlawful employment practices by employers, etc.; filing; allegations; notice to respondent; contents of notice; investigation by Commission; contents of charges; prohibition on disclosure of charges; determination of reasonable cause; conference, conciliation, and persuasion for elimination of unlawful practices; prohibition on disclosure of informal endeavors to end unlawful practices; use of evidence in subsequent proceedings; penalties for disclosure of information; time for determination of reasonable cause

Whenever a charge is filed by or on behalf of a person claiming to be aggrieved, or by a member of the Commission, alleging that an employer, employment agency, labor organization, or joint labor-management committee controlling apprenticeship or other training or retraining, including on-the-job training programs, has engaged in an unlawful employment practice, the Commission shall serve a notice of the charge (including the date, place and circumstances of the alleged unlawful employment practice) on such employer, employment agency, labor organization, or joint labor-management committee (hereinafter referred to as the “respondent”) within ten days, and shall make an investigation thereof. Charges shall be in writing under oath or affirmation and shall contain such information and be in such form as the Commission requires. Charges shall not be made public by the Commission. If the Commission determines after such investigation that there is not reasonable cause to believe that the charge is true, it shall dismiss the charge and promptly notify the person claiming to be aggrieved and the respondent of its action. In determining whether reasonable cause exists, the Commission shall accord substantial weight to final findings and orders made by State or local authorities in
Title VII of the Civil Rights Act of 1964

(f) Civil action by Commission, Attorney General, or person aggrieved; precedents; procedure; appointment of attorney;

(b) In addition to any relief authorized by section 1977A of the Revised Statutes (42 U.S.C. 1981a), liability may accrue and an aggrieved person may obtain relief as provided in subsection (g)(1), including recovery of back pay for up to two years preceding the filing of the charge, where the unlawful employment practices that have occurred during the charge filing period are similar or related to unlawful employment practices with regard to discrimination in compensation that occurred outside the time for filing a charge.

(f) Civil action by Commission, Attorney General, or person aggrieved; precedents; procedure; appointment of attorney;
(1) If within thirty days after a charge is filed with the Commission or within thirty days after expiration of any period of reference under subsection (c) or (d) of this section, the Commission has been unable to secure from the respondent a conciliation agreement acceptable to the Commission, the Commission may bring a civil action against any respondent not a government, governmental agency, or political subdivision named in the charge. In the case of a respondent which is a government, governmental agency, or political subdivision, if the Commission has been unable to secure from the respondent a conciliation agreement acceptable to the Commission, the Commission shall take no further action and shall refer the case to the Attorney General who may bring a civil action against such respondent in the appropriate United States district court. The person or persons aggrieved shall have the right to intervene in a civil action brought by the Commission or the Attorney General in a case involving a government, governmental agency, or political subdivision. If a charge filed with the Commission pursuant to subsection (b) of this section is dismissed by the Commission, or if within one hundred and eighty days from the filing of such charge or the expiration of any period of reference under subsection (c) or (d) of this section, whichever is later, the Commission has not filed a civil action under this section or the Attorney General has not filed a civil action in a case involving a government, governmental agency, or political subdivision, or the Commission has not entered into a conciliation agreement to which the person aggrieved is a party, the Commission, or the Attorney General in a case involving a government, governmental agency, or political subdivision, shall so notify the person aggrieved and within ninety days after the giving of such notice a civil action may be brought against the respondent named in the charge (A) by the person claiming to be aggrieved or (B) if such charge was filed by a member of the Commission, by any person whom the charge alleges was aggrieved by the alleged unlawful employment practice. Upon application by the complainant and in such circumstances as the court may deem just, the court may appoint an attorney for such complainant and may authorize the commencement of the action without the payment of fees, costs, or security. Upon timely application, the court may, in its discretion, permit the Commission, or the Attorney General in a case involving a government, governmental agency, or political subdivision, to intervene in such civil action upon certification that the case is of general public importance. Upon request, the court may, in its discretion, stay further proceedings for not more than sixty days pending the termination of State or local proceedings described in subsection (c) or (d) of this section or further efforts of the Commission to obtain voluntary compliance.

