SPECIAL REPORT: FACILITIES

DEQ leases all of its office space. The following chart details the agency's monthly lease expenses and describes any potential changes to current leases or office locations. The DEQ closed two offices in 2012, and has plans to consolidate its two Portland offices in the 2013-15 biennium.

Lease	Lease expiration date	Current monthly lease expense	Lease disposition
Baker City	10/31/2013	$ 300.00	Expected to lease to end date
Bend	10/31/2018	$21,448.83	Expected to lease to end date with option to extend beyond
Coos Bay	4/30/2015	$ 4,881.22	Expected to lease to end date with option to extend beyond
The Dalles	5/31/2014	$ 4,704.65	Expected to lease to end date with option to extend beyond
Eugene	Indefinite	$ 22,186.46 (DAS uniform rent)	Expected to lease for an indefinite period
Grants Pass	7/31/2013	$ 88.27	Expected to lease to end date
Hillsboro - Laboratory	7/1/2013 Updated Biennially	$ 160,654.00 (DAS self support rent)	Expected to lease for an indefinite period. Self support rent set biennially to cover cost of Certificate of Participation debt service plus ongoing operations and maintenance. Share facility with Oregon Public Health Laboratory.
Medford	6/30/2022	$10,145.67	Expected to lease to end date with option to extend beyond
Pendleton	Indefinite	$9,462.66 (DAS uniform rent)	Expected to lease for an indefinite period
Portland – Headquarters	10/31/2016	$ 140,876.29	Expected to lease to end date with new lease option after lease expiration
Portland – NW Region	6/30/2017	$ 79,710.95	Tentative plan to consolidate this location with the Portland DEQ Headquarters in 2013-15 biennium

SPECIAL REPORT: FACILITIES

Lease	Lease expiration date	Current monthly lease expense	Lease disposition
Salem	5/31/2013	$ 13,496.33	The DEQ continues to look for a suitable lease opportunity closer to the Capital Mall area.
Salem – State Library	Indefinite	$ 285.90	Expected to lease for an indefinite period. Used by DEQ as a working space with communication/ computer services in close proximity to the Capitol.
Tillamook	2/31/2015	$ 359.78	Sublease with Department of Agriculture. Expected to lease to end date with option to extend beyond
Warrenton	6/30/2013	$ 649.00	Expected to lease to end date with option to extend beyond
Vehicle Inspection Station - Clackamas	8/31/2013	$ 19,807.44	Expected to lease to end date with option to extend beyond
Vehicle Inspection Station - Gresham	12/31/2017	$16,458.87	Expected to lease to end date with option to extend beyond
Vehicle Inspection Station - Hillsboro	7/31/2017	$28,310.10	Expected to lease to end date with option to extend beyond
Vehicle Inspection Station - Medford	10/31/2014	$5,170.00	Expected to lease to end date with option to extend beyond
Vehicle Inspection Station – NE Portland	9/30/2014	$20,542.22	Expected to lease to end date with option to extend beyond
Vehicle Inspection Station - Scappoose	1/31/2014	$1,701.52	Expected to lease to end date with option to extend beyond
Vehicle Inspection Station - Sherwood	3/31/2017	$10,166.00	Expected to lease to end date with option to extend beyond
Vehicle Inspection Program-Tech Center	7/31/2015	$9,899.47	Expected to lease to end date with option to extend beyond

SPECIAL REPORT: SUMMARY OF RECENT DEQ AUDIT RESULTS

Secretary of State audits

The Secretary of State conducted the following audits:

- **Annual Statewide Financial Audit (FY 2011)**: The audit report concluded that the segment of the financial accounts audited were fairly presented in accordance with generally accepted accounting principles. There were no major findings or reportable conditions for DEQ.

- **Capitalization Grants for the Clean Water State Revolving Fund (FY 2010-11):** The audit did not detect any material deficiencies in internal control over federal compliance.

- **Financial Statements and Internal Controls for Capitalization Grants for the Clean Water State Revolving Fund for FY2010:** The auditors concluded that CWSRF's financial statements are fairly presented in accordance with generally accepted accounting principles. No deficiencies were noted in internal control over financial reporting.

