



BOARD OF PHARMACY

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Affirmative Action Plan
2009 – 2011 Biennium

**BOARD OF PHARMACY
AFFIRMATIVE ACTION PLAN
2009-2011 BIENNIUM**

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Oregon

Theodore R. Kulongoski, Governor

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September 9, 2008

Peggy Ross, Director
Governor's Affirmative Action Office
155 Cottage Street NE
Salem, OR 97301

RE: 2009-11 Board of Pharmacy Affirmative Action Plan

Dear Peggy:

Attached please find the Agency's 2009-11 - Affirmative Action Plan. This plan is designed to foster a work environment that recruits, retains and promotes employees who represent the broadest possible spectrum of society, which includes women, minorities, individuals with disabilities and all other protected classes.

The Agency works to share affirmative action diversity activities with the staff on a regular basis. We are incorporating cultural competency activities into our periodic staff meetings to further staff awareness. Management Staff have a heightened awareness of the Governor's affirmative action requirements and actively participate in expanding awareness. We welcome staff involvement in the planning of future training and events.

We strive to recruit a diverse workforce in our small agency and among those on our Board.

Respectfully Submitted,

Gary A. Schnabel, R.N., R.Ph.
Executive Director

Attachments

AGENCY DESCRIPTION

Mission: The mission of the Oregon Board of Pharmacy is to promote, preserve and protect the public health safety and welfare by establishing high standards in the practice of pharmacy and in the distribution of drugs in Oregon.

Statutory Authority: The authority and responsibilities of the Board of Pharmacy are contained in Chapter 689 of the Oregon Revised Statutes (The Oregon Pharmacy Act) and Chapter 475 (Uniform Controlled Substances Act).

ORS 689.005 – 995	Pharmacists; Drug Outlets; Drug Sales
ORS 475.005 – 999	Controlled Substances; Illegal Drug Cleanup; Paraphernalia; Precursors
OAR 855 Divisions 001 – 110	Board of Pharmacy Administrative Rules

Statement of Purpose: The practice of pharmacy in the State of Oregon is declared a professional practice affecting the public health, safety and welfare and is subject to regulation and control in the public interest. It is further declared to be a matter of public interest and concern that the practice of pharmacy, as defined in ORS Chapter 689, merit and received the confidence of the public and that only qualified persons be permitted to engage in the practice of pharmacy in the State of Oregon.

Agency Staffing: The Oregon Board of Pharmacy is made up of five members who are practicing pharmacists, two public members who are not pharmacists and a staff of 19 full or part time employees. The Board is budgeted and accounted for as a single program. The staff is internally organized into four distinct sections including Licensing, Compliance, Administration and Recovery Program.

The *Licensing section* is made up of three FTE's and handles all details related to licensing and examinations including applications, renewals, production and mailing of more than 19,500 certificates of licensure and registration and frequent communication with applicants and licensees. Examinations include the North American Pharmacy Licensure Examination (NAPLEX), the Multi-state Pharmacy Jurisprudence Examination, the Foreign Pharmacy Graduate Equivalency Examination (FPGEE), and the Test of Spoken English (TSE). The licensing staff also performs criminal background checks using the Oregon Law Enforcement Data System (LEDS) on all new pharmacist, pharmacy technician, certified pharmacy technicians and pharmacy intern applicants.

The *Compliance section* is made up of seven and a half FTE's, is responsible for all on site inspections of pharmacies and drug outlets, all investigations of consumer complaints, reports of possible drug diversion and other suspected violations, as well as for administrative details of proposed and ordered disciplinary action. Compliance staff is also responsible for interpretation and review of pharmacy laws and rules and provision of information to and consultation with all stakeholders on pharmacy and drug laws upon request.

The *Recovery Program* is staffed with a .75 FTE Program Director and a .75 FTE Program Assistant and overseen by a five person Council and is established to allow the Board work with the chemically dependent licensee in lieu of or in addition to disciplinary action by the Board. The Recovery Program is authorized by statute, ORS 689.342 through 689.356. With the implementation of licensing Pharmacy Technicians, approximately 6500 new licensees have become eligible for the Recovery Program.