(2) Whenever a charge is filed with the Commission and the Commission concludes on the basis of a preliminary investigation that prompt judicial action is necessary to carry out the purposes of this Act, the Commission, or the Attorney General in a case involving a government, governmental agency, or political subdivision, may bring an action for appropriate temporary or preliminary relief pending final disposition of such charge. Any temporary restraining order or other order granting preliminary or temporary relief shall be issued in accordance with rule 65 of the Federal Rules of Civil Procedure. It shall be the duty of a court having jurisdiction over proceedings under this section to assign cases for hearing at the earliest practicable date and to cause such cases to be in every way expedited.

(3) Each United States district court and each United States court of a place subject to the jurisdiction of the United States shall have jurisdiction of actions brought under this subchapter. Such an action may be brought in any judicial district in the State in which the unlawful employment practice is alleged to have been committed, in the judicial district in which the employment records relevant to such practice are maintained and administered, or in the judicial district in which the aggrieved person would have worked but for the alleged unlawful employment practice, but if the respondent is not found within any such district, such an action may be brought within the judicial district in which the respondent has his principal office. For purposes of sections 1404 and 1406 of Title 28 [United States Code], the judicial district in which the respondent has his principal office shall in all cases be considered a district in which the action might have been brought.

(4) It shall be the duty of the chief judge of the district (or in his absence, the acting chief judge) in which the case is pending immediately to designate a judge in such district to hear and determine the case. In the event that no judge in the district is available to hear and determine the case, the chief judge of the district, or the acting chief judge, as the case may be, shall certify this fact to the chief judge of the circuit (or in his absence, the acting chief judge) who shall then designate a district or circuit judge of the circuit to hear and determine the case.

(5) It shall be the duty of the judge designated pursuant to this subsection to assign the case for hearing at the earliest practicable date and to cause the case to be in every way expedited. If such judge has not scheduled the case for trial within one hundred and twenty days after issue has been joined, that judge may appoint a master pursuant to rule 53 of the Federal Rules of Civil Procedure.

(g) Injunctions; appropriate affirmative action; equitable relief; accrual of back pay; reduction of back pay; limitations on judicial orders

(1) If the court finds that the respondent has intentionally engaged in or is intentionally engaging in an unlawful employment practice charged in the complaint, the court may enjoin the respondent from engaging in such unlawful employment practice, and order such affirmative action as may be appropriate, which may
include, but is not limited to, reinstatement or hiring of employees, with or without back pay (payable by the employer, employment agency, or labor organization, as the case may be, responsible for the unlawful employment practice), or any other equitable relief as the court deems appropriate. Back pay liability shall not accrue from a date more than two years prior to the filing of a charge with the Commission. Interim earnings or amounts earnable with reasonable diligence by the person or persons discriminated against shall operate to reduce the back pay otherwise allowable.

(2) (A) No order of the court shall require the admission or reinstatement of an individual as a member of a union, or the hiring, reinstatement, or promotion of an individual as an employee, or the payment to him of any back pay, if such individual was refused admission, suspended, or expelled, or was refused employment or advancement or was suspended or discharged for any reason other than discrimination on account of race, color, religion, sex, or national origin or in violation of section 2000e-3(a) of this Title [section 704(a)].

(B) On a claim in which an individual proves a violation under section 2000e-2(m) of this title [section 703(m)] and a respondent demonstrates that the respondent would have taken the same action in the absence of the impermissible motivating factor, the court-

(i) may grant declaratory relief, injunctive relief (except as provided in clause (ii)), and attorney’s fees and costs demonstrated to be directly attributable to the pursuit of a claim under section 2000e-2(m) of this title [section 703(m)]; and

(ii) shall not award damages or issue an order requiring any admission, reinstatement, hiring, promotion, or payment, described in subparagraph (A).