- **Laboratory Operations:** Auditors evaluated DEQ's laboratory operations relative to information from several other states and noted that DEQ's turnaround time for laboratory analysis was slower than comparable states. As a result, DEQ divisions and partner agencies experienced delays in monitoring, environmental assessment, cleanup and decision making. The auditors determined that the laboratory information management system (LIMS) is a major contributor to these delays. The audit noted that current operational and budget practices restrict the Laboratory's ability to manage for performance and efficiency. The Laboratory also lacks a cost accounting system or other method to track productivity and cost for each type of analytical test.

  The Auditors' recommendation was for DEQ to upgrade LIMS, develop performance measurement and cost accounting systems, and develop a separate analytical laboratory budget to provide additional flexibility to make resource decisions and serve external customers. Finally, they recommended that DEQ continue its diligent efforts to reduce National Pollutant Discharge Elimination System permit backlog.

  The agency responded to the audit: (1) the agency had evaluated replacing LIMS before the audit and proceeded with the procurement of a commercial off-the-shelf laboratory information management system that would meet laboratory needs and resolve issues identified by the audit. DEQ completed the procurement process and is proceeding with installment of the new system. (2) As part of implementing DEQ's outcome-based management system, the laboratory management team established a set of measures to address the auditors' recommendation. The agency noted that meeting customer expectations is more important than a standard turnaround time. (3) The laboratory management team will continue to work with the Management Services Division accounting and budgeting staff to develop better tools for measuring and tracking both fixed and variable actual costs associated with various analytical activities. (4) DEQ will ensure that budgeting decisions take into account the laboratory's

unique position of working across all three programs and for external customers. Statutory restrictions on spending prevent the agency from developing an independent budget for the laboratory.

US Environmental Protection Agency audits

The EPA conducted the following audits:

- **Program Evaluation Report for Oregon's Clean Water State Revolving Fund (FY 2009):** Included EPA's semi-annual review of Oregon's implementation of the American Recovery and Reinvestment Act (ARRA). EPA determined that DEQ has an effective CWSRF program and demonstrates continuing commitment to its success and improvement. Their review noted two projects that did not fully comply with environmental review requirements. The agency needs additional steps to comply with the new Disadvantaged Business Enterprise rule, Davis-Bacon and Buy American provisions under the ARRA funding authority. EPA is confident these matters are currently being resolved.

- C**ompliance and Enforcement Program Evaluation Report for Oregon DEQ:** This was the second time EPA has used the new "state review framework" audit process. The process mostly restricts EPA inspectors to looking at statistical analyses of defined metrics, which reigns in the scope and standardizes findings. Following is a summary of the highest level metrics.

DEQ internal audit

- **Small Purchase Order Transaction System (SPOTS) Credit Cards Audit and Transaction Testing (FY 2011):** Internal Audits determined DEQ's oversight of the SPOTS program meets requirements established by the Oregon Accounting Manual (OAM) 55.30.00 and SPOTS-related policies and procedures. One person purchased two USB docking stations using a SPOTS card, which DEQ's LAN Administrator Purchasing Procedures for Information Technology (IT Purchasing Procedure) prohibits. DEQ will seek to add IT purchasing procedures either to the State Controller's Office approved training or develop a separate training.

State of Oregon
Department of
Environmental
Quality

Department of Environmental Quality

Dick Pedersen, Director
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Portland, Oregon 97204-1390
503-229-5696, 1-800-452-4011

Affirmative Action Plan

July 1, 2011-June 30, 2013

Oregon
Theodore R. Kulongoski, Governor

Department of Environmental Quality

Letter from the Director

August 13, 2010

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

_____

Dick Pedersen, Director
Department of Environmental Quality
(503) 503-229-5696

Effective Date: July 1, 2011j

AFFIRMATIVE ACTION PLAN, 2011-13

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Description of the Department of Environmental Quality

DEQ's mission is to be a leader in restoring, maintaining and enhancing Oregon's air, land and water quality. This is done through a variety of activities including permitting, inspections, spill response and working with Oregonians to minimize their impacts on the environment.

