



Oregon Medical Board

Kathleen Haley, Executive Director
1500 SW First Ave, Suite 620
Portland OR 97201
971-673-2700

Affirmative Action Plan
2015 – 2017 Biennium

Letter from the Director

August 1, 2014

The Oregon Medical Board remains committed to diversity and inclusion in its workforce. To that end, OMB supports taking action with respect to its affirmative action and diversity and inclusion programs. The affirmative action plan that follows represents my personal and professional commitment to upholding our commitment to the citizens of Oregon. The plan also represents our commitment to equal opportunity and affirmative action in employment and public service in compliance with all applicable federal and state laws, including, but not limited to: Executive Order 11246; Title VII of the Civil Rights Act of 1964; Sections 503 and 504 of the Rehabilitation Act of 1974; the Vietnam Era Veterans Readjustment Assistance Act; and the Americans with Disabilities Act. This affirmative action plan has my complete authorization.

Kathleen Haley, Executive Director
Oregon Medical Board
(971) 673-2700

Jessica Bates, Affirmative Action Officer
Oregon Medical Board
1500 S.W. First Avenue, Suite 620
Portland, Oregon 97201-5847
971-673-2697

Effective Date: July 1, 2015

OREGON MEDICAL BOARD

**AFFIRMATIVE ACTION PLAN
2015-2017 BIENNIUM**

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I. DESCRIPTION OF AGENCY

A. Mission and Objectives

The Mission of the Oregon Medical Board is to protect the health, safety, and wellbeing of Oregonians by regulating the practice of medicine in a manner that promotes access to quality care.

The Oregon Legislature created the Oregon Medical Board (“Board”) in 1889 to regulate the practice of medicine in the state of Oregon. Lawmakers created the Board after 10 years of lobbying by the Oregon State Medical Society (now known as the Oregon Medical Association or OMA). The Legislature charged the new Board with enforcing the Oregon Medical Practice Act (ORS Chapter 677). That Act required the Governor to compose the first board of “three persons from among the most competent physicians of the state.”

The Oregon Medical Board administers ORS Chapter 677 and OAR Chapter 847 to license, to investigate charges against, and to discipline medical and osteopathic physicians (MDs and DOs), doctors of podiatry (DPMs), acupuncturists, and physician assistants (PAs).

The Board members are appointed by the Governor to adopt rules, establish policy, investigate and discipline licensees and appoint the agency’s director. Of the twelve members, two are public members, one is a DPM, two are DOs, and the remainders are MDs.

The Board is a regulatory agency created to protect the health, safety, and welfare of the people of Oregon from the practice of medicine by unauthorized or unqualified persons and from unprofessional conduct by persons licensed to practice medicine, and to promote medical excellence in Oregon. As the agency regulating medical practice statewide, the Board also develops and enforces most of the state laws, rules, and policies under which its licensees practice. There are more than 18,000 licensees under the jurisdiction of the Board.

B. The Executive Director of the Oregon Medical Board is:

Ms. Kathleen Haley
1500 SW 1st Ave Suite 620
Portland OR 97201-5847
Phone number 971-673-2700

C. The Governor’s Healthcare Policy Advisor is:

Mr. Sean Kolmer
Phone number 503-373-1558

D. & E. The Affirmative Action and Diversity and Inclusion Representative for the Oregon Medical Board is:

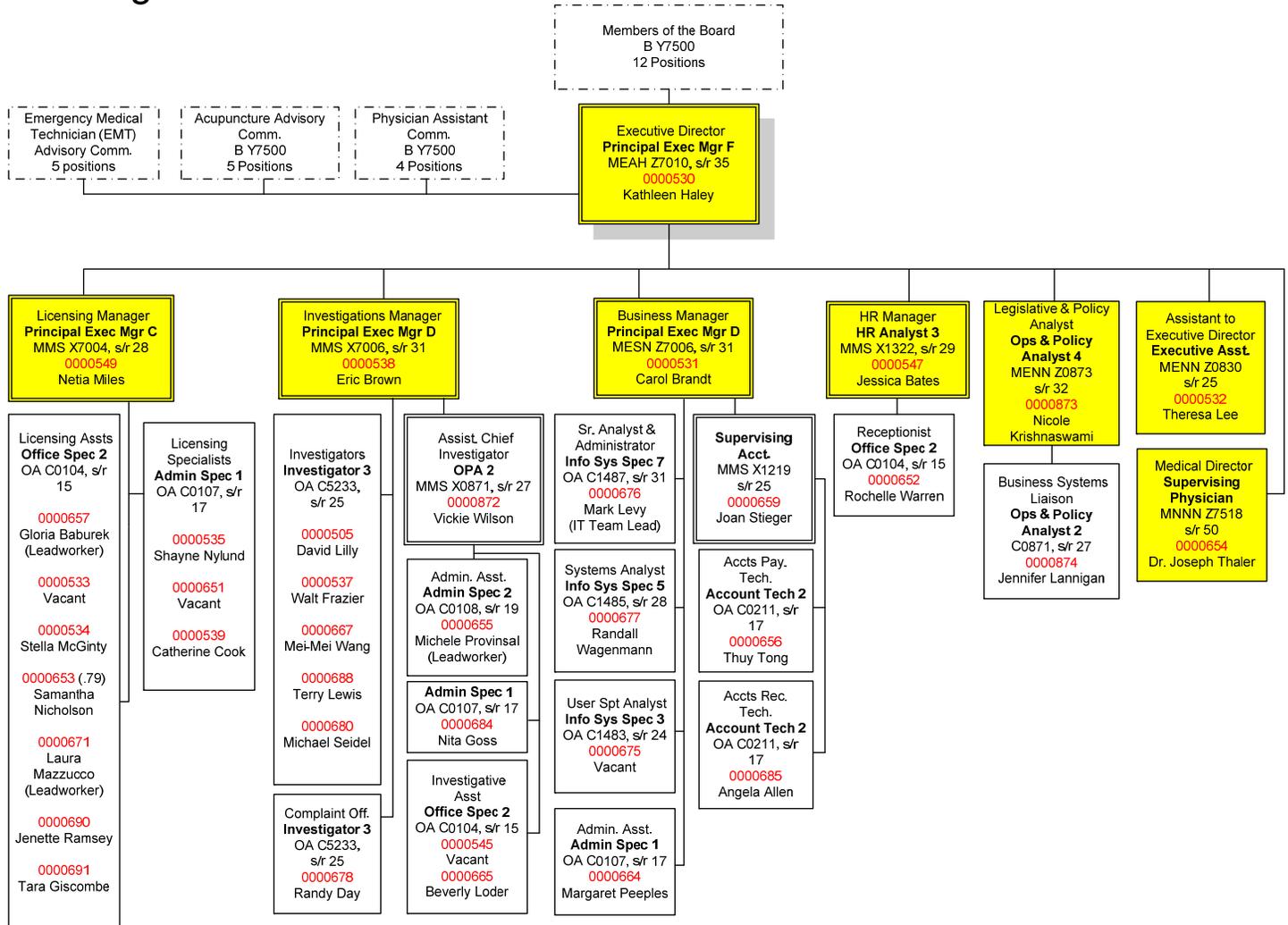
Ms. Jessica Bates
Phone number 971-673-2697

F. A current organizational chart for the Oregon Medical Board follows this page.

Organizational Chart

Oregon Medical Board

July 1, 2014



G. Executive Summary

The Oregon Medical Board is dedicated to meeting its mission of protecting the health, safety and well-being of Oregonians by regulating the practice of medicine in a manner that promotes access to quality care. Through this mission we serve the State of Oregon and its citizens in a manner that promotes and encourages continual efforts toward diversity and inclusion, equal employment opportunity and affirmative action in all aspects of our work environment.

II. AFFIRMATIVE ACTION PLAN

A. Agency Affirmative Action Policy Statement

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

Affirmative Action Policy Statement

The Oregon Medical Board will not tolerate discrimination or harassment on the basis of age, color, marital status, mental or physical disability, national origin, race, religion, sex, sexual orientation, or any reason prohibited by state or federal statute, nor shall the Board conduct business with any vendor/provider for the state of Oregon who discriminates against members of any protected class. All personnel actions of the Oregon Medical Board, and all licensing actions and disciplinary actions concerning licensees, shall be administered according to this policy.