(h) Provisions of chapter 6 of Title 29 not applicable to civil actions for prevention of unlawful practices

The provisions of chapter 6 of title 29 [the Act entitled “An Act to amend the Judicial Code and to define and limit the jurisdiction of courts sitting in equity, and for other purposes,” approved March 23, 1932 (29 U.S.C. 105-115)] shall not apply with respect to civil actions brought under this section.

(i) Proceedings by Commission to compel compliance with judicial orders In any case in which an employer, employment agency, or labor organization fails to comply with an order of a court issued in a civil action brought under this section, the Commission may commence proceedings to compel compliance with such order.

(j) Appeals

Any civil action brought under this section and any proceedings brought under subsection (i) of this section shall be subject to appeal as provided in sections 1291 and 1292, Title 28 [United States Code].

(k) Attorney’s fee; liability of Commission and United States for costs

In any action or proceeding under this subchapter the court, in its discretion, may allow the prevailing party, other than the Commission or the United States, a reasonable attorney’s fee (including expert fees) as part of the costs, and the Commission and the United States shall be liable for costs the same as a private person.

CIVIL ACTIONS BY THE ATTORNEY GENERAL

SEC. 2000e-6. [Section 707]

(a) Complaint

Whenever the Attorney General has reasonable cause to believe that any person or group of persons is engaged in a pattern or practice of resistance to the full enjoyment of any of the rights secured by this subchapter, and that the pattern or practice is of such a nature and is intended to deny the full exercise of the rights herein described, the Attorney General may bring a civil action in the appropriate district court of the United States by filing with it a complaint (1) signed by him (or in his absence the Acting Attorney General), (2) setting forth facts pertaining to such pattern or practice, and (3) requesting such relief, including an application for a permanent or temporary injunction, restraining order or other order against the person or persons responsible for such pattern or practice, as he deems necessary to insure the full enjoyment of the rights herein described.

(b) Jurisdiction; three-judge district court for cases of general public importance: hearing, determination, expedition of action, review by Supreme Court; single judge district court: hearing, determination, expedition of action

The district courts of the United States shall have and shall exercise jurisdiction of proceedings instituted pursuant to this section, and in any such proceeding the Attorney General may file with the clerk of such court a request that a court of three judges be convened to hear and determine the case. Such request by the Attorney General may be accompanied by a certificate that, in his opinion, the case is of general public importance. A copy of the certificate and request for a three–judge court shall be immediately furnished by such clerk to the chief judge of the circuit (or in his absence, the presiding circuit judge of the circuit) in which the case is pending. Upon receipt of such request it shall be the duty of the chief judge of the circuit or the presiding circuit judge, as the case may be, to designate immediately three judges in such circuit, of whom at least one shall be a circuit judge and another of whom shall be a district judge of the court in which the proceeding was instituted, to hear and determine such case, and it shall be the duty of the judges so designated to assign the case for hearing at the earliest practicable date, to participate in the hearing and determination thereof, and to cause
the case to be in every way expedited. An appeal from the final judgment of such court will lie to the Supreme Court.

In the event the Attorney General fails to file such a request in any such proceeding, it shall be the duty of the chief judge of the district (or in his absence, the acting chief judge) in which the case is pending immediately to designate a judge in such district to hear and determine the case. In the event that no judge in the district is available to hear and determine the case, the chief judge of the district, or the acting chief judge, as the case may be, shall certify this fact to the chief judge of the circuit (or in his absence, the acting chief judge) who shall then designate a district or circuit judge of the circuit to hear and determine the case.

It shall be the duty of the judge designated pursuant to this section to assign the case for hearing at the earliest practicable date and to cause the case to be in every way expedited.