The Environmental Quality Commission, DEQ's policy and rule-making board,, is a a five-member citizen panel appointed by the governor to adopt rules, o establish policy, issue orders, judge appeals of fines or other agency actions and appoint the agency's director.

DEQ staff use a combination of technical assistance, inspections, enforcement, and permitting to help public and private facilities and citizens understand and comply with state and federal environmental regulations.

DEQ staff consists of environmental specialists, scientists, engineers, technicians, program and policy staff and operations support staff. The agency has offices throughout the state including Bend, Coos Bay Eugene, Pendleton, Grants Pass, Gresham, Hermiston, Portland, Medford, Salem, The Dalles, Tillamook and Warrenton. DEQ also operates a modern laboratory in Hillsboro and vehicle inspection stations in Clackamas, Jackson, Multnomah and Washington Counties.

Responsibilities
In addition to local programs, the US Environmental Protection Agency has delegated authority to DEQ to operate federal environmental programs. This includes the federal Clean Air and Clean Water Acts and the Resource Conservation and Recovery Act, which covers waste management and underground storage tank programs. DEQ also implements state programs including recycling, groundwater protection, air toxics, emergency response and environmental cleanup activities.

DEQ also relies on several advisory committees of citizens and government officials to help guide its decision-making.

DEQ's director has the authority to issue civil penalties (fines) for violation of pollution laws and standards.

History
Oregon's history of environmental regulation dates back to 1939, with the formation of the Oregon State Sanitary Authority. A division within the State Board of Health, the Authority was formed in response to outraged citizens who supported with 76.7 percent of the vote an initiative petition on the November 8, 1938 ballot known as the "Water Purification and Prevention of Pollution Bill."

AFFIRMATIVE ACTION PLAN, 2011-13

The bill made it state policy to preserve Oregon's waters from pollution. In 1969, the Oregon Legislature formed an independent state agency as a successor to the Authority, calling it the Department of Environmental Quality. In June 2008, the Environmental Quality Commission appointed Dick Pedersen DEQ's tenth director. In 2009, DEQ celebrated its fortieth anniversary as the state's environmental leader with several events throughout the year.

Agency mission:
"Our mission is to be a leader in restoring, maintaining and enhancing the quality of Oregon's air, water, and land."

Agency vision:
Our vision is to work cooperatively with all Oregonians for a healthy, sustainable environment.

Agency values:
DEQ has eight values that guide our work:

- **Environmental results** – We focus on environmental outcome. We integrate pollution prevention across all media, balance resources among compliance, technical assistance and education, and focus resources and problem-solving on specific geographic areas.

- **Public service** – We establish and implement environmental policy through public forums and open participation, seek public involvement, and implement responsible business practices which are timely, transparent, and equitable.

- **Partnership** – Within our agency, among agencies, and with other public jurisdictions, the private sector, and our community, we foster trust, teamwork, collaboration, and equity in our efforts to create a healthy environment for all Oregonians.

- **Excellence and integrity** – We are proud to provide services in a manner that demonstrates the importance of our mission. We make decisions based on facts and science. Excellence, leadership, integrity, responsible innovation, and continuous improvement are our standards.

- **Employee growth** – We are committed to providing the tools, resources, and experiences necessary to help employees develop new skills and to enhance their capabilities and quality of work life.

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- **Diversity** – In a state with a growing global role, a varied constituency, and increasingly complex challenges, we value the dignity of all people and strive for a diverse workplace that develops equitable, integrative solutions.

- **Health, safety and wellness** – We maintain a healthy and safe work environment and implement the best work practices possible for preventing work-related illnesses and injuries.

- **Economic growth through quality environment** – The better we make Oregon's quality of life via a healthy environment, the greater our ability to attract healthy economic growth in the state.