All staff of the Oregon Medical Board shall adhere to the Affirmative Action Policy and Plan. Supervisory and management staff, in particular, shall assure that the intent as well as the stated requirements are implemented in all employee relationships and personnel practices. In addition, it is the duty of every employee of the Oregon Medical Board to create a job environment reflecting respect, care and concern for every individual and to maintain a harassment-free environment. Managers and employees are expected to work together to eliminate and prevent discrimination. The application of this policy is the individual responsibility of all administrative and supervisory staff, and each shall be evaluated on his/her performance in achieving this affirmative action policy as well as in other job performance criteria. Failure to meet our affirmative action standards will be subject to disciplinary actions. The Affirmative Action Plan will be posted on the Board's website and intranet. A hard copy will be placed in the reception area, and in the Executive Director's and HR Manager's offices. The Affirmative Action Policy Statement is posted on the bulletin board where all other required posters are located.

All employees shall be advised of the procedure for lodging a discrimination/harassment complaint, and all employees with concerns of any kind related to affirmative action shall be encouraged to bring them to the attention of the Executive Director or the Human Resources Manager. Our internal procedure that supports statewide policy is located on page 39 of this Affirmative Action Plan.

It is further the policy of the Oregon Medical Board to establish and maintain this program of affirmative action to provide for a method of eliminating any effects of past or present discrimination, intended or unintended, which may be indicated by analysis of present employment patterns, practices, or policies.

Duration of Plan

This revision of the Board's Affirmative Action Plan is effective July 1, 2015 and shall be evaluated annually or as needed when statewide changes occur. The Board's Affirmative Action Representative is Jessica Bates, 971-673-2697.

Kathleen Haley, Executive Director of the OMB

B. Agency Diversity & Inclusion Statement

The Oregon Medical Board serves all Oregon's citizens, and respects and is inclusive of the diversity among those citizens. In order to carry out its mission, OMB embraces initiatives and policies consistent with respect for diversity and inclusion. OMB embraces its responsibility to Oregonians including those of all genders, ages, races, national origins, colors, ethnicities, religions, physiological and psychological disabilities, sexual orientations, and those with status as veterans. Individuals in all these categories should expect that the practice of medicine will be regulated to protect their health, safety and well-being. They should further expect that they will have the ability to have their voices heard in pursuit of these goals.

The Oregon Medical Board's commitment to Oregonians comes from its Board, Executive Director and management team, and includes all staff. Just as in our commitment to affirmative action, those who fall short in their support of equal access and inclusion are held responsible. The agency's management team is expected to do all they can to improve diversity and inclusion at OMB.

Only by embracing the variety of cultures embodied by Oregon's citizens can OMB provide the best possible service to those citizens and to the state of Oregon. OMB continues to strive to improve the lives of those living within the borders of this state, and will continue to improve as the agency moves forward.

C. Training, Education and Development Plan:

1. Employees

- a. Train and inform managers, supervisors, and employees at New Employee Orientation as to their rights and responsibilities under the Board's affirmative action plan and other Board policies to eliminate discrimination or harassment on the basis of age, color, marital status, mental or physical disability, national origin, race, religion, sex, sexual orientation, or any reason prohibited by state or federal statute.
- b. Managers and employees will attend training in the areas of AA/EEO, Valuing Diversity and preventing Harassment. Training may be in the form of guest speakers during monthly all-staff meetings, formal classes, sharing of information from the Governor's Affirmative Action Office, and/or one-on-one discussions. Managers will be evaluated annually for their adherence to this Affirmative Action Plan.
- c. A significant portion of the Oregon Medical Board's workforce is eligible to retire within the next five years. Succession planning is critical for the seamless transition of employees in key positions. Our upper level managers have identified people that could move into these key roles within twelve months. To develop all our employees skills and give them opportunities to grow within the organization, the Oregon Medical Board will:
 - Provide assistance in identifying career paths;
 - Encourage employees to seek career development and job rotation opportunities;
 - Identify mentors and coaches and promote their use;
 - Link capable employees up with staff members who may be considering retirement; and

- Groom top performers for advanced levels of leadership within the organization by giving them exposure to political processes, providing management-level training, and encouraging job shadow activities.
- d. Provide new Board Members with a copy of the Affirmative Action Plan or direct them to the Board's website where the Plan is available for public viewing. Invite them to participate in the Board's cultural diversity training sessions.

2. Volunteers

The Oregon Medical Board does not currently have any Volunteers. When volunteers are utilized, they are required to read, understand and comply with all agency policies, including those affecting workplace diversity and inclusion.

3. Contractors/Vendors

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

D. Programs

The Oregon Medical Board uses a number of approaches in executing a diversity program and bringing new people into the work force, creating opportunities for existing employees, and promoting an environment that is welcoming, tolerant and supportive. Some of the initiatives and activities include:

1. Internship Program

- Our internship program is informal and includes:
 - Identifying tasks well suited for interns and that are related to their career goals;
 - Recruiting for interns at our local higher educational facilities;
 - Depending on budget restraints, hiring at least one intern a year; and
 - Using interns to teach young people about the mission of the Oregon Medical Board and show them possible employment opportunities.

To date, we have typically had law students as interns who perform research projects related to board issues, such as consistency of disciplinary measures taken against licensees over the past 5 years. While these projects are useful to the board, once the students graduate, they are usually looking for a position as a lawyer (and frequently find them), and we do not have those types of jobs within our agency. So, as of yet, we have not looked at the internships as a method for developing pipelines of candidates for future openings, but rather as a way to expose these students to the world of public service.

2. Mentorship Program

- As a small agency, our organization does not currently have a formal mentorship program, but we do encourage and allow for employees to grow and develop.

3. Community Outreach Programs

- Career Fairs

- We attend career fairs as our resources allow. On February 26, 2014 we attended the City Career Fair Diversity Employment Day and we hired one candidate that we sourced from that event.
- b. Community Events/Festivals
- Our Executive Director makes presentations to community organizations such as health care groups and higher educational facilities about the work of the OMB which in turn creates interest in our jobs.
 - The Executive Director travels and lectures throughout the state in order to conduct outreach, promote the services of the Oregon Medical Board and develop and maintain ties to the community.
- c. Trade-Specific Events
- The Medical Director acts as an “ambassador” to the medical community, traveling and speaking to various audiences to engage the licensee population.

In addition, our agency supports our programs by:

- Posting notices and forwarding e-mails that talk about cultural activities and other information that supports diversity and tolerance;
- Displaying the agency’s commitment to our Affirmative Action Plan by publicizing it on our website and having hard copies available in strategic locations for everyone to read;
- Supporting our Affirmative Action Representative in joining local organizations that are aligned with our AA goals.

4. Diversity Awareness Programs

Our agency does not have a Diversity Council, or employee Affinity Groups, however, we support and enhance the awareness of diversity by:

- Communicating to all staff in a variety of mediums the importance of diversity and how it impacts the Board’s success rate;
- Asking staff to focus on the organization and provide suggestions on ways to improve our diversity performance. Aggressively converting that input into action, provide training, and continually evaluating and evolving our diversity and inclusion program;
- The Diversity and Inclusion representative is responsible for reporting the progress of the program periodically to management and the Executive Director and provide training and support in meeting the objectives and goals of the plan.
- Encouraging existing employees to learn new skills and apply them for career advancement opportunities both within the OMB and the State;
- Drawing upon different sources to advertise our recruitments such as E-Recruit, and increase awareness of our openings by contacting minority and community organizations.
- Promoting a respectful workplace by offering training on diversity awareness, improving communications, conflict management, and an open atmosphere to talk about problems and ideas; and
- Creating a welcoming environment by fostering an acceptance of people’s differences and treating everyone with respect and professionalism whether they are staff or customers.

5. Leadership Development/Training Programs

- We do not have a formal leadership development or training program, however we do encourage employees to seek out opportunities to develop within the organization and engage in training and development toward their career goals. We are eager to see the results of the State's re-vamped Management Development Series to determine if this is a good resource for us to enhance our leadership training.