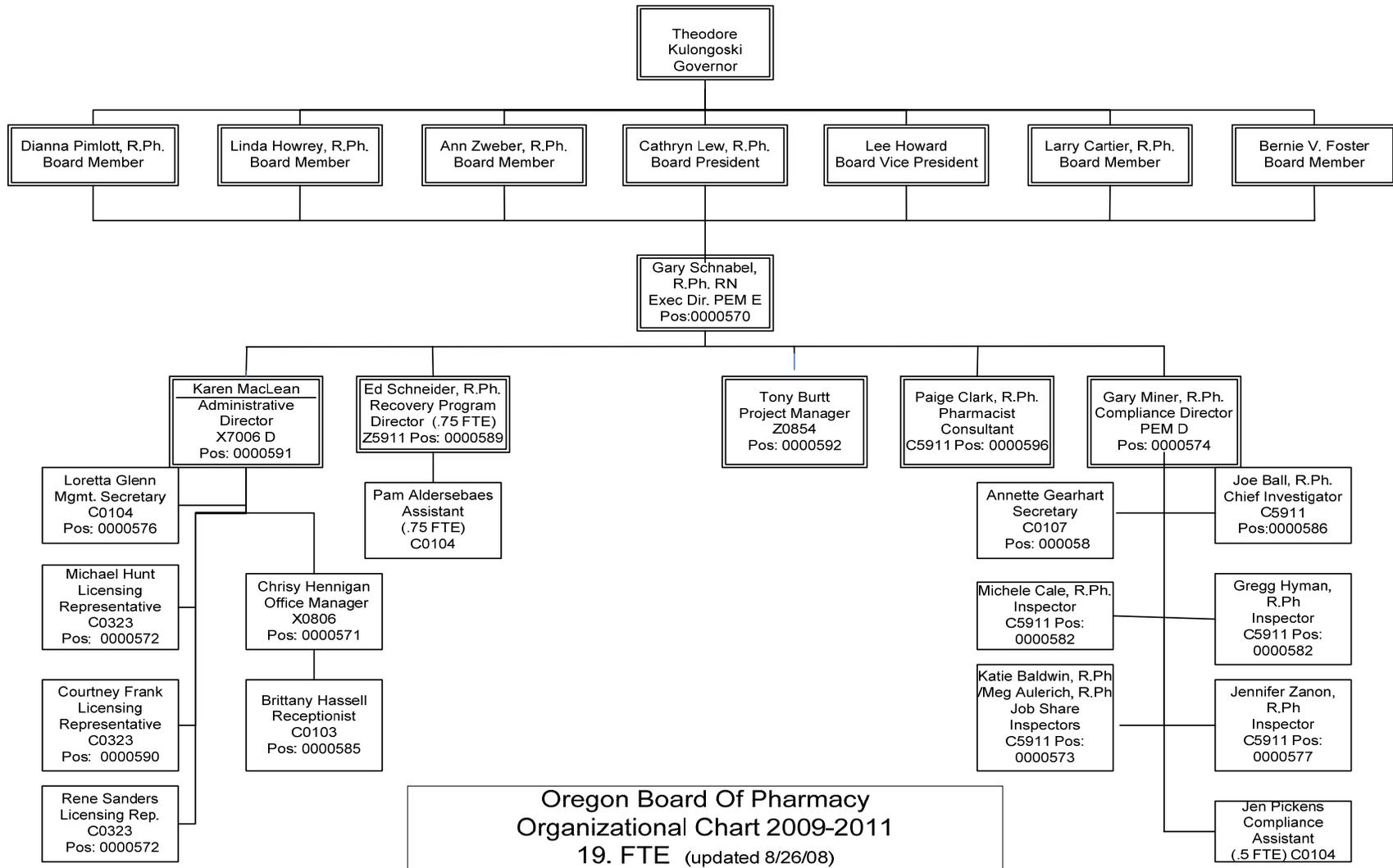
The *Administration section* includes the Executive Director, Administrative Director, Office Manager, Pharmacist Consultant, Project Manager, Management Secretary and Receptionist. The Executive Director and Administrative Director's are responsible for the overall business operations of the Agency. This also includes, supervision of the Licensing and Compliance sections and the performance of all staff, the interpretation and implementation of Board policy, public and media relations, active participation with the National Association of Boards of Pharmacy (NABP), the American Council of Pharmaceutical Education (ACPE), and the state and federal regulatory bodies including the U.S. Food and Drug Administration (FDA) and the Drug Enforcement Administration (DEA) and the development and maintenance of the network of stake holder relationships. Both

Compliance staff and Administrative staff are involved in conducting policy research, writing reports and recommendations, and coordinating committees and task forces as required by the Board.

The Executive Director directly supervises the Administrative Director, the Compliance Director, and the Pharmacist Consultant, Project Manager and the Recovery Program Director and answers to the President of the Board. The Administrative Director supervises the Agency Operations and Licensing activities and staff. The Compliance Director directly supervises the Compliance section activities and staff. The Pharmacist Consultant and Project Manager positions provide essential support in researching pharmacy issues, managing projects for the Board and Agency. All report directly to the Executive Director. The Recovery Program is designed for addressing the chemically dependent licensees and is managed by a Program Director who is a Board of Pharmacy employee and reports to a five member council and to the Executive Director.

BOARD OF PHARMACY 2009-2011

ORGANIZATION CHART



BOARD OF PHARMACY AFFIRMATIVE ACTION PLAN

2009-2011 AFFIRMATIVE ACTION POLICY STATEMENTS

We are dedicated to creating a work environment which will attract and retain employees who represent the broadest possible spectrum of society, including women, minorities, and the disabled.

The Board of Pharmacy is located at 800 NE Oregon St, Suite 150, Portland, Oregon, (971) 673-0001. The agency Administrative Director is the Affirmative Action Representative. The Affirmative Action Representative is Karen MacLean, (971) 673-0001. The Executive Director is Gary Schnabel, R.N, RPh. Claudia Black is the Governor's Policy Advisor for the agency.