Agency Representatives

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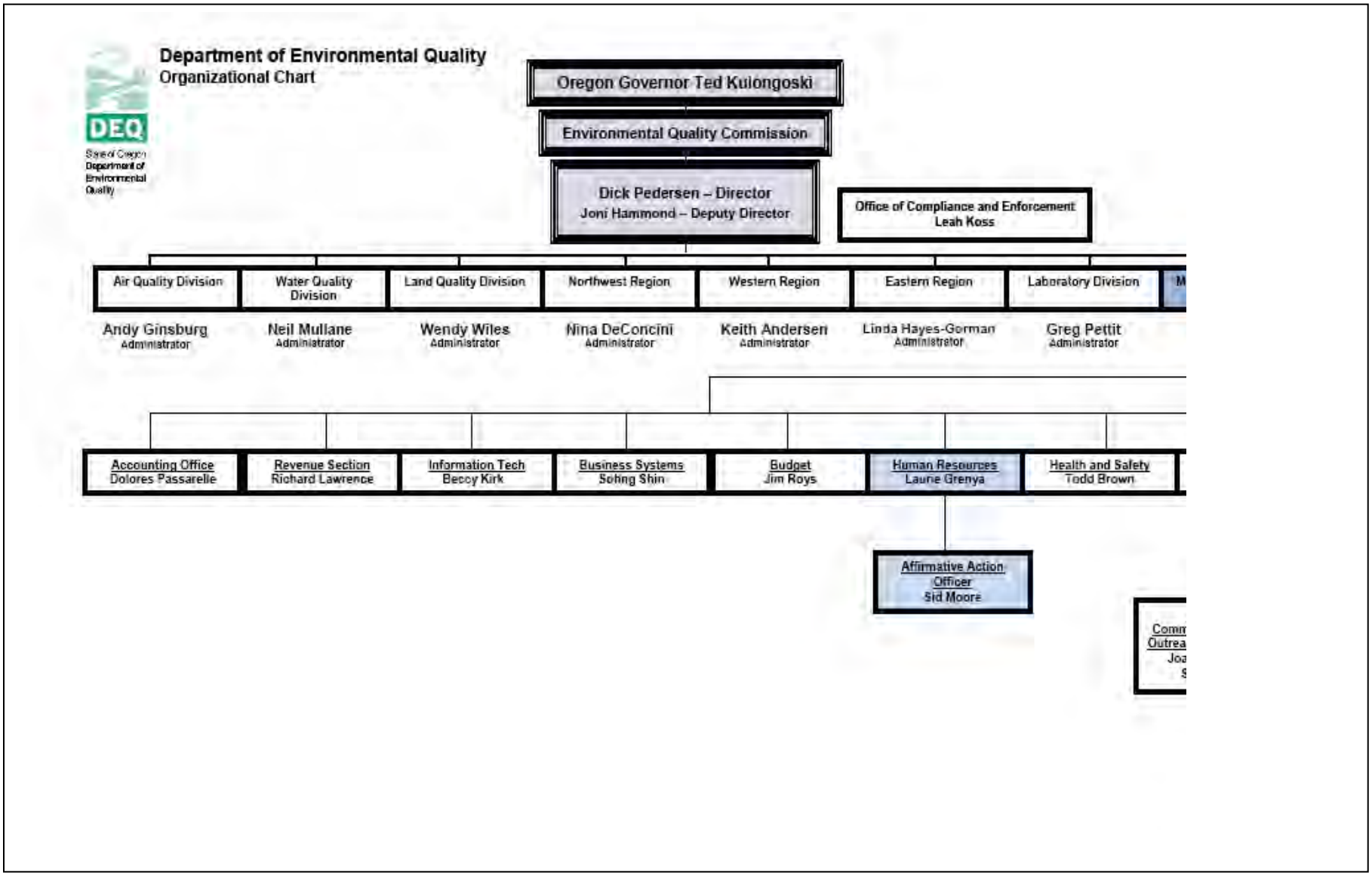
AFFIRMATIVE ACTION PLAN, 2011-13

Organizational Chart



AFFIRMATIVE ACTION PLAN, 2011-13

Affirmative Action Plan

State of Oregon
Department of Environmental Quality

Equal Employment Opportunity and Affirmative Action Policy Statement

The Department of Environmental Quality is committed to a policy and practice of Equal Employment Opportunity, i.e., a policy of non-discrimination at all levels and in all aspects of the Agency's operations. From recruitment through the end of the employment relationship, DEQ respects its applicants and employees and does not discriminate based on race, religion, national origin, age, gender, sexual orientation, marital status, disability, veterans status, or any other factor not related to job performance.