(c) Transfer of functions, etc., to Commission; effective date; prerequisite to transfer; execution of functions by Commission

Effective two years after March 24, 1972 [the date of enactment of the Equal Employment Opportunity Act of 1972], the functions of the Attorney General under this section shall be transferred to the Commission, together with such personnel, property, records, and unexpended balances of appropriations, allocations, and other funds employed, used, held, available, or to be made available in connection with such functions unless the President submits, and neither House of Congress vetoes, a reorganization plan pursuant to chapter 9 of Title 5 [United States Code], inconsistent with the provisions of this subsection. The Commission shall carry out such functions in accordance with subsections (d) and (e) of this section.

(d) Transfer of functions, etc., not to affect suits commenced pursuant to this section prior to date of transfer

Upon the transfer of functions provided for in subsection (c) of this section, in all suits commenced pursuant to this section prior to the date of such transfer, proceedings shall continue without abatement, all court orders and decrees shall remain in effect, and the Commission shall be substituted as a party for the United States of America, the Attorney General, or the Acting Attorney General, as appropriate.

(e) Investigation and action by Commission pursuant to filing of charge of discrimination; procedure

Subsequent to March 24, 1972 [the date of enactment of the Equal Employment Opportunity Act of 1972], the Commission shall have authority to investigate and act on a charge of a pattern or practice of discrimination, whether filed by or on behalf of a person claiming to be aggrieved or by a member of the Commission. All such actions shall be conducted in accordance with the procedures set forth in section 2000e-5 of this title [section 706].

EFFECT ON STATE LAWS

SEC. 2000e-7. [Section 708]

Nothing in this subchapter shall be deemed to exempt or relieve any person from any liability, duty, penalty, or punishment provided by any present or future law of any State or political subdivision of a State, other than any such law which purports to require or permit the doing of any act which would be an unlawful employment practice under this subchapter.

INVESTIGATIONS

SEC. 2000e-8. [Section 709]

(a) Examination and copying of evidence related to unlawful employment practices

In connection with any investigation of a charge filed under section 2000e-5 of this title [section 706], the Commission or its designated representative shall at all reasonable times have access to, for the purposes of examination, and the right to copy any evidence of any person being investigated or proceeded against that relates to unlawful employment practices covered by this subchapter and is relevant to the charge under investigation.

(b) Cooperation with State and local agencies administering State fair employment practices laws; participation in and contribution to research and other projects; utilization of services; payment in advance or reimbursement; agreements and rescission of agreements

The Commission may cooperate with State and local agencies charged with the administration of State fair employment practices laws and, with the consent of such agencies, may, for the purpose of carrying out its functions and duties under this subchapter and within the limitation of funds appropriated specifically for such purpose, engage in and contribute to the cost of research and other projects of mutual interest undertaken by such agencies, and utilize the services of such agencies and their employees, and, notwithstanding any other provision of law, pay by advance or reimbursement such agencies and their employees for services rendered to assist the Commission in carrying out this subchapter. In furtherance of such cooperative efforts, the Commission may enter into written agreements with such State or local agencies and such agreements may include provisions under which the Commission shall refrain from processing a charge in any cases or class of cases specified in such agreements or under which the Commission shall relieve any person or class of persons in such State or locality from requirements imposed under this section. The Commission shall rescind any such agreement whenever it determines that the agreement no longer serves the interest of effective enforcement of this subchapter.

