

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

**POLICY STATEMENT:**

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

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

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

**AUTHORITY:**

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

**APPLICABILITY:**

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

**ATTACHMENTS:**

ADA Accommodation Tool Kit

**DEFINITIONS:**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## **POLICY**

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

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

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

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

**APPLICABILITY:** All employees, state temporary employees and volunteers.

**ATTACHMENTS:** None

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**POLICY**

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

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

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

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

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

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

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

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

(ii) the name of the complainant;

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

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

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

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

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

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

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

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

of the problem behavior and require prompt, appropriate action.

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

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

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

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

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

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

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

(B) be given directions to read the policy;

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

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

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

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**(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

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(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.

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(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%

## 105-040-0015

### Veteran's Preference in Employment

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Stat. Auth: ORS 240.145(3) & 240.250

Stats. Implemented: ORS 408.225, 408.230 & 408.235

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

HRSD 3-2009, f. 12-30-09, cert. ef. 1-1-10

**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.

Stat. Auth.: ORS 184.340, 240.145 & 240.250

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;



**EXECUTIVE ORDER 16-09**  
**PAGE TWO**

- 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.



**EXECUTIVE ORDER 16-09**  
**PAGE THREE**

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 3<sup>rd</sup> day of May, 2016.



Handwritten signature of Kate Brown in blue ink.

Kate Brown  
GOVERNOR

ATTEST:

Handwritten signature of Jeanne P. Atkins in blue ink.

Jeanne P. Atkins  
SECRETARY OF STATE