Affirmative Action provides active, assertive, and positive steps for eliminating the intended or unintended effects of past and present discrimination in the workplace. Because DEQ believes diversity makes good business sense, its Affirmative Action Plan identifies goals that will help develop and maintain a workforce that reflects the demographics of Oregon; encourages career development and employee advancement; and provides employees with the tools necessary to serve a more diverse customer base. DEQ will not knowingly conduct business with any bidder, contractor, subcontractor, or supplier of materials who discriminates against members of any protected class.

DEQ is committed to Oregon's public policy that "all branches of State government shall be leaders" in the area of affirmative action.[1] DEQ managers are directly responsible for the success of affirmative action programs within the agency and actively support recruitment and career development programs to achieve these goals.

Implementation of the Affirmative Action Plan is the responsibility of all DEQ employees, including the director, Dick Pedersen, the Affirmative Action officer, Sid Moore, and every DEQ manager. Each employee is expected to promote a work climate 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.

Individuals who believe they might have been discriminated against may file a complaint with the director, Human Resource manager, or any of the other offices or agencies referred to in DEQ's Affirmative Action Plan. All complaints will be investigated by the appropriate manager and/or Human Resources representative, and corrective action will be taken when appropriate. An individual with a complaint against the agency director may file a complaint with the Governor's Office of Affirmative Action at 503-378-3544.

[1] Oregon Revised Statutes 243.305

AFFIRMATIVE ACTION PLAN, 2011-13

Support for diversity and non-discrimination are contained in the position descriptions of all the agency's managers, and are considered in reviewing manager performance. Increases in the number of discrimination or harassment complaints within a management unit will be investigated and addressed through the agency's performance management system.

Copies of DEQ's Affirmative Action Plan are available upon request in the Human Resources office, the Office of the Director and from each division administrator. A link to the plan is posted on the agency's internal and external web pages, on AFSCME's public bulletin board, located in the cafeteria at headquarters, and in a central and public location in each of the regional offices.

The DEQ Affirmative Action Plan has been developed to ensure implementation of agency policy, and becomes effective July 1, 2011.

Dick Pedersen, Director

Training, Education and Development Plan and Schedule

EMPLOYEES

STAFF

DEQ provides opportunities for education and training for employees to perform their current jobs, and to prepare them for additional responsibilities.

Job-related education is paid from program funds at 100 percent of the cost of work-related classes and workshops, including fees and books. Educational materials purchased in conjunction with classes and workshops are considered the property of the agency. Attendance at a job-related class or workshop is on paid time.

All new managers were to complete the appropriate Department of Administrative Services **Management Development Series** course within six months of hire. Though this program still appears in the agency's Education and Training policy, DAS discontinued the program in 2010 due to budget cuts.

If an employee requires a **certification or license** for a position the employee currently holds, DEQ pays for certification or license fee as well as the study course to prepare for the exam. Time spent outside regular working hours in training or study courses required for certification is on the employee's own time (OAR 839-020-0044(7)).

Employees receive a formal performance evaluation annually. During this process, employees hear feedback from their managers and – on an anonymous basis, their peers. The performance evaluation process provides a formal opportunity for employees to speak to their managers about advancement, and to receive coaching regarding the best way to accomplish this.

Though agency-wide staff meetings rarely occur, employees do have the opportunity to provide feedback to management within their divisions. Each division has a division-wide staff meeting at least quarterly, and many of these meeting occur monthly. Staff members and managers are invited to attend these meetings and all are encouraged to participate. Employees who are not able to attend these staff meetings may talk to their managers or other staff members to obtain the materials used and to discuss what was covered.

Public Employees' Retirement System (PERS) sponsored retirement and investment seminars are paid from program funds at 100 percent of the cost of the seminar. These seminars will be on paid time if during the employee's regular work hours. If the seminar takes place outside the regular working hours, it is on the employee's own time.

Career development education is reimbursed from program funds. Prior authorization for a course and an approved Career Plan on file in Human Resources are required for reimbursement of career development education. Up to 75 active participants may participate in this program at a given time. Attendance at training for career development education is on the employee's own time.