(c) Execution, retention, and preservation of records; reports to Commission; training program records; appropriate relief from regulation or order for undue hardship; procedure for exemption; judicial action to compel compliance
Every employer, employment agency, and labor organization subject to this subchapter shall (1) make and keep such records relevant to the determinations of whether unlawful employment practices have been or are being committed, (2) preserve such records for such periods, and (3) make such reports therefrom as the Commission shall prescribe by regulation or order, after public hearing, as reasonable, necessary, or appropriate for the enforcement of this subchapter or the regulations or orders thereunder. The Commission shall, by regulation, require each employer, labor organization, and joint labor-management committee subject to this subchapter which controls an apprenticeship or other training program to maintain such records as are reasonably necessary to carry out the purposes of this subchapter, including, but not limited to, a list of applicants who wish to participate in such program, including the chronological order in which applications were received, and to furnish to the Commission upon request, a detailed description of the manner in which persons are selected to participate in the apprenticeship or other training program. Any employer, employment agency, labor organization, or joint labor-management committee which believes that the application to it of any regulation or order issued under this section would result in undue hardship may apply to the Commission for an exemption from the application of such regulation or order, and, if such application for an exemption is denied, bring a civil action in the United States district court for the district where such records are kept. If the Commission or the court, as the case may be, finds that the application of the regulation or order to the employer, employment agency, or labor organization in question would impose an undue hardship, the Commission or the court, as the case may be, may grant appropriate relief. If any person required to comply with the provisions of this subsection fails or refuses to do so, the United States district court for the district in which such person is found, resides, or transacts business, shall, upon application of the Commission, or the Attorney General in a case involving a government, governmental agency or political subdivision, have jurisdiction to issue to such person an order requiring him to comply.

(d) Consultation and coordination between Commission and interested State and Federal agencies in prescribing recordkeeping and reporting requirements; availability of information furnished pursuant to recordkeeping and reporting requirements; conditions on availability

In prescribing requirements pursuant to subsection (c) of this section, the Commission shall consult with other interested State and Federal agencies and shall endeavor to coordinate its requirements with those adopted by such agencies. The Commission shall furnish upon request and without cost to any State or local agency charged with the administration of a fair employment practice law information obtained pursuant to subsection (c) of this section from any employer, employment agency, labor organization, or joint labor-management committee subject to the jurisdiction of such agency. Such information shall be furnished on condition that it not be made public by the recipient agency prior to the institution of a proceeding under State or local law involving such information. If this condition is violated by a recipient agency, the Commission may decline to honor subsequent requests pursuant to this subsection.

(e) Prohibited disclosures; penalties

It shall be unlawful for any officer or employee of the Commission to make public in any manner whatever any information obtained by the Commission pursuant to its authority under this section prior to the institution of any proceeding under this subchapter involving such information. Any officer or employee of the Commission who shall make public in any manner whatever any information in violation of this subsection shall be guilty of a misdemeanor and upon conviction thereof, shall be fined not more than $1,000, or imprisoned not more than one year.

CONDUCT OF HEARINGS AND INVESTIGATIONS PURSUANT TO SECTION 161 OF Title 29

SEC. 2000e-9. [Section 710]

For the purpose of all hearings and investigations conducted by the Commission or its duly authorized agents or agencies, section 161 of Title 29 [section 11 of the National Labor Relations Act] shall apply.

POSTING OF NOTICES; PENALTIES

SEC. 2000e-10. [Section 711]

(a) Every employer, employment agency, and labor organization, as the case may be, shall post and keep posted in conspicuous places upon its premises where notices to employees, applicants for employment, and members are customarily posted a notice to be prepared or approved by the Commission setting forth excerpts from or, summaries of, the pertinent provisions of this subchapter and information pertinent to the filing of a complaint.

(b) A willful violation of this section shall be punishable by a fine of not more than $100 for each separate offense.

VETERANS’ SPECIAL RIGHTS OR PREFERENCE

SEC. 2000e-11. [Section 712]

Nothing contained in this subchapter shall be construed to repeal or modify any Federal, State, territorial, or local law creating special rights or preference for veterans.

REGULATIONS; CONFORMITY OF REGULATIONS WITH ADMINISTRATIVE PROCEDURE PROVISIONS; RELIANCE ON INTERPRETATIONS AND INSTRUCTIONS OF COMMISSION

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SEC. 2000e-12. [Section 713]

(a) The Commission shall have authority from time to time to issue, amend, or rescind suitable procedural regulations to carry out the provisions of this subchapter. Regulations issued under this section shall be in conformity with the standards and limitations of subchapter II of chapter 5 of Title 5 [originally, the Administrative Procedure Act].