E. Update: Executive Order 08-18

1. Cultural Competency Assessment and Implementation Services

The Oregon Medical Board is implementing activities to increase the cultural awareness and competency of our employees. Due to budget constraints, OMB will postpone a formal Cultural Competency Assessment until economic conditions improve. Until then, our organization will use the policies, people and resources available to systematically anticipate, recognize and respond to varying expectations of customers and employees. A culturally competent organization values individuals for their differences instead of expecting individuals to adapt to the organizations culture. The OMB, its employees and customers will immediately benefit from our movement along the spectrum towards cultural competence. It is this journey that will make our organization successful.

The Oregon Medical Board's plan to enhance its cultural competence over the 2015-2017 Biennium will result in:

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

The plan will focus on:

- Greater awareness among the members of OMB's workforce;
- Changes to policies and procedures that will enhance effective communication and utilize differing strengths;
- Identifying training events that all employees will participate in and benefit from; and
- An increased respect for and understanding of diverse cultures within the workforce.

The Oregon Medical Board will benefit from this plan by:

- Utilizing unique strengths and perspectives of our employees to solve problems and enrich the work environment;
- Creating a climate of cultural awareness and an inclusive environment that honors diversity;
- Making a stronger and more cohesive workforce rallied together by common goals;
- Increasing ownership of decisions when they are made by a process supported by a diverse workforce;
- Having a greater understanding of the world in which we work and the citizens we serve; and
- Preventing and overcoming misunderstandings, lost opportunities and conflict.

2. Statewide Exit Interview Survey

- Asking all employees leaving the Oregon Medical Board to respond to the statewide Exit Interview Survey.

- Review the results of those surveys at least quarterly, share both positive and negative remarks with the Executive Director, and take appropriate action.

As a small agency with only 38 positions, we are fortunate to have employees with rather long tenure. As employees exit, we send them the survey, but often it seems it is not completed. Of those who complete the survey, we have not been able to identify any trends or areas of concern to work on improving. While this is a good thing, we also realize that the small sample size has an effect as well.

3. Performance Evaluations of all Management Personnel

- Consistent with Executive Order 08-18, all management staff members are responsible for engaging in and supporting affirmative action diversity efforts in the agency, and are held responsible for this in their annual performance appraisals. If needed, the disciplinary process will be applied to make corrections and achieve compliance.

F. Status of contracts to Minority Businesses (ORS 659A.015)

The Oregon Medical Board does not have any contracts that exceed \$5,000 with minority businesses. The majority of our contracts are with subject matter experts that are called upon for single-need issues, primarily to serve as Medical Consultants in investigation cases. Some of these consultants are women and minorities, however, as they are not certified as these types of businesses, particularly for these very small contracts, we do not have data to track this information.

III. Roles for Implementation of Affirmative Action Plan

A. *Responsibilities and Accountabilities*

1. **Director/Administrator**

- a. Foster and promote to employees the importance of a diverse and discrimination and harassment free workplace. Participate in cultural diversity trainings, orientations, and be a living example of cultural sensitivity. Held accountable through annual performance evaluations.
- b. Meet annually, or more often as needed, with the Board's Human Resource Manager to review equal employment opportunities, evaluate affirmative action and diverse work environment progress, and identify problems. Approve strategies and timetables for meeting goals.
- c. Annual performance reviews will include ratings on the Director's support and effectiveness of the agency's Affirmative Action Plan.
- d. Hold managers accountable for participating in and promoting affirmative action activities and for communicating this same responsibility to their subordinate supervisors and employees. The effectiveness of managers and supervisors in promoting the affirmative action activities, goals and objectives for OMB will be included in their annual performance appraisals. ORS 659.025(1) states:

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

Executive Assistant to Director

Include articles in the OMB newsletter that express the Director's commitment to promoting a diverse workforce and environment. Articles relating to equal employment opportunity, affirmative action, the ongoing development of a diverse workforce, and the efforts and progress made toward meeting the Board's goals in these areas are some examples. Make certain articles about employees and clients are non-discriminatory in their portrayal of employees' gender, ethnic heritage, disability, or other non-job-related characteristics.

2. **Managers and Supervisors**

- a. Foster and promote to employees the importance of a diverse and discrimination and harassment free workplace. Look for ways to increase the skills of current employees using mentoring, job rotations and formal training to prepare them for higher level positions within the organization.

- b. Managers and supervisors will receive an orientation on the Board's affirmative action goals, understand their own responsibilities, and evaluate how well they are achieving the Board's affirmative action goals and objectives. They will attend cultural competency training, attend orientations, and promote cultural awareness.
- c. Subordinate supervisors will be evaluated on their effectiveness in carrying out the responsibilities they have for participating in and promoting affirmative action activities.
- d. In undertaking these evaluations, managers will consider how well the supervisor fosters and promotes a diverse workforce, how well s/he promotes the affirmative action goals and objectives, and that his/her staff are knowledgeable about OMB policies and procedures that encourage an inclusive environment.
- e. Inform applicants for vacant positions that the Board is an equal employment employer committed to workforce diversity. Have a copy of the Board's Affirmative Action Plan available for applicants to review on request.
- f. Work with human resources to utilize State of Oregon procedures and rules in filling vacancies. Attend equal opportunity, affirmative action and other diversity-related training in order to be informed of current issues.
- g. Display the Board's Affirmative Action Policy Statement and have available a hard copy of the Affirmative Action Plan. An electronic copy of the Board's Affirmative Action Policy Statement will also be maintained on the OMB website.
- h. Act decisively and in a timely manner if they become aware of any Board employee engaging in any type of harassment.
- i. Periodically report to employees on the Board's progress in attaining its affirmative action goals and on other affirmative action matters.

3. Affirmative Action Representative

- a. Work with the Executive Director, managers and supervisors to promote a diverse workforce and inclusive work environment to help attain the AA goals of the Board. Encourage the retention of existing employees and create new learning opportunities for them.
- b. Report AA activities to the Executive Director in one-on-one meetings as well as staff meetings. Obtain support for proposed changes to the AA Plan to reach goals and objectives. Respond to AA issues and attend AA meetings on behalf of the Director.
- c. Use a variety of recruiting sources such as minority and women-specific web sites, community agencies and schools. Emphasize the Board's support of equal

employment opportunity, affirmative action and the benefits of a diverse workforce.

- d. Place the “An Equal Opportunity/Affirmative Action Employer” statement on every announcement and in every advertisement.
- e. Provide upward mobility opportunities through cross-training, job rotations and job shadowing as appropriate. Inform all employees of career development opportunities and explain any options employees may have for meeting the minimum requirements for promotional job classifications through education and/or experience. Assist employees in the application process for state jobs and how interview skills can be improved.
- f. Train managers to have diverse interview panels including, when possible, one member who works outside the hiring section/division and one member from a protected class.
- g. Keep management informed of the latest law and rule changes in the EEO/AA area.
- h. Research training opportunities and topics for presentation to all staff. Actively participate in those trainings.
- i. Have hard copies and/or electronic copies of the Board's Affirmative Action Policy Statement and Plan available for review by all managers, supervisors and employees. Make hard or electronic copies available to applicants for employment on request. Recommend changes to the Plan and update it as required. Compile statistics and keep management informed of the Board’s AA status during management meetings.
- j. Solicit comments from managers requesting how Human Resources can assist them in promoting affirmative action activities and how best to create a more diverse workforce.
- k. Discuss the State of Oregon/Board Affirmative Action Plan and Policy in New Employee Orientation. Make the orientation as welcoming as possible. Include in the discussion:
 - Our expectations surrounding a respectful workplace and talk about what that means to the agency as well as the employee.
 - Our commitment to supporting the personal and professional growth of our employees.
 - Our encouragement to contribute and participate in agency activities that will assist the agency in meeting its objectives.
 - And our doors are always open for questions and concerns.
- l. Train and inform managers, supervisors and employees at New Employee Orientation as to their rights and responsibilities under the Board's affirmative action policy and other Board policies to eliminate any harassment based on any protected class status.