All employment related actions; recruitment, hiring, transfers, promotions, terminations and all other terms, conditions and privileges of employment of individuals will be free of discrimination; including disabilities as defined in ORS 240.391. The Board will not tolerate discrimination against any person on the basis of race, color, ancestry, gender, national origin, age, family or marital status, sexual orientation, political or religious affiliation, veteran status, physical or mental disability. The Board is committed to equal employment opportunity covering all aspects of pre and post employment. The Board follows and complies with the Governor's Executive Orders 05-01 and 08-18 on Affirmative Action.

An individual who has interviewed for employment, who believes s/he was denied employment based on any discriminatory factors listed above, may review the employment decision with the Administrative Director/Human Resources Director and the Executive Director. If the concern is not resolved to the satisfaction of the individual, the Affirmative Action Office would be contacted.

In administering Board programs, employees will not discriminate against any person who is a current or potential user of the Oregon Board of Pharmacy's services on the basis of race, color, ancestry, gender, national origin, age, family or marital status, sexual orientation, political or religious affiliation, veteran status, physical or mental disability.

Definition of discrimination: An act based on prejudice.

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

In carrying out the policy of affirmative action, under ORS659A.012, the Board awarded (2) personal services contracts. These contracts are with Sue Dicile, Meeting Facilitator, and Grant Moyle, Confuzer, Inc, IT Services. These are not OMWESB Certified. However, both are small business owners and clearly Ms. Dicile is a minority provider by definition. Confuzer, Inc. was selected for this contract by an Invitation to Bid process through ORPIN.

Employee Training and Education and Development Plan:

It is the policy of the Board to provide resources for employees to encourage their career development in state service, as is reasonably practicable to do. To accomplish this mission, the Board may provide opportunities for training to employees for developing proficiency, enhancing skills and encouraging development in areas for potential advancement. Staff shall be eligible for mandated and required training. Suggested training opportunities will be considered by management for approval.

The training plan is designed to reinforce the mission and values of the Oregon Board of Pharmacy. All employees are given an opportunity to participate in the following training:

- a) Developing Job Skills – opportunities to developing proficiency, enhancing skills and encouraging development in areas for potential advancement.
- b) Increase staff and board member knowledge and awareness of affirmative action through review and discussion of the Affirmative Action Plan.
 - 1) Train and inform managers and employees as to their rights and responsibilities under the Board of Pharmacy’s Affirmative Action policy.
 - 2) Make the complete Affirmative Action Plan available and accessible to all board members, employees and contractors.
- c) New employees are provided the Board of Pharmacy’s Affirmative Action and Equal Employment Opportunity policy and plan and encouraged to review and discuss questions or concerns with their supervisor.
- d) The Board of Pharmacy will continue to educate managers and staff and focus on developing work environment that is attractive to a diverse pool of applicants, retain employees and is accepting and respect of employee’s differences.
- e) The Board of Pharmacy posts a copy of the Affirmative Action and Equal Employment Opportunity policy and plan on its web site for easy access by employees. A copy of the plan is also given to each new employee as part of their orientation.
- f) The Board of Pharmacy’s recruitment announcements and advertisements identify the Agency as an Equal Opportunity/Affirmative Action employer and includes the statement, “THE BOARD OF PHARMACY IS AN EQUAL OPPORTUNITY, AFFIRMATIVE ACTION EMPLOYER COMMITTED TO WORK FORCE DIVERSITY

The plan is available to all volunteers, providers and vendors upon request.

Status of Cultural Competency Assessment/Implementation

All management staff of the Board has been assigned the responsibility to increase cultural awareness at the Board of Pharmacy. Ongoing assessments and implementation are in progress.

Dissemination: The Affirmative Action Policy Statement will be on file in the Board Office and will be supplied to other agencies, volunteers, providers and vendors upon request.

Programs: In 2008, the Board utilized the Intern Oregon Program, as well as hired student workers in an attempt to recruit and promote a diverse staff. The Board recognizes the value of individual and cultural difference and creates a work environment where talents and abilities are valued.

BOARD OF PHARMACY AFFIRMATIVE ACTION PLAN 2009-2011

ROLES FOR IMPLEMENTATION OF AFFIRMATIVE ACTION PLAN

The Board attests that all Board staff was hired in compliance with the Affirmative Action policy of the Agency. The Board will continue its implementation of the plan by exercising impartial and unbiased evaluations of future applications and interviews for employment. The Director will foster and promote to employees to importance of a diverse, and workplace free from discrimination and harassment.

The Board of Pharmacy assumes ultimate responsibility for the actions of the Board and its staff. The Board entrusts and delegates to the Executive Director the responsibility for implementation and adherence to this policy.