(b) In any action or proceeding based on any alleged unlawful employment practice, no person shall be subject to any liability or punishment for or on account of (1) the commission by such person of an unlawful employment practice if he pleads and proves that the act or omission complained of was in good faith, in conformity with, and in reliance on any written interpretation or opinion of the Commission, or (2) the failure of such person to publish and file any information required by any provision of this subchapter if he pleads and proves that he failed to publish and file such information in good faith, in conformity with the instructions of the Commission issued under this subchapter regarding the filing of such information. Such a defense, if established, shall be a bar to the action or proceeding, notwithstanding that (A) after such act or omission, such interpretation or opinion is modified or rescinded or is determined by judicial authority to be invalid or of no legal effect, or (B) after publishing or filing the description and annual reports, such publication or filing is determined by judicial authority not to be in conformity with the requirements of this subchapter.

APPLICATION TO PERSONNEL OF COMMISSION OF SECTIONS 111 AND 1114 OF TITLE 18; PUNISHMENT FOR VIOLATION OF SECTION 1114 OF TITLE 18

SEC. 2000e-13. [Section 714]

The provisions of sections 111 and 1114, Title 18 [United States Code], shall apply to officers, agents, and employees of the Commission in the performance of their official duties. Notwithstanding the provisions of sections 111 and 1114 of Title 18 [United States Code], whoever in violation of the provisions of section 1114 of such title kills a person while engaged in or on account of the performance of his official functions under this Act shall be punished by imprisonment for any term of years or for life.

TRANSFER OF AUTHORITY

[Administration of the duties of the Equal Employment Opportunity Coordinating Council was transferred to the Equal Employment Opportunity Commission effective July 1, 1978, under the President's Reorganization Plan of 1978.]

EQUAL EMPLOYMENT OPPORTUNITY COORDINATING COUNCIL; ESTABLISHMENT; COMPOSITION; DUTIES; REPORT TO PRESIDENT AND CONGRESS

SEC. 2000e-14. [Section 715]

[Original introductory text: There shall be established an Equal Employment Opportunity Coordinating Council (hereinafter referred to in this section as the Council) composed of the Secretary of Labor, the Chairman of the Equal Employment Opportunity Commission, the Attorney General, the Chairman of the United States Civil Service Commission, and the Chairman of the United States Civil Rights Commission, or their respective delegates.]

The Equal Employment Opportunity Commission [originally, Council] shall have the responsibility for developing and implementing agreements, policies and practices designed to maximize effort, promote efficiency, and eliminate conflict, competition, duplication and inconsistency among the operations, functions and jurisdictions of the various departments, agencies and branches of the Federal Government responsible for the implementation and enforcement of equal employment opportunity legislation, orders, and policies. On or before October 1 [originally, July 1] of each year, the Equal Employment Opportunity Commission [originally, Council] shall transmit to the President and to the Congress a report of its activities, together with such recommendations for legislative or administrative changes as it concludes are desirable to further promote the purposes of this section.

PRESIDENTIAL CONFERENCES; ACQUAINTANCE OF LEADERSHIP WITH PROVISIONS FOR EMPLOYMENT RIGHTS AND OBLIGATIONS; PLANS FOR FAIR ADMINISTRATION; MEMBERSHIP

SEC. 2000e-15. [Section 716]

[Original text: (a) This title shall become effective one year after the date of its enactment.

(b) Notwithstanding section (a), sections of this title other than sections 703, 704, 706, and 707 shall become effective immediately.

(c) The President shall, as soon as feasible after July 2, 1964 [the date of enactment of this title], convene one or more conferences for the purpose of enabling the leaders of groups whose members will be affected by this subchapter to become familiar with the rights afforded and obligations imposed by its provisions, and for the purpose of making plans which will result in the fair and effective administration of this subchapter when all of its provisions become effective. The President shall invite the participation in such conference or conferences of (1) the members of the President's Committee on Equal Employment Opportunity, (2) the members of the Commission on Civil Rights, (3) representatives of State and local agencies engaged in furthering equal employment opportunity, (4) representatives of private agencies engaged in...]