- m. Respond to and investigate complaints. Enforce policies and procedures. Provide counseling to employees related to discrimination complaints and advise of the consequences of retaliation.
- n. Offer and review the Statewide Exit Interview Survey to all terminated employees. Analyze for trends. If it appears that discrimination or harassment was a factor in employee separation, conduct an investigation and take appropriate action. Inform the Executive Director of the results.
- o. Evaluate revised and new policies for possible adverse impact on the Board's commitment to affirmative action and equal employment opportunities.
- p. Serve as a liaison between the Board and the state and federal agencies that protect civil rights.
- q. Ensure agency training opportunities are offered free of discrimination on the basis of race, religion, national origin, age, gender, sexual orientation, veteran status, or disability.

IV. JULY 1, 2012 – JUNE 30, 2014

A. Accomplishments

1. Multiple recruitments have been performed since July 2012. Each one was conducted in a way that would provide the most diverse candidate pool possible. Candidates that met the minimum and specific qualifications and rated highest on the scoring criteria as well as the desired attributes or requested skills were offered an interview. Interviews were conducted by panels that consisted of men, women, and people of color, managers, co-workers and customers. During this period, the Board has hired people who are the best qualified candidate and these hires have come from a broad range of diverse groups, including age, gender and background.
2. We have had extremely large candidate pools for our vacant positions. We managed to reach a very diverse audience with limited spending on advertising. Announcements were placed on the state's job page, at higher education facilities, with the Veterans Administration Office, on OMB's website and with special interest organizations.
3. To make prospective employees feel welcome at the Oregon Medical Board, emphasis was placed on creating a comfortable interview atmosphere. Name plates were placed in front of the interview team, water, paper and pencils were available, plenty of time was given to the candidate for organizing their thoughts, etc. Existing employees were given respectful workplace training and support for creating and maintaining an inclusive environment and this is further exemplified by the management team.
4. Cross-training and career developmental opportunities are encouraged. Our goal is to retain our employees by keeping them challenged and giving them room for growth. The small size of our agency requires that more than one person be knowledgeable regarding each job, so it becomes relatively easy to promote these opportunities. They are offered to all employees equally.
5. The OMB utilized externs from higher-education facilities to perform legal research for various projects. This allows the extern to gain real-world experience while benefiting the Board at very low cost.
6. Cultural competency training was provided to for our managers and employees in October of 2013. This training was also provided to our Board members in January 2014.
7. The OMB has been working diligently to meet its goals for increasing and retaining our protected class employees. Using the EEOC statistics from the quarter ending June 2014 (which shows shortcomings in less than one whole person increments in the categories of African Americans, Hispanics, Asians and People with Disabilities), we are short two women in the Professional category.

B. Progress made or lost since previous biennium

The Oregon Medical Board has 59 positions - 38 regular and 21 Board and Committee Members. Overall the agency has had success in recruiting and retaining women and people of color, as shown in the following table.

Summary Report 07/01/2014	TOTAL EMP	ME N FT	WOME N FT	PO C FT	AF-AM FT	HISP FT	ASIA N FT	NATA M FT	PWD FT
A OFFICIAL/ADMINISTRATOR	4	1	3	1	1	0	0	0	0
B PROFESSIONALS	15	8	7	4	1	0	2	1	0
F ADMINISTRATIVE SUPPORT	16	1	15	6	2	1	2	1	1
Totals	35	10	25	11	4	1	4	2	1

This data shows that 31% of staff at the OMB are People of Color, and more than 70% are women. Overall, we are doing very well in recruiting and retaining diverse candidates. We continue to work to expand the opportunities for inclusion and diversity in all categories.

Since July 1, 2012 the OMB experienced some turnover with several retirements and resignations. The turnover and its' effect on protected classes can be summarized as follows:

Category	2010-2012	2012-2014	Explanation
People of Color	2 lost 0 gained	1 lost 4 gained	Active support for expanding and maintaining our diverse workforce.
Women	2 lost 2 gained	8 lost 7 gained	Improving economic conditions increased the turnover rate as employees moved on to higher paying jobs.
Disabled	1 lost 1 gained	0 lost 0 gained	Active support for our employees and policies to encourage a safe and accommodating workplace.

The Oregon Medical Board's strategy for retaining our employees is simple:

- Value our employees and urge them to participate in decisions that affect their work;
- Treat our employees with respect and dignity;
- Show our employees the benefits of working for the State of Oregon from pay to health insurance to location;
- Support our employees in their learning and personal development plans;
- Carefully maintain the Board's reputation for professionalism by making it a business people are proud to work for;
- Keep our processes as lean as possible so work makes sense even to our newest employees;
- Communicate well and often. Let people know what is happening in the organization;
- Make wise hiring decisions and continually evaluate our hiring practices; and
- Hold people accountable for adhering to our respectful workplace and harassment-free policy.

Our agency's strength lies in our employees and our customers. Our employees know the complex business of licensing and investigating, both of which are critical in meeting our mission of protecting the public from unscrupulous physicians. We are a very professional organization that lives up to high expectations every day. The challenges we face are few:

- Communications – we must learn to communicate better. We have a wide generational span and at times it seems they speak different languages. We must proactively promote respectful and sensitive communication. These groups are also very different in their technology skills; our older employees tend to need more time and hands-on help learning new computer skills.
- Positive attitudes – Helping employees feel valued is difficult. We are constantly being asked to do more without an increase in staff or resources. Additionally, we have had staff turnover that has left departments with more workload than staff time, requiring some overtime hours to accomplish our mission. We must increase our appreciation of our hard-working employees in ways that are low or no cost.
- Losing staff – Losing our senior employees will make it increasingly difficult to train our talented younger employees. We must start a more aggressive cross-training program to avoid the loss of institutional knowledge.

V. JULY 1, 2015 – JUNE 30, 2017

A. *Goals for our Affirmative Action Plan*

The Affirmative Action goals of the Oregon Medical Board for the 2015-2017 biennium are:

1. The HR Manager, supported by the Director, will continue to educate and guide managers in creating applicant pools and interviewing processes that are welcoming to all people, and helping them understand the benefits of a diverse workforce and supporting our Affirmative Action Plan. This will be accomplished by the HR Manager actively participating in all recruitment and selection activities and including AA performance measures on annual evaluations. It also includes attendance at the Governor's Affirmative Action Office workshops.
2. The HR Manager will utilize creative means to advertise vacancies to people of color, disabled individuals and women. These may include attendance at job fairs, contacting community and specialized ethnic organizations, communicating with higher educational facilities (especially for interns), posting on various web sites, and using the services of the Governor's Affirmative Action Office for our higher-level positions. Job rotations will be offered to increase current employee growth options.
3. All managers will support activities that develop a work environment that is attractive to a diverse pool of applicants, retains employees, and is accepting and respectful of employees' differences. An inclusive environment will be created a number of ways - by sharing e-mail activity notices from the Governor's Affirmative Action Office, posting posters and flyers in the break room, encouraging employees to share their thoughts and ideas, responding to issues quickly and efficiently, etc. Respectful workplace behaviors will be expected and enforced. Expectations will be presented using formal training, written policies and procedures, and/or one-on-one counseling.
4. Managers will continue to offer and encourage career development, mentorship and training opportunities for all employees particularly those of color, employees with disabilities and female employees to prepare them for advancement and retain them in the agency. Managers will also utilize employee retention ideas that include offering flexible schedules, having open door policies, listening respectfully and responding quickly to problems. Managers will be evaluated on their compliance with the agency's AA objectives by rating them on their annual performance evaluation.
5. The Director will encourage managers to use interns when they have specific projects that fit within an intern's timeframe. Using interns, especially those from protected classes, will bring a fresh perspective to the way we conduct business at the Board.