The Administrative Director serves as the Affirmative Action Officer and is responsible for:

1. Disseminating affirmative action information through orientation, training and management consultation;
2. Coordinating activities to implement the Affirmative Action Plan;
3. Monitoring progress toward affirmative action goals;
4. Developing and communicating agency-wide policies and procedures related to AA/EEO.
5. Designing performance measures and reporting systems to measure effectiveness of the Plan, and reporting progress to the Director on a regular basis;
6. Identify opportunities for mentoring, training and developmental assignments to assist qualified minorities, women and disabled persons to increase their job skills and advance their careers.
7. Developing or contracting for training for staff on AA/EEO issues, workplace harassment and cultural competence.
8. Assuring the agency recruitment efforts are carried out in compliance with AA and EEO goals, and assisting with efforts to meet affirmative action recruitment and promotion of people of color, people with disabilities, women and those under the protected classes.
9. Receiving and investigating discrimination complaints in accordance within the Agency's complaint procedure and making recommendations to the appropriate actions.
10. Assuring that agency recruitments are free from artificial barriers to employment and advancement of minority, women, disabled and older applicants.

In the evaluation of the Affirmative Action Officer's performance the Director shall ensure that their work performance reviews will include evaluation of their affirmative action efforts and accomplishments. The Affirmative Action Officer reviews materials and attends meetings or trainings as time allows.

All agency management staff are required to encourage and promote the Agency's Affirmative Action Policies. This requirement is evaluated annually.

**BOARD OF PHARMACY
AFFIRMATIVE ACTION PLAN
2009-2011**

2007-2009

ACCOMPLISHMENTS

Management staff is proactive in communicating the importance of diversity with the staff, and includes diversity discussions in periodic staff meetings. The Board utilizes the diversity within the workforce by incorporating the diverse perspectives into business decisions and attending significant events. The Affirmative Action Representative attends training to learn more about the development and implementation of a program that fosters cultural competency and multi-cultural organizational development. Management staff made a greater effort to communicate cultural events throughout the area.

In the 2007-2009 Biennium, two new .5 FTE positions were created. There were 8 employees recruited, including these new positions. The Board strives to create a culturally diverse staff through the employee recruitment process. The agency utilizes the Oregon jobs website and services provided by the Statewide Recruiting services, as well as our own website, to reach the broadest spectrum of candidates possible. 12 employees were retained and 1 employee was promoted during the biennium.

The Board's current employment (19.5 FTE) opportunities are too few for statistically significant parity calculations and goal setting.

PROGRESS

By using the recruitment strategies mentioned above, 3 employees from protected classes were recruited. Unfortunately, we did not retain two of those employees. They resigned to pursue other employment opportunities.

2009-2011

GOALS

The Board will continue to provide information and opportunities for staff to participate in diversity training and multi-cultural events. The Board will continue to develop strategies to recruit, retain and promote a diverse staff. The Board recognizes the value of individual and cultural difference and creates a work environment where talents and abilities are valued.

Management staff is proactive in communicating the importance of diversity in staff meetings, and includes diversity discussions in communications with staff. The Board utilizes diversity within the workforce by incorporating diverse perspectives into business decisions. Management will also continue to attend required training to participate in the development and implementation of a program that fosters cultural competency and multi-cultural organizational development. Management staff will continue to make greater effort to communicate cultural events throughout the area.

The Oregon Board of Pharmacy is so small that there are no charts, or analysis provided.

Updated & Submitted by Executive Director:  September 12, 2008
Gary Schnabel

APPENDIX A

ADA and Reasonable Accommodation Policy

I. Applicability

This policy applies to all applicants, board members, employees, and contractors of the Oregon Board Of Pharmacy.

II. Definitions

Reasonable Accommodation

Is "any modification or adjustment to a job or the work environment that will enable a qualified applicant or employee with a disability to perform essential job functions. Reasonable accommodation also includes adjustments to assure that a qualified individual with a disability has the same rights and privileges in employment as non-disabled employees."

Person With a Disability

A person who has a physical or mental impairment which substantially limits one or more major life activities, has a record of such impairment or is regarded as having such an impairment.

Undue Hardship

Significant difficulty, expense, or impact on the agency when considered in light of a number of factors that include the nature and cost of the accommodation in relation to the size, resources, and structure of the agency.

ADA Coordinator

The Administrative Director is designated as the ADA Coordinator pursuant to part 35.107 of the American's with Disabilities Act.

III. Policy

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

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

In compliance with ADA guidelines, the Board will provide special materials, services or assistance to individuals with a disability upon sufficient notice to the board office. The Oregon Relay Service – 711 – is available to assist individuals with speech or hearing disabilities. In addition, the Speech to Speech Relay Service supplies Oregon with a toll-free number (1-877-735-7525) to assist individuals whose speech may be difficult to understand. If an individual does not request an accommodation, the Board is not obligated to provide one.

No employee of the Board nor any entity contracting with it may coerce, intimidate, threaten, or interfere with any individual who has opposed any act or practice prohibited by the ADA; participated in any investigation; or aided or encouraged others to assert rights granted under the ADA.

An individual who believes they have been discriminated due to their disability should contact the ADA Coordinator, Board Chairperson, or other board member(s). If the issue is not resolved to the individual's satisfaction, they may file a grievance with the:

- U.S. Dept of Justice Civil Rights Division – PO Box 6618, Washington, D.C., 20530
- Equal Employment Opportunity Commission – 1801 L. St. NW #9024, Washington, D.C. 20507

Persons with Disabilities Policy and Complaint Procedure:

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

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

Definition of Person with a disability: A person who has a physical or mental impairment which substantially limits one or more major life activities, has a record of such impairment or is regarded as having such an impairment. The Agency Administrative Director is designated as the ADA Coordinator pursuant to part 35.107 of the American's with Disabilities Act.