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furthering equal employment opportunity, and (5) representatives of employers, labor organizations, and employment
agencies who will be subject to this subchapter.

TRANSFER OF AUTHORITY

[Enforcement of Section 717 was transferred to the Equal Employment Opportunity Commission from the Civil Service
Commission (Office of Personnel Management) effective January 1, 1979 under the President's Reorganization Plan No. 1
of 1978.]

EMPLOYMENT BY FEDERAL GOVERNMENT

SEC. 2000e-16. [Section 717]

(a) Discriminatory practices prohibited; employees or applicants for employment subject to coverage

All personnel actions affecting employees or applicants for employment (except with regard to aliens employed outside the
limits of the United States) in military departments as defined in section 102 of Title 5 [United States Code], in executive
agencies [originally, other than the General Accounting Office] as defined in section 105 of Title 5 [United States Code]
(including employees and applicants for employment who are paid from nonappropriated funds), in the United States
Postal Service and the Postal Regulatory Commission, in those units of the Government of the District of Columbia having
positions in the competitive service, and in those units of the judicial branch of the Federal Government having positions in
the competitive service, in the Smithsonian Institution, and in the Government Printing Office, the Government
Accountability Office, and the Library of Congress shall be made free from any discrimination based on race, color, religion,
sex, or national origin.

(b) Equal Employment Opportunity Commission; enforcement powers; issuance of rules, regulations, etc.; annual review
and approval of national and regional equal employment opportunity plans; review and evaluation of equal employment
opportunity programs and publication of progress reports; consultations with interested parties; compliance with rules,
regulations, etc.; contents of national and regional equal employment opportunity plans; authority of Librarian of Congress

Except as otherwise provided in this subsection, the Equal Employment Opportunity Commission [originally, Civil Service
Commission] shall have authority to enforce the provisions of subsection (a) of this section through appropriate remedies,
including reinstatement or hiring of employees with or without back pay, as will effectuate the policies of this section, and
shall issue such rules, regulations, orders and instructions as it deems necessary and appropriate to carry out its
responsibilities under this section. The Equal Employment Opportunity Commission [originally, Civil Service
Commission] shall

(1) be responsible for the annual review and approval of a national and regional equal employment
opportunity plan which each department and agency and each appropriate unit referred to in subsection (a)
of this section shall submit in order to maintain an affirmative program of equal employment opportunity for
all such employees and applicants for employment;

(2) be responsible for the review and evaluation of the operation of all agency equal employment
opportunity programs, periodically obtaining and publishing (on at least a semiannual basis) progress
reports from each such department, agency, or unit; and

(3) consult with and solicit the recommendations of interested individuals, groups, and organizations relating
to equal employment opportunity.

The head of each such department, agency, or unit shall comply with such rules, regulations, orders, and instructions which
shall include a provision that an employee or applicant for employment shall be notified of any final action taken on any
complaint of discrimination filed by him thereunder. The plan submitted by each department, agency, and unit shall include,
but not be limited to

(1) provision for the establishment of training and education programs designed to provide a maximum
opportunity for employees to advance so as to perform at their highest potential; and

(2) a description of the qualifications in terms of training and experience relating to equal employment
opportunity for the principal and operating officials of each such department, agency, or unit responsible for
carrying out the equal employment opportunity program and of the allocation of personnel and resources
proposed by such department, agency, or unit to carry out its equal employment opportunity program.

With respect to employment in the Library of Congress, authorities granted in this subsection to the Equal Employment
Opportunity Commission [originally, Civil Service Commission] shall be exercised by the Librarian of Congress.