B. Strategies and time lines for achieving our goals

Fall 2014	The Director will present the 2015-2017 Affirmative Action Plan to all employees during a normally scheduled staff meeting and via e-mail to all Board Members. The HR Manager will also request project information from managers that may support at least one intern.
Winter 2014	The HR Manager will become involved with various cultural organizations in the state and community. She will become a participant in the statewide Diversity Conference as well as a member of the Northwest EEO/Affirmative Action Association. Being part of these organizations will provide our agency with contacts and information to help us on our culturally competent journey. We are offering second language choices on our web site. We will request our employee's assistance in identifying ways we can make our organization more welcoming and meet the goals of our AA plan.
Spring 2015	The HR Manager will update the Board and managers on OMB's affirmative action and recruitment statistics. Discuss ways of increasing our diversity and using this plan as our guideline. The HR Manager will also request project information from managers that may support at least one intern.
Winter 2015	The HR Manager will identify a trainer that will conduct all-employee training on another suitable diversity topic. Request our employee's assistance in identifying ways we can make our organization more welcoming and meet the goals of this plan. Sources for training can be found through the Governor's Affirmative Action Office, professional organizations, and other providers in the Portland area.
Spring 2016	The HR Manager will update the Board and managers on OMB's affirmative action and recruitment statistics. Discuss ways of increasing our diversity and using this plan as our guideline. The HR Manager will also request project information from managers that will support at least one intern.
Winter 2016	The HR Manager will identify a trainer that will conduct all-employee training on another suitable diversity topic. Request our employee's assistance in identifying ways we can make our organization more welcoming and meet the goals of this plan. Sources for training can be found through the Governor's Affirmative Action Office, professional organizations and other providers in the Portland area.
Ongoing -	The HR Manager will post recruitments on a wide variety of diversity websites, attend job fairs and actively search for minority and disabled applicants using the AA Plan as a guide, and all managers will support the

growth of current employees. Continually monitor the welcoming environment of this organization.

Ongoing -

All staff will continue to identify career development, cross-training, mentorship, temporary and rotation opportunities that will provide advancement in support of the Board's Business Continuity and Affirmative Action Plans. Listen and take action on our employee's feedback for creating a more welcoming environment. Continue to keep cultural diversity in the forefront of all employees by sending out information sent to us by the Governor's Affirmative Action Office and showing management's commitment to cultural diversity by being an example of patience, tolerance and respect.

VI. Appendix A

A. *Agency's Policy Documentation*

1. ADA & Reasonable Accommodation Policy and Procedures

All state agencies are required to use DAS's Statewide Policy 50.020.10. It follows this cover page. Please refer to it as well as the following internal procedures.

SUBJECT: ADA and Reasonable Accommodation in Employment NUMBER: 50.020.10

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

APPROVED: Signature on file with Human Resource Services Division

POLICY STATEMENT:

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

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

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

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

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

ATTACHMENTS: ADA Accommodation Tool Kit

DEFINITIONS: See State HR Policy 10.000.01 Definitions and OAR 105-010-0000
The following definitions apply to terms referenced in this policy and its attachments: Americans with Disabilities Act (ADA) –The ADA is a federal civil rights statute that removes barriers that prevent qualified people with disabilities from enjoying the same employment opportunities available to people without disabilities. References to ADA also refer to amendments to that Act.

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

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

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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.

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ADA and Reasonable Accommodation in Employment

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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.

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Oregon Medical Board

Procedures

TITLE/SUBJECT: Reasonable Accommodation Procedures
NUMBER: 847-201-003
SUPERCEDES: n/a
REFERENCE: Statewide Policy 50.020.10
APPLICATION: All persons with disabilities including job applicants and current employees.
INTERPRETATION RESPONSIBILITY: Business and HR Managers
EFFECTIVE DATE: June 1, 2008
REVISED: May 20, 2014

Procedures for Reasonable Accommodation Requests:

Applicants for Employment:

Step 1	Manager	Identifies the essential functions of the position on the position description, particularly those requiring physical requirements. Some tools to use when establishing essential functions are: <ul style="list-style-type: none">a. written job descriptionsb. the amount of time spent on the functionc. consequences of not performing the functiond. work experience of past incumbents or incumbents in similar jobs.
Step 2	HR Section	Develops recruitment announcements, which include an offer to provide reasonable accommodation to applicants, upon their request, who need assistance to participate in the application and/or selection process.
Step 3	Applicant	Follows the application procedure described on the job announcement, meets the qualifications for the job with or without accommodation, and qualifies by examination in the same way as a non-disabled applicant. Submits oral or written request for accommodation to Personnel in order to participate in the interview, if necessary.
Step 4	Manager	Interviews applicants. During the interview process, the interviewers may NOT inquire about the existence, nature, or severity of a disability. If a current employee is an applicant for a position, the employee is treated like an outside applicant for the job. A current supervisor who has confidential medical information about the employee should not disclose that information to the person conducting interviews for the new job or to the new supervisor. Ascertain if the applicant is qualified to perform the essential functions of the job with or without reasonable accommodation. After hiring, you may ask the employee if they can evacuate the building safely.

Current Employees:

Step 1	Manager	Identifies the essential functions of the position on each employee's position description.
Step 2	Employee	Identifies the limitations imposed by the disability which prevents or hampers the employee's ability to perform an essential function of their position without

		accommodation, and submits a request for specific accommodation. The individual may use “plain English” and need not mention the ADA or use phrases like “with reasonable accommodation” in their request.
Step 3	Manager	Notifies the ADA Coordinator of employee’s request for reasonable accommodation.
Step 4	ADA Coordinator/ HR Manager	<p>Ensures the employee is qualified to perform the essential functions of the job with or without reasonable accommodations. To determine whether or not the person has a disability that qualifies under the ADA and the Americans with Disabilities Act Amendments Act (ADAAA), the ADA Coordinator coordinates an interactive dialogue with the employee, their supervisor, and other accommodation specialists as necessary.</p> <p>In certain circumstances, a conversation with the employee’s health care provider or medical documentation may be needed for final determination. The request for documentation must be job-related and consistent with business necessity (i.e., if an employee’s ability to do the essential job functions will be impaired by a medical condition or an employee will pose a direct threat due to a medical condition).</p> <p>If there is an out-of-pocket expense for obtaining this documentation, it will be at the employer’s expense. In cases where this documentation is required, the employee will need to provide a signed Authorization to Release Protected Health Information (Attachment A.)</p> <p>If an individual has more than one disability, OMB will request information pertaining only to the disability that requires a reasonable accommodation. A second professional opinion at the Board’s expense may be required to determine an employee’s disability or options for accommodation. Professionals may include doctors, licensed physician’s assistants, psychologists, nurses, occupational therapists, physical therapists, speech therapists, vocational rehabilitation specialists or licensed mental health professionals.</p> <p>After determination that the employee is a qualified individual with a disability, the employee, manager and ADA Coordinator will begin a collaborative process to explore potential accommodations that would mitigate the limitations.</p>
Step 5	Mgmt Team	<p>Performs job analysis and evaluates employee-submitted recommendations based on the following factors:</p> <ol style="list-style-type: none"> a. Essential functions of the job b. Classification and compensation implications c. Collective bargaining provisions and/or ADA statutes d. Reasonable accommodation alternatives e. Whether the accommodation and/or alternatives shall enable the individual to perform the essential functions of the job f. Effect of the accommodation on Agency operations, the ability of other employees to perform their duties, and the Agency’s ability to fairly and effectively meet its business objectives g. Nature and cost of accommodation(s), availability of financial resources, and availability of outside funding

		<p>Some common areas for reasonable accommodation are:</p> <ol style="list-style-type: none"> a. Facilities readily accessible and usable b. Acquisition of modified equipment or assistive devices c. Modified work schedule d. Adjustment of tests, policies or training e. negotiated variances in the collective bargaining agreement, or provision of readers or interpreters f. job restructuring (except essential functions) <p>The Board may consider reassignment to a funded, vacant position as a possible accommodation, if other valid alternatives are not available. However, the Board is not required to create a new position. Employees cannot employ “bumping rights” to an occupied position as an accommodation for a disability.</p> <p>Makes decision regarding the accommodations that will be made.</p>
Step 6	ADA Coordinator/ HR Manager	Notifies the employee requesting the accommodation of the Agency’s determination and specific accommodations it proposes to make if accommodations are feasible. Documents all actions taken by the agency and ensures agency-wide consistency in approach to approving or denying accommodation requests.
Step 7	Employee	Notifies the ADA Coordinator if the accommodation is or is not acceptable.
Step 8	ADA Coordinator/ HR Manager	Coordinates with the parties involved to insure the accommodations are implemented.
Step 9	Employee	If s/he rejects the accommodation(s) offered, has no reasonable alternatives, and cannot perform the essential functions of the job as a result of the rejection, then s/he will not be considered a qualified individual for that position. The agency will then take appropriate steps, up to and including termination from the position.