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

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

Harassment In The Workplace Policy And Complaint Procedure

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

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

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

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

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

(a) Examples of prohibited harassment may include (these examples are not meant to be all-inclusive): epithets, jokes, slurs, negative stereotyping, demeaning comments or labels, or threatening, intimidating or hostile acts that relate to race, color, religion, gender, sexual orientation, marital status, national origin, disability, age, or other protected class status; written or graphic material that puts down or shows hostility or dislike toward an individual or group because of race, color, religion, gender, sexual orientation, marital status, national origin, disability, age, or other protected class status and is placed on walls, bulletin boards, computers or elsewhere on the employer's premises, or accessed or circulated in the workplace, electronically or otherwise.

(b) Sexual harassment is a form of unlawful workplace harassment. Sexual harassment is defined as unwelcome sexual advances, requests for sexual favors, and other verbal or physical behavior of a sexual nature when:

(1) Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment or used as a basis for any employment decision (e.g., granting a leave request, promotion, favorable performance appraisal); or

(2) Such conduct is unwelcome and has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile or offensive working environment.

(3) Examples of prohibited sexual harassment may include (these examples are not intended to be all-inclusive): unwelcome touching or closeness of a personal nature, including sexual contact, leaning over, cornering, pinching, sexual innuendoes, teasing and other sexual talk such as jokes, intimate inquiries, persistent unwanted courting, sexist put-downs or insults, sexually suggestive comments, inappropriate use of state communication systems including email, internet and telephone, and written or graphic material of a sexual or sexist nature. See also the examples under part (a) above.

(6) Complaint Procedure:

(a) Complaint. An employee who is subject to or is aware of conduct which violates or might violate this policy should report that information immediately to his/her immediate supervisor, the Executive Director, the Human Resources Manager, or the Board Chair (if the complaint is against the Executive Director). If at all possible, the report should be made before the behavior becomes severe. The complaint should be reported verbally or in writing within 30 calendar days of the alleged act, preferably earlier. However, complaints filed late will still be investigated pursuant to this policy to the extent possible. All supervisors and managers shall promptly report complaints and incidents in violation of or potential violation of this policy, or reported to the supervisor/manager as being or potentially being in violation of this policy, to the Executive Director, the Human Resources Manager, or the Board Chair (if the complaint is against the Executive Director).

Complaints should include the name of the complainant, the name(s) of the person(s) alleged to have been discriminated against or harassed (if different from the person bringing the complaint), the name(s) of the person(s) alleged to have engaged in the prohibited conduct, a specific and detailed description of the conduct that the employee believes is discrimination or harassment, and a description of the remedy the employee desires.

(b) Investigation. The recipient of a discrimination or harassment complaint shall promptly forward it to the Executive Director (or to the Board Chair in the event the complaint is about the Executive Director), who will coordinate in consultation with Human Resources, or delegate responsibility for coordinating, the Board of Pharmacy's investigation. The complaint will be given prompt and thorough attention including an initial inquiry into whether discrimination or harassment has occurred, steps to prevent any ongoing discrimination or harassment, and an impartial investigation. If the complaint is substantiated, prompt and appropriate corrective action will be taken. The affected parties will be informed that the investigation has concluded and, if the complaint is sustained, that appropriate corrective action will be or has been taken. All personnel can be assured that complaints will be taken seriously, will be investigated as necessary, and will to the extent possible consistent with applicable laws, rules, policies and investigatory needs, be dealt with in a confidential manner.

(c) Other complaints and grievances. Nothing in this policy precludes any person from filing a grievance in accordance with the SEIU Collective Bargaining Agreement, or a complaint with BOLI and/or the EEOC, or a

lawsuit. Timelines for filing grievances, lawsuits, and/or complaints with BOLI/EEOC are different from those established in this policy. Employees should contact SEIU, private counsel, or BOLI/EEOC directly for specific guidance on filing deadlines and procedures.

VIII. Appendix B

- A. Age Discrimination in Employment Act of 1967 (ADEA)
- B. Disability Discrimination Title I of the Americans with Disability Act of 1990
- C. Equal Pay and Compensation Discrimination Equal Pay Act of 1963, and

Title VII of the Civil Rights Act of 1964

- D. National Origin Discrimination Title VII of the Civil Rights Act of 1964
- E. Pregnancy Discrimination Title VII of the Civil Rights Act of 1964
- F. Race/Color Discrimination Title VII of the Civil Rights Act of 1964
- G. Religious Discrimination Title VII of the Civil Rights Act of 1964
- H. Retaliation Title VII of the Civil Agency Affirmative Action Policy
- I. Sex-Base Discrimination Title VII of the Civil Rights Act of 1964
- J. Sexual Harassment Title VII of the Civil Rights Act of 1964

Age Discrimination

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

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.

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 would 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 the same as the cost of providing benefits to younger workers.