(c) Civil action by employee or applicant for employment for redress of grievances; time for bringing of action; head of
department, agency, or unit as defendant

Within 90 days of receipt of notice of final action taken by a department, agency, or unit referred to in subsection (a) of this
section, or by the Equal Employment Opportunity Commission [originally, Civil Service Commission] upon an appeal from a
decision or order of such department, agency, or unit on a complaint of discrimination based on race, color, religion, sex or
national origin, brought pursuant to subsection (a) of this section, Executive Order 11478 or any succeeding Executive
orders, or after one hundred and eighty days from the filing of the initial charge with the department, agency, or unit or with
the Equal Employment Opportunity Commission [originally, Civil Service Commission] on appeal from a decision or order of such department, agency, or unit until such time as final action may be taken by a department, agency, or unit, an employee or applicant for employment, if aggrieved by the final disposition of his complaint, or by the failure to take final action on his complaint, may file a civil action as provided in section 2000e-5 of this title [section 706], in which civil action the head of the department, agency, or unit, as appropriate, shall be the defendant.

(d) Section 2000e-5(f) through (k) of this title applicable to civil actions

The provisions of section 2000e-5(f) through (k) of this title [section 706(f) through (k)], as applicable, shall govern civil actions brought hereunder, and the same interest to compensate for delay in payment shall be available as in cases involving nonpublic parties.

(e) Government agency or official not relieved of responsibility to assure nondiscrimination in employment or equal employment opportunity

Nothing contained in this Act shall relieve any Government agency or official of its or his primary responsibility to assure nondiscrimination in employment as required by the Constitution and statutes or of its or his responsibilities under Executive Order 11478 relating to equal employment opportunity in the Federal Government.

(f) Section 2000e-5(e)(3) [Section 706(e)(3)] shall apply to complaints of discrimination in compensation under this section.

PROCEDURE FOR DENIAL, WITHHOLDING, TERMINATION, OR SUSPENSION OF GOVERNMENT CONTRACT SUBSEQUENT TO ACCEPTANCE BY GOVERNMENT OF AFFIRMATIVE ACTION PLAN OF EMPLOYER; TIME OF ACCEPTANCE OF PLAN

SEC. 2000e-17. [Section 718]

No Government contract, or portion thereof, with any employer, shall be denied, withheld, terminated, or suspended, by any agency or officer of the United States under any equal employment opportunity law or order, where such employer has an affirmative action plan which has previously been accepted by the Government for the same facility within the past twelve months without first according such employer full hearing and adjudication under the provisions of section 554 of Title 5 [United States Code], and the following pertinent sections: Provided, That if such employer has deviated substantially from such previously agreed to affirmative action plan, this section shall not apply: Provided further, That for the purposes of this section an affirmative action plan shall be deemed to have been accepted by the Government at the time the appropriate compliance agency has accepted such plan unless within forty-five days thereafter the Office of Federal Contract Compliance has disapproved such plan.
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
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 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 “retali ate” 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 "retali ate" 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.

Source: U.S. Equal Employment Opportunity Commission (EEOC)
http://www.eeoc.gov/laws/types/facts-retal.cfm
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.

Source: U.S. Equal Employment Opportunity Commission (EEOC)
http://www.eeoc.gov/laws/types/sex.cfm
Sexual Harassment

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

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

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

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

Facts About Sexual Harassment

Sexual harassment is a form of sex discrimination that violates Title VII of the Civil Rights Act of 1964. Title VII applies to employers with 15 or more employees, including state and local governments. It also applies to employment agencies and to labor organizations, as well as to the federal government.

Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when this conduct explicitly or implicitly affects an individual's employment, unreasonably interferes with an individual's work performance, or creates an intimidating, hostile, or offensive work environment.

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

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

It is helpful for the victim to inform the harasser directly that the conduct is unwelcome and must stop. The victim should use any employer complaint mechanism or grievance system available.

Source: U.S. Equal Employment Opportunity Commission (EEOC)
When investigating allegations of sexual harassment, EEOC looks at the whole record: the circumstances, such as the nature of the sexual advances, and the context in which the alleged incidents occurred. A determination on the allegations is made from the facts on a case-by-case basis.

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

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