CONFIDENTIALITY:

Information obtained during the reasonable accommodation process regarding the medical condition or history of the applicant/employee shall be held confidential as medical records, with these exceptions:

- Managers and supervisors may be informed regarding necessary accommodations.
- First aid and safety personnel may be informed, where appropriate, if the impairment might require emergency treatment, or if accommodations need to be made for the safe evacuation of the building.
- Government officials investigating compliance with Section 504 of the Rehabilitation Act, or the Americans with Disabilities Act, shall be provided relevant information upon request. To ensure confidentiality, all information concerning applicants/employees will be maintained by the HR Section in confidential files separate from their personnel file.

APPEAL PROCEDURES:

Any employee or applicant who believes they have been discriminated against because the Oregon Medical Board failed to provide reasonable accommodation may file a complaint with the Agency Director, the Business or HR Manager (ADA Coordinator), or a supervisor. All reported incidents will be investigated promptly, thoroughly, impartially, and discreetly, to the extent possible. The investigator will notify the complainant in writing of the results of the investigation.

Formal appeals/complaints may also be filed with the state's Affirmative Action Office; the Bureau of Labor and Industries; the Equal Employment Opportunity Commission; or the United States Department of Labor, Office of Civil Rights.

ADA RESOURCES:

Contact the ADA Coordinator/HR Manager for current resources.

Authorization for Release of Protected Health Information

In order to assist with my request for reasonable accommodations under the Americans with Disabilities Act, I hereby authorize _____ [provider's name] to use and disclose a copy of the specific health information regarding _____ [health condition] to:

Oregon Medical Board
Attn: Human Resources
1500 SW 1st Avenue, Suite 620
Portland, OR 97201

Patient's (Employee's) Name: _____

Date of Birth: ___ / ___ / ___

If the information to be disclosed contains any of the types of records or information listed below, additional laws relating to the use and disclosure of the information may apply. I understand and agree that this information will be disclosed if I place my initials in the applicable space next to the type of information.

- _____ HIV/AIDS-related records*
- _____ Mental health information*
- _____ Genetic testing information*

Drug/alcohol diagnosis, treatment or referral information:**

This authorization is limited to the following treatment:**

This authorization is limited to the following time period:**

This authorization is limited to a workers' compensation claim for injuries of _____ (date):

* Must be initialed to be included in other documents.

** Federal Regulation, 12CFR Part 2, requires a description of how much and what kind of information is to be disclosed.

I understand that the information used or disclosed pursuant to this authorization may be subject to re-disclosure and no longer be protected under federal law. However, I also understand that federal or state law may restrict re-disclosure of HIV/AIDS information, mental health information, genetic testing information and drug/alcohol diagnosis, and treatment or referral information.

You may revoke this authorization in writing at any time. If you revoke your authorization, the information described above may no longer be used or disclosed for the purpose described in this written authorization. The only exception is when a covered entity has taken action in reliance on the authorization or the authorization was obtained as a condition of obtaining insurance coverage.

To revoke this authorization, please send a written statement to the Oregon Medical Board at the address above.

SIGNATURE

I have read this authorization and I understand it. Unless revoked in writing, this authorization expires on this date: _____.

Signature

Date

Health Care Provider

Name:

Address:

Phone Number:

2. Discrimination and Harassment Free Workplace Policy & Procedures

All state agencies are required to use DAS's Statewide Policy 50.010.01. It follows this cover page. Please refer to it as well as the following internal procedures:

Statewide Policy

SUBJECT: Discrimination and Harassment Free Workplace **NUMBER:** 50.010.01

DIVISION: Human Resource Services Division **EFFECTIVE DATE:** 01/25/08

APPROVED: Signature on file with Human Resource Services Division

POLICY STATEMENT:

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

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

APPLICABILITY: All employees, state temporary employees and volunteers.

ATTACHMENTS: None

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

POLICY

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

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

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

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

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

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

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

- (i) the name of the person filing the report;
- (ii) the name of the complainant;
- (iii) the names of all parties involved, including witnesses;
- (iv) a specific and detailed description of the conduct or action that the employee believes is discriminatory or harassing;
- (v) the date or time period in which the alleged conduct occurred; and
- (vi) a description of the remedy the employee desires.

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

(e) Filing a Report with the USDOL Civil Rights Center. An employee whose position is funded by the Oregon Workforce Investment Act (WIA), such as employees of the Oregon Workforce One-stop System, may file a complaint under the WIA, Methods of Administration (MOA) with the State of Oregon WIA, MOA Equal Opportunity Officer or directly through the USDOL, Civil Rights Center. The complaint must be written, signed and filed within 180 days of when the alleged discrimination or harassment occurred.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(F) If a complaint involves the conduct of a contracted employee or a contractor, the agency, board, or commission Human Resource section, Executive Director, chair, or designee must inform the contractor of the problem behavior and require prompt, appropriate action.

DAS Statewide Policy

**Policy title: Discrimination and Harassment Free Workplace
50.010.01**

(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%

Oregon Medical Board

Procedures

TITLE/SUBJECT: Professional & Harassment-Free Workplace Procedures
NUMBER: 847-201-006
SUPERCEDES: n/a
REFERENCE: Statewide Policy 50.010.01, Discrimination & Harassment-Free Workplace
Statewide Policy 50.010.03, Maintaining a Professional Workplace
APPLICATION: All OMB Employees
INTERPRETATION RESPONSIBILITY: Business and HR Managers
EFFECTIVE DATE: June 1, 2008
REVISED: May 20, 2014

Procedures for implementing statewide policies on maintaining a professional, discrimination and harassment-free workplace:

Current Employees:

Ongoing	HR Manager	Ensure all employees receive, read and understand the two policies referred to in this procedure. Ensure the employee signs an acknowledgement form which will be maintained in their personnel file.
Step 1	Employee	Reports incident(s) to his/her supervisor, any manager or the HR Manager in writing or verbally. The report must contain details such as: <ul style="list-style-type: none">• Names;• Date(s) and time(s);• Witnesses;• Factual circumstances that lead you to believe the incident was harassing, discriminatory or disrespectful; and• A suggested remedy.
Step 2	Supervisor/Manager	Immediately informs the Executive Director and the HR Manager or designee as soon as they become aware of the allegation.
Step 3	OMB/HR Managers	Jointly determines what action shall be taken. It may include, but is not limited to: <ul style="list-style-type: none">• Investigating the complaint;• Informing the alleged harasser about the complaint;• Determining whether the alleged conduct occurred, whether it was a violation of policy, and the appropriate type and level of corrective action, if any;• Implementing corrective action pursuant to the collective bargaining agreement and/or state policy as appropriate; and

		<ul style="list-style-type: none">• Responding to complainant and alleged harasser in writing.
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3. Employee and Training Policy

Oregon Medical Board

POLICY

TITLE/SUBJECT:	Employee Development
NUMBER:	847-201-004
SUPERCEDES:	n/a
REFERENCE:	State Policy 50.045.01 SEIU/OPEU Article 121.50, W Oregon Accounting Manual 50.10.00.PO Internal Revenue Code Section 127
APPLICATION:	All OMB Employees
INTERPRETATION RESPONSIBILITY:	Business and HR Managers
EFFECTIVE DATE:	June 1, 2008
REVISED:	May 20, 2014

POLICY APPROVED BY: _____ **Signature on File** _____
Kathleen Haley, Executive Director

PURPOSE/POLICY: Provide resources and learning opportunities for Oregon Medical Board employees to perform the duties of their current positions and to encourage their career development in state service. It is the goal of the Oregon Medical Board to provide all employees with the job required and/or job related training related to work skills and knowledge to ensure efficient and effective operations.

DEFINITIONS:

Training related to work skills – includes formal instruction that relates to an employee’s competence to perform their specific job, an employee’s work environment, or an employee’s state government career. It may also include both in-agency and cross-agency job rotations and developmental assignments.

Job required training – provides knowledge or skills specific to an employee’s current job. It is needed for the successful performance of that job. Examples include technical knowledge, use of equipment, software applications, organizational skills and interpersonal skills.