Waivers of ADEA Rights

An employer may ask an employee to waive his/her rights or claims under the ADEA either in the settlement of an ADEA administrative or court claim or in connection with an exit incentive program or other employment termination program. 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:

1. be in writing and be understandable;
2. specifically refer to ADEA rights or claims;
3. not waive rights or claims that may arise in the future;
4. be in exchange for valuable consideration;
5. advise the individual in writing to consult an attorney before signing the waiver;
and
6. 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 program or other employment termination program, the minimum requirements for a valid waiver are more extensive.

Statistics

In Fiscal Year 2005, EEOC received 16,585 charges of age discrimination. EEOC resolved 14,076 age discrimination charges in FY 2005 and recovered \$77.7 million in monetary benefits for charging parties and other aggrieved individuals (not including monetary benefits obtained through litigation).

[Charge Statistics: Age Discrimination](#)

Disability Discrimination

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. 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.

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.

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.

Statistics

In Fiscal Year 2005, EEOC received 14,893 charges of disability discrimination. EEOC resolved 15,357 disability discrimination charges in FY 2005 and recovered \$44.8 million in monetary benefits for charging parties and other aggrieved individuals (not including monetary benefits obtained through litigation).

[Americans With Disabilities Act Charges](#)

Equal Pay and Compensation Discrimination

The right of employees to be free from discrimination in their compensation is protected under several federal laws, including the following enforced by the U.S. Equal Employment Opportunity Commission (EEOC): 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 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:

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 key 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. However, in some circumstances, physically separate places of business should be treated as one establishment. For example, if a central administrative unit hires employees, sets their compensation, and assigns them to 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 under Title VII, the ADEA, or the ADA 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.

A discriminatory compensation system has been discontinued but still has lingering discriminatory effects on present salaries. For example, if an employer has a compensation policy or practice that pays Hispanics lower salaries than other employees, the employer must not only adopt a new non-discriminatory compensation policy, it also must affirmatively eradicate salary disparities that began prior to the adoption of the new policy and make the victims whole.

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.

Statistics

In Fiscal Year 2005, EEOC received 970 charges of compensation discrimination. EEOC resolved 889 compensation discrimination charges in FY 2005 and recovered \$3.1 million in monetary benefits for charging parties and other aggrieved individuals (not including monetary benefits obtained through litigation).

[Charge Statistics: Equal Pay Act](#)

Other Resources

Here are some links to other sources of information about compensation discrimination. Please be aware that, consistent with the EEOC's general [disclaimer](#) statement, the EEOC does not control or guarantee the accuracy or completeness of this outside information, and references to the sites below are not intended to reflect their importance or an endorsement of any views expressed or products or services offered.

Department of Labor's Office of Federal Contract Compliance Programs

- [Equal Pay and the Department of Labor](#)
- [Best Compensation Practices](#)
- [Analyzing Compensation Data: A Guide to Three Approaches](#)

Department of Labor's Women's Bureau

- [Ten Steps to An Equal Pay Self-Audit for Employers](#)
- [Working Women's Equal Pay Checklist](#)
- [Women's Bureau Fair Pay Clearinghouse](#)

[Department of Labor's Wage and Hour Division](#)

[Employment Litigation Section of the Civil Rights Division of the Department of Justice](#)

National Origin Discrimination

Whether an employee or job applicant's ancestry is Mexican, Ukrainian, Filipino, Arab, American Indian, or any other nationality, he or she is entitled to the same employment opportunities as anyone else. EEOC enforces the federal prohibition against national origin discrimination in employment under Title VII of the Civil Rights Act of 1964, which covers employers with fifteen (15) or more employees.

"With American society growing increasingly diverse, protection against national origin discrimination is vital to the right of workers to compete for jobs on a level playing field," said EEOC Chair Cari M. Dominguez, [announcing the issuance of recent guidance](#) on national origin discrimination. "Immigrants have long been an asset to the American workforce. This is more true than ever in today's increasingly global economy. Recent world events, including the events of September 11, 2001, only add to the need for employers to be vigilant in ensuring a workplace free from discrimination."

About National Origin Discrimination

National origin discrimination means treating someone less favorably because he or she comes from a particular place, because of his or her ethnicity or accent, or because it is believed that he or she has a particular ethnic background. National origin discrimination also means treating someone less favorably at work because of marriage or other association with someone of a particular nationality. Examples of violations covered under Title VII include:

[Employment Decisions](#)

Title VII prohibits any employment decision, including recruitment, hiring, and firing or layoffs, based on national origin.

[Harassment](#)

Title VII prohibits offensive conduct, such as ethnic slurs, that creates a hostile work environment based on national origin. Employers are required to take appropriate steps to prevent and correct unlawful harassment. Likewise, employees are responsible for reporting harassment at an early stage to prevent its escalation.

[Language](#)

- [Accent discrimination](#)
An employer may not base a decision on an employee's foreign accent unless the accent materially interferes with job performance.
- [English fluency](#)
A fluency requirement is only permissible if required for the effective performance of the position for which it is imposed.
- [English-only rules](#)
English-only rules must be adopted for nondiscriminatory reasons. An English-only rule may be used if it is needed to promote the safe or efficient operation of the employer's business.

Coverage of foreign nationals

Title VII and the other antidiscrimination laws prohibit discrimination against individuals employed in the United States, regardless of citizenship. However, relief may be limited if an individual does not have work authorization.

Statistics

In Fiscal Year 2005, EEOC received 8,035 charges of national origin discrimination. Including charges from previous years, 8,319 charges were resolved, and monetary benefits for charging parties totaled \$19.4 million (not including monetary benefits obtained through litigation).

Pregnancy Discrimination

The Pregnancy Discrimination Act is an amendment to [Title VII of the Civil Rights Act of 1964](#). Discrimination on the basis of pregnancy, childbirth, or related medical conditions constitutes unlawful sex discrimination under Title VII, which covers employers with 15 or more employees, including state and local governments. Title VII also applies to employment agencies and to labor organizations, as well as to the federal government. Women who are pregnant or affected by related conditions must be treated in the same manner as other applicants or employees with similar abilities or limitations.

Title VII's pregnancy-related protections include:

Hiring

An employer cannot refuse to hire a pregnant woman because of her pregnancy, because of a pregnancy-related condition or because of the prejudices of co-workers, clients, or customers.

Pregnancy and Maternity Leave

An employer may not single out pregnancy-related conditions for special procedures to determine an employee's ability to work. However, if an employer requires its employees to submit a doctor's statement concerning their inability to work before granting leave or paying sick benefits, the employer may require employees affected by pregnancy-related conditions to submit such statements.

If an employee is temporarily unable to perform her job due to pregnancy, the employer must treat her the same as any other temporarily disabled employee. For example, if the employer allows temporarily disabled employees to modify tasks, perform alternative assignments or take disability leave or leave without pay, the employer also must allow an employee who is temporarily disabled due to pregnancy to do the same.

Pregnant employees must be permitted to work as long as they are able to perform their jobs. If an employee has been absent from work as a result of a pregnancy-related condition and recovers, her employer may not require her to remain on leave until the baby's birth. An employer also may not have a rule that prohibits an employee from returning to work for a predetermined length of time after childbirth.

Employers must hold open a job for a pregnancy-related absence the same length of time jobs are held open for employees on sick or disability leave.

Health Insurance

Any health insurance provided by an employer must cover expenses for pregnancy-related conditions on the same basis as costs for other medical conditions. Health insurance for expenses arising from abortion is not required, except where the life of the mother is endangered.

Pregnancy-related expenses should be reimbursed exactly as those incurred for other medical conditions, whether payment is on a fixed basis or a percentage of reasonable-and-customary-charge basis.

The amounts payable by the insurance provider can be limited only to the same extent as amounts payable for other conditions. No additional, increased, or larger deductible can be imposed.

Employers must provide the same level of health benefits for spouses of male employees as they do for spouses of female employees.

Fringe Benefits

Pregnancy-related benefits cannot be limited to married employees. In an all-female workforce or job classification, benefits must be provided for pregnancy-related conditions if benefits are provided for other medical conditions.

If an employer provides any benefits to workers on leave, the employer must provide the same benefits for those on leave for pregnancy-related conditions.

Employees with pregnancy-related disabilities must be treated the same as other temporarily disabled employees for accrual and crediting of seniority, vacation calculation, pay increases, and temporary disability benefits.

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

Statistics

In Fiscal Year 2005, EEOC received 4,449 charges of pregnancy-based discrimination. EEOC resolved 4,321 pregnancy discrimination charges in FY 2005 and recovered \$11.6 million in monetary benefits for charging parties and other aggrieved individuals (not including monetary benefits obtained through litigation).

Race/Color Discrimination

Title VII of the Civil Rights Act of 1964 protects individuals against employment discrimination on the bases of race and color, as well as national origin, sex, and religion. 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.

Equal employment opportunity cannot be denied any person because of his/her racial group or perceived racial group, his/her race-linked characteristics (e.g., hair texture, color, facial features), or because of his/her marriage to or association with someone of a particular race or color. 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's prohibitions apply regardless of whether the discrimination is directed at Whites, Blacks, Asians, Latinos, Arabs, Native Americans, Native Hawaiians and Pacific Islanders, multi-racial individuals, or persons of any other race, color, or ethnicity.

It is unlawful to discriminate against any individual in regard to recruiting, hiring and promotion, transfer, work assignments, performance measurements, the work environment, job training, discipline and discharge, wages and benefits, or any other term, condition, or privilege of employment. Title VII prohibits not only intentional discrimination, but also neutral job policies that disproportionately affect persons of a certain race or color and that are not related to the job and the needs of the business. 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.

Harassment/Hostile Work Environment

Title VII prohibits offensive conduct, such as racial or ethnic slurs, racial "jokes,"

derogatory comments, or other verbal or physical conduct based on an individual's race/color. The conduct has to be unwelcome and offensive, and has to be severe or pervasive. Employers are required to take appropriate steps to prevent and correct unlawful harassment. Likewise, employees are responsible for reporting harassment at an early stage to prevent its escalation.

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.