Job related training – provides knowledge or skills an employee needs to meet agency or state performance expectations. Examples include understanding the agency or state mission and values, policies and procedures, customer service standards, safe work practices, valuing diversity and preventing harassment.

Approved job required and job related training shall be conducted without loss of pay to the employee and the employee shall be paid for the time as time worked. The agency may pay the costs associated with approved job required and job related training subject to business and budget restrictions. In the case of Educational Assistance (i.e., college classes) these must be taken on the employee's own time, not work time.

RESPONSIBILITIES:

Manager

1. Assess the training needs of their employees on an on-going basis.
2. Develop and implement individual employee development plans as needed that enable employees to successfully perform their jobs and contribute to the achievement of the Board's mission and goals.
3. Encourage employees to research training opportunities for consideration.
4. Evaluate training requests for job relevance, business necessity and budgetary constraints on a case by case basis, and approve or disapprove in a timely manner.

HR Manager

1. Schedule and provide agency-wide training programs that meet common needs such as cultural competency, policy trainings, etc.
2. Provide communication about internal and external training programs, services, resources and opportunities.
3. Track in-agency training completed by employees.

Employees

1. Identify and research training opportunities. Share information with manager.
2. If training opportunity is approved, complete and submit a Career Development Request form, which can be found on the OMB website under Forms, Policies and Procedures page, General Forms and Information.
3. Attend the training, and apply and share new skills where appropriate.

EDUCATIONAL ASSISTANCE PROGRAM:

Employees of the Board may request reimbursement for pre-approved undergraduate or graduate-level educational expenses. The classes must be work skill related and further the employee's career development in state service. Classes must be taken on the employees own time, not work time. Reimbursements may be made for tuition, books, supplies or other equipment necessary for class. Tools, or supplies which an employee may keep after the course is completed, are not reimbursable. Reimbursements will be made on a case-by-case basis and are subject to business and budget restrictions.

RESPONSIBILITIES:

Employee

1. Submit a formal request to your manager for educational assistance before registering.
2. Detail why the class or classes are job-related and how they will further your career in state government.
3. Attach to your request a syllabus of the course(s), the fee(s) documentation, and an approximate cost of supplies (if any are required).

Manager

1. Review request with the Executive Director.
2. If it is in the best interest of the Oregon Medical Board (based on operating requirements and budgetary constraints) to approve the request, note “approved” on the cover memo and return a copy to the employee.
3. Keep the original documentation.
4. If not approved, note reason on the cover letter and return the request to the employee. Keep a copy for your records.

Employee

1. At the conclusion of your class, submit to your manager:
 - a. A memo requesting reimbursement;
 - b. A copy of the pre-approved cover letter;
 - c. A copy of your tuition and/or supplies receipt(s); and
 - d. Proof that you satisfactorily completed the class or classes with a passing letter grade of at least a “C” or a “Pass” score.

Manager

1. Review and approve expenditure(s).
2. Submit paperwork to the Accounting Manager.
3. Inform employee of reimbursement status.

Accounting Manager

1. Determine taxability of the reimbursement and inform employee of the tax impact (if any). Generally, an educational reimbursement is not reported as taxable income if the following conditions are met:
 - a. The employee does not need the class to meet the minimum requirements of the position;
 - b. The class is directly related to the employee’s current or next likely position with the state; and
 - c. The class will maintain or improve the employee’s skills in their current job.
2. Submit packet to Payroll Clerk.

Payroll Clerk

1. Process reimbursement through the Oregon State Payroll Application system.

4. Veteran's Preference in Employment Statewide Rule

DEPARTMENT OF ADMINISTRATIVE SERVICES, HUMAN RESOURCE SERVICES DIVISION 40 FILLING POSITIONS

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.

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

5. Other Agency Documentation in Support of the AA Plan

- a. Invitation to Self-Identify: Gender, Race/Ethnicity, Disability and Veteran Status

(See following form used for new and current employees)

Employee Voluntary Questionnaire for Self-Identification of: Race/Ethnicity, Disability and Veteran Status

Employee's Name: _____ Date: _____

Employee ID # (your human resource or payroll representative can provide this number): _____

Gender: ___ Female ___ Male

Completing this questionnaire is optional; if you do not provide this information it will not subject to any adverse treatment.

Section 1 data is collected as required by the Equal Employment Opportunity Commission. The Department of Administrative Services submits the statewide data in a biennial report to the Equal Employment Opportunity Commission (EEOC). Data in all sections is used for statistical and reporting purposes. The information may be subject to disclosure under federal or state law or rule.

Anti-Discrimination Notice

It is an unlawful employment practice for an employer to fail or refuse to hire or discharge any individual, or otherwise discriminate against an individual with respect to the individual's terms and conditions of employment, because of an individual's race, color, religion, sex, national origin, disability or veteran status.

Section I. Race/Ethnicity*

Your employer is required to record and report certain nondiscrimination and affirmative action statistics. The state invites employees to voluntarily self-identify their race/ethnicity. This information will be used according to the provisions of applicable federal laws, executive orders and regulations, including those requiring the information to be summarized and reported to the federal government for civil rights enforcement purposes. All race/ethnicity information is collected and reported in five EEO-4 categories: (A) Asian or Pacific Islander, (B) Black, (H) Hispanic, (I) American Indian or Alaskan Native, (W) White, established by the federal government.

If you choose to voluntarily self-identify, please mark the one box describing the race/ethnicity with which you identify:

___ (A) Asian or Pacific Islander: All persons having origins in any of the peoples of the Far East, Southeast Asia, the Indian subcontinent, or the Pacific Islands. This area includes, for example, China, Japan, Korea, the Philippine Islands and Samoa.

- (AB) Asian or Pacific Islander, Black
- (AH) Asian or Pacific Islander, Hispanic
- (AI) Asian or Pacific Islander, American Indian or Alaskan Native
- (AW) Asian or Pacific Islander, White

__ (B) Black (not of Hispanic origin): All persons having origins in any of the Black racial groups of Africa.

- (BA) Black, Asian or Pacific Islander
- (BH) Black, Hispanic

- (BI) Black, American Indian or Alaskan Native
- (BW) Black, White

(H) Hispanic: All persons of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin, regardless of race.

- (HA) Hispanic, Asian or Pacific Islander
- (HB) Hispanic, Black
- (HI) Hispanic, American Indian or Alaskan Native
- (HW) Hispanic, White

(I) American Indian or Alaskan Native: All persons having origins in any of the original peoples of North America, and who maintain cultural identification through tribal affiliation or community recognition.

- (IA) American Indian or Alaskan Native, Asian or Pacific Islander
- (IB) American Indian or Black
- (IH) American Indian, Hispanic
- (IW) American Indian, White

(W) White (not of Hispanic origin): All persons having origins in any of the original peoples of Europe, North Africa or the Middle East

- (WA) White, Asian or Pacific Islander
- (WB) White, Black
- (WH) White, Hispanic
- (WI) White, American Indian

*If you choose not to self-identify your race/ethnicity, the federal government requires the employer to determine this information by visual survey and/or other available information.

For agency HR use only:

- AV (Asian or Pacific Islander-Visual assessment)
- BV (Black -Visual assessment)
- HV (Hispanic-Visual assessment)
- IV (American Indian or Alaskan Native-Visual assessment)
- WV (White-Visual assessment)

Section II: **Disability Yes No

(Any requests for accommodation for a current or future disability must go through your supervisor and human resources.)

Section III: **Are you a Veteran of the United States Military Armed Forces Yes No

(Declaring you are a veteran on this form does not satisfy your obligation to declare veteran status in future employment applications, if you wish to receive veteran's preference points.)

**Providing this information is voluntary.

This form may be destroyed after the information on this form is entered into the Personnel Data Base.

VIII. Appendix B

The documents in Appendix B were supplied by the Governor's Affirmative Action Office and follow this page.

1. Age Discrimination in Employment Act of 1967 (ADEA)

[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

2. Disability Discrimination Title I of the ADA of 1990

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

An individual with a disability is a person who:

- Has a physical or mental impairment that substantially limits one or more major life activities;
 - Has a record of such an impairment; or
 - Is regarded as having such an impairment.
- A qualified employee or applicant with a disability is an individual who, with or without reasonable accommodation, can perform the essential functions of the job in question. Reasonable accommodation may include, but is not limited to:

- Making existing facilities used by employees readily accessible to and usable by persons with disabilities.
- Job restructuring, modifying work schedules, reassignment to a vacant position;
- Acquiring or modifying equipment or devices, adjusting or modifying examinations, training materials, or policies, and providing qualified readers or interpreters.

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

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

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

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

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

Title I of the ADA also covers:

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

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

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

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

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

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

- **Small Business Tax Credit (Internal Revenue Code Section 44: Disabled Access Credit)**
Small businesses with either \$1,000,000 or less in revenue or 30 or fewer full-time employees may take a tax credit of up to \$5,000 annually for the cost of providing reasonable accommodations such as sign language interpreters, readers, materials in alternative format (such as Braille or large print), the purchase of adaptive equipment, the modification of existing equipment, or the removal of architectural barriers.
- **Work Opportunity Tax Credit (Internal Revenue Code Section 51)**
Employers who hire certain targeted low-income groups, including individuals referred from vocational rehabilitation agencies and individuals receiving Supplemental Security Income (SSI) may be eligible for an annual tax credit of up to \$2,400 for each qualifying employee who works at least 400 hours during the tax year. Additionally, a maximum credit of \$1,200 may be available for each qualifying summer youth employee.
- **Architectural/Transportation Tax Deduction (Internal Revenue Code Section 190 Barrier Removal):**
This annual deduction of up to \$15,000 is available to businesses of any size for the costs of removing barriers for people with disabilities, including the following: providing accessible parking spaces, ramps, and curb cuts; providing wheelchair-accessible telephones, water

fountains, and restrooms; making walkways at least 48 inches wide; and making entrances accessible.

Disability Discrimination

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

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

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

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

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

Disability Discrimination & Work Situations

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

Disability Discrimination & Harassment

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

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

Disability Discrimination & Reasonable Accommodation

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

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

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

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

Disability Discrimination & Reasonable Accommodation & Undue Hardship

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

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

Definition of Disability

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

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

- A person may be disabled if he or she has a physical or mental condition that substantially limits a major life activity (such as walking, talking, seeing, hearing, or learning).
- A person may be disabled if he or she has a history of a disability (such as cancer that is in remission).
- A person may be disabled if he is believed to have a physical or mental impairment that is not transitory (lasting or expected to last six months or less) and minor (even if he does not have such an impairment).

Disability & Medical Exams During Employment Application & Interview Stage

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

For example, an employer may not ask a job applicant to answer medical questions or take a medical exam before extending a job offer. An employer also may not ask job applicants if they

have a disability (or about the nature of an obvious disability). An employer may ask job applicants whether they can perform the job and how they would perform the job, with or without a reasonable accommodation.

Disability & Medical Exams After A Job Offer For Employment

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

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

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

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

Available Resources

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

- [Your Employment Rights as an Individual With a Disability](#)
- [Job Applicants and the ADA](#)
- [Understanding Your Employment Rights Under the ADA: A Guide for Veterans](#)
- [Questions and Answers: Promoting Employment of Individuals with Disabilities in the Federal Workforce](#)
- [The Family and Medical Leave Act, the ADA, and Title VII of the Civil Rights Act of 1964](#)
- [The ADA: A Primer for Small Business](#)
- [Your Responsibilities as an Employer](#)
- [Small Employers and Reasonable Accommodation](#)
- [Work At Home/Telework as a Reasonable Accommodation](#)
- [Applying Performance And Conduct Standards To Employees With Disabilities](#)
- [Obtaining and Using Employee Medical Information as Part of Emergency Evacuation Procedures](#)
- [Veterans and the ADA: A Guide for Employers](#)
- [Pandemic Preparedness in the Workplace and the Americans with Disabilities Act](#)
- [Employer Best Practices for Workers with Caregiving Responsibilities](#)
- [Reasonable Accommodations for Attorneys with Disabilities](#)
- [How to Comply with the Americans with Disabilities Act: A Guide for Restaurants and Other Food Service Employers](#)
- [Final Report on Best Practices For the Employment of People with Disabilities In State Government](#)
- [ABCs of Schedule A Documents](#)

The ADA Amendments Act

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

The Questions and Answers Series

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

Mediation and the ADA

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

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

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

The law against compensation discrimination includes all payments made to or on behalf of 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.

4. 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.

5. National Origin Discrimination Title VII of the Civil Rights Act of 1964

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

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

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

National Origin Discrimination & Work Situations

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

National Origin & Harassment

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

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

National Origin & Employment Policies/Practices

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

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

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

Citizenship Discrimination & Workplace Laws

The Immigration Reform and Control Act of 1986 (IRCA) makes it illegal for an employer to discriminate with respect to hiring, firing, or recruitment or referral for a fee, based upon an individual's citizenship or immigration status. The law prohibits employers from hiring only U.S. citizens or lawful permanent residents unless required to do so by law, regulation or government contract. Employers may not refuse to accept lawful documentation that establishes the employment eligibility of an employee, or demand additional documentation beyond what is legally required, when verifying employment eligibility (i.e., completing the Department of Homeland Security (DHS) Form I-9), based on the employee's national origin or citizenship status. It is the employee's choice which of the acceptable Form I-9 documents to show to verify employment eligibility.

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

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

1-800-255-7688 (voice for employees/applicants),
1-800-237-2515 (TTY for employees/applicants),
1-800-255-8155 (voice for employers), or
1-800-362-2735 (TTY for employers), or
<http://www.usdoj.gov/crt/osc>.

6. Pregnancy Discrimination Title VII of the Civil Rights Act of 1964

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).

7. Race/Color Discrimination Title VII of the Civil Rights Act of 1964

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 pseudo folliculitis barbae (severe shaving bumps) unless the policy is job-related and consistent with business necessity.

Color Discrimination

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

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

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

Title VII's protections include:

- **Recruiting, Hiring, and Advancement**

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

Employers may legitimately need information about their employees or applicants race for affirmative action purposes and/or to track applicant flow. One way to obtain racial information and simultaneously guard against discriminatory selection is for employers to use separate forms or otherwise keep the information about an applicant's race separate from

the application. In that way, the employer can capture the information it needs but ensure that it is not used in the selection decision.

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

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

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

- **Harassment**

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

- **Retaliation**

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

- **Segregation and Classification of Employees**

Title VII is violated where minority employees are segregated by physically isolating them from other employees or from customer contact. Title VII also prohibits assigning primarily minorities to predominantly minority establishments or geographic areas. It is also illegal to exclude minorities from certain positions or to group or categorize employees or jobs so that certain jobs are generally held by minorities. Title VII also does not permit racially motivated decisions driven by business concerns – for example, concerns about the effect on employee relations, or the negative reaction of clients or customers. Nor may race or color ever be a bona fide occupational qualification under Title VII.

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

- **Pre-Employment Inquiries and Requirements**

Requesting pre-employment information which discloses or tends to disclose an applicant's race suggests that race will be unlawfully used as a basis for hiring. Solicitation of such pre-employment information is presumed to be used as a basis for making selection decisions.

Therefore, if members of minority groups are excluded from employment, the request for such pre-employment information would likely constitute evidence of discrimination.

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

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

8. 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.

9. Retaliation Title VII of the Civil Rights Act of 1964

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

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

Retaliation & Work Situations

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

Facts About Retaliation

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

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

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

Adverse Action

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

- employment actions such as termination, refusal to hire, and denial of promotion,

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

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

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

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

Covered Individuals

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

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

Protected Activity

Protected activity includes:

Opposition to a practice believed to be unlawful discrimination

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

Examples of protected opposition include:

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

Examples of activities that are NOT protected opposition include:

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

Participation in an employment discrimination proceeding.

Participation means taking part in an employment discrimination proceeding.

Participation is protected activity even if the proceeding involved claims that ultimately were found to be invalid.

Examples of participation include:

- Filing a charge of employment discrimination;
- Cooperating with an internal investigation of alleged discriminatory practices; or
- Serving as a witness in an EEO investigation or litigation.

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

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

10. Sex-Based Discrimination Title VII of the Civil Rights Act of 1964

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.

11. 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. 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.