Segregation and Classification of Employees

Title VII is violated where employees who belong to a protected group are segregated by physically isolating them from other employees or from customer contact. In addition, employers may not assign employees according to race or color. For example, Title VII prohibits assigning primarily African-Americans to predominantly African-American establishments or geographic areas. It is also illegal to exclude members of one group from particular positions or to group or categorize employees or jobs so that certain jobs are generally held by members of a certain protected group. Coding applications/resumes to designate an applicant's race, by either an employer or employment agency, constitutes evidence of discrimination where people of a certain race or color are excluded from employment or from certain positions.

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.

Statistics

In fiscal year 2005, EEOC received 26,740 charges of race discrimination. EEOC resolved 27,411 race charges in FY 2005, and recovered \$76.5 million in monetary benefits for charging parties and other aggrieved individuals (not including monetary benefits obtained through litigation).

Religious Discrimination

[Title VII of the Civil Rights Act of 1964](#) prohibits employers from discriminating against individuals because of their religion in hiring, firing, and other terms and conditions of employment. Title VII covers 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.

Under Title VII:

Employers may not treat employees or applicants more or less favorably because of their religious beliefs or practices - except to the extent a religious accommodation is warranted. For example, an employer may not refuse to hire individuals of a certain religion, may not impose stricter promotion requirements for persons of a certain religion, and may not impose more or different work requirements on an employee because of that employee's religious beliefs or practices.

Employees cannot be forced to participate -- or not participate -- in a religious activity as a condition of employment.

Employers must reasonably accommodate employees' sincerely held religious practices unless doing so would impose an undue hardship on the employer. A reasonable religious accommodation is any adjustment to the work environment that will allow the employee to practice his religion. An employer might accommodate an employee's religious beliefs or practices by allowing: flexible scheduling, voluntary substitutions or swaps, job reassignments and lateral transfers, modification of grooming requirements and other workplace practices, policies and/or procedures.

An employer is not required to accommodate an employee's religious beliefs and practices if doing so would impose an undue hardship on the employers' legitimate business interests. An employer can show undue hardship if accommodating an employee's religious practices requires more than ordinary administrative costs, diminishes efficiency in other jobs, infringes on other employees' job rights or benefits, impairs workplace safety, causes co-workers to carry the accommodated employee's share of potentially hazardous or burdensome work, or if the proposed accommodation conflicts with another law or regulation.

Employers must permit employees to engage in religious expression, unless the religious expression would impose an undue hardship on the employer. Generally, an employer may not place more restrictions on religious expression than on other forms of expression that have a comparable effect on workplace efficiency.

Employers must take steps to prevent religious harassment of their employees. An employer can reduce the chance that employees will engage unlawful religious harassment by implementing an anti-harassment policy and having an effective procedure for reporting, investigating and correcting harassing conduct.

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

Statistics

In Fiscal Year 2005, EEOC received 2,340 charges of religious discrimination. EEOC resolved 2,352 religious discrimination charges and recovered \$6.1 million in monetary benefits for charging parties and other aggrieved individuals (not including monetary benefits obtained through litigation).

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](#).

Statistics

In Fiscal Year 2004, EEOC received 22,740 charges of retaliation discrimination based on all statutes enforced by EEOC. The EEOC resolved 24,751 retaliation charges in 2004, more than were filed during the course of the Fiscal Year, and recovered more than \$90 million in monetary benefits for charging parties and other aggrieved individuals (not including monetary benefits obtained through litigation).

Sex-Based Discrimination

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

It is unlawful to discriminate against any employee or applicant for employment because of his/her sex 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 on the basis of sex. Title VII prohibits both intentional discrimination and neutral job policies that disproportionately exclude individuals on the basis of sex and that are not job related.

Title VII's prohibitions against sex-based discrimination also cover:

[Sexual Harassment](#)

This includes practices ranging from direct requests for sexual favors to workplace conditions that create a hostile environment for persons of either gender, including same sex harassment.

[Pregnancy Based Discrimination](#)

Title VII was amended by the Pregnancy Discrimination Act, which prohibits discrimination on the basis of pregnancy, childbirth and related medical conditions.

The [Equal Pay Act of 1963](#) 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. Title VII also prohibits compensation discrimination on the basis of sex. Unlike the Equal Pay Act, however, Title VII does not require that the claimant's job be substantially equal to that of a higher paid person of the opposite sex or require the claimant to work in the same establishment.

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.

Statistics

In Fiscal Year 2005, EEOC received 23,094 charges of sex-based discrimination. EEOC resolved 23,743 sex discrimination charges in FY 2005 and recovered \$91.3 million in monetary benefits for charging parties and other aggrieved individuals (not including monetary benefits obtained through litigation).

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.

Statistics

In Fiscal Year 2005, EEOC received 12,679 charges of sexual harassment. 14.3% of those charges were filed by males. EEOC resolved 12,859 sexual harassment charges in FY 2004 and recovered \$47.9 million in monetary benefits for charging parties and other aggrieved individuals (not including monetary benefits obtained through litigation).

[Charge Statistics: Sexual Harassment](#)

[Trends in Harassment Charges Filed With The EEOC During the 1980s and 1990s](#)