Employees at salary range 20 and above are reimbursed at 50 percent of the cost of tuition and fees related to career development classes; employees at salary range 19 or below are reimbursed at 75 percent of the cost of tuition and fees related to these classes. These rates are pro-rated for part-time staff. Reimbursement is not to exceed $2,500 (an increase from $1,000 per year) in the twelve month period beginning with the first reimbursement payment. Funds are available to each staff member for a period of up to three consecutive years; however, leftover funds may not be carried over from year to year. Employees must submit documentation of a score indicative of a passing grade ("pass" or "C" or better) in order to be eligible for reimbursement. If the class is credit/no credit the employee must receive credit status. The cost of books is not reimbursable unless the program manager agrees at the time of enrollment to purchase and retain the books as agency property.

There may be times when, for reasons such as budget constraints, workload, or other operational reasons, a manager may deny an education/training request. The reasons for denial should be in writing to the employee with a copy forwarded to Human Resources.

Education and training are available to employees without regard to race, color, religion, gender, national origin, age, sexual orientation or mental or physical disability.

Advancement Opportunities

AFFIRMATIVE ACTION PLAN, 2011-13

All regular status DEQ employees are eligible to apply for any advancement opportunities in which they have an interest. In order to prepare for such opportunities, DEQ encourages its employees to take advantage of career development plans and courses. Employees may also set up career development plans with the assistance of the human resources section and their manager.

Consistent with DEQ's commitment to employee advancement, the agency is committed to the development of a comprehensive succession plan. The plan will include a talent pool which all employees will be eligible to join based on their knowledge, skills, abilities, and desire to for promotion with the agency. This pool will include employees currently ready for promotion, those DEQ anticipates will presumably be ready in six months, and those DEQ anticipates will be ready in twelve months. The members of the talent pool will receive training and mentoring specific to their career path, and will be encouraged to apply for promotions as these positions arise. DEQ's succession plan will include a replacement chart or list which will identify candidates ready for key positions over current, six month, and yearly time frames. The succession plan will be completed and in place by July 1, 2011.

Volunteers

DEQ will provide opportunities for education/training for volunteers to perform their current assignments, and to prepare them for additional responsibilities. This process will include a meeting between managers and volunteers during their training periods to discuss their opportunities and obligations with regard to affirmative action, along with the affirmative action statement.

Education and training will be made available without regard to race, color, religion, gender, national origin, age, marital status, sexual orientation, marital status, veteran status, or mental or physical disability. The affirmative action plan – including the affirmative action statement – is available to all volunteers.

Contractors and Vendors

DEQ requires all contractors and vendors to adhere to all relevant agency policies, including those governing affirmative action and equal opportunity. The Affirmative Action Plan – including the affirmative action statement – is made available to vendors and contractors upon entering into a contract. DEQ will include a review of its affirmative action and non-discrimination policies at the inception and renewal of all contracts with contractors and vendors, and at least annually during the course of the contract.

As with employees and volunteers, education and training are available to contractors and vendors, as appropriate, without regard to race, color, religion, gender, national origin, age, sexual orientation or mental or physical disability.

AFFIRMATIVE ACTION PLAN, 2011-13

2011 – 2013 Programs

Internships

DEQ's internship program is designed to meet the agency's goals by providing program managers with talented students or recent graduates who engage in research or perform analysis and contribute to the agency's infrastructure for a limited period of time, usually during the summer months. In return, the agency provides interns with useful experience by asking managers to assign interns meaningful work, place them on a team with which they can identify and be involved, and expose them to senior management on a regular basis. These guidelines help interns identify their place in the agency and to see how their work contributes to accomplishing DEQ's goals.

Though there is no guarantee that every intern's experience will be directly related to his or her career goals, DEQ makes every effort to match students and recent graduates with work appropriate to their academic discipline and career interests. DEQ accomplishes this through the competitive selection process it uses to select interns, as outlined on Human Resources' page located on DEQ's intranet site, Q-Net, to which interns have access.

Managers are encouraged to be clear with interns about job prospects, bringing to their attention positions within the agency that seem to fit the intern's skills and abilities. Managers are expected to give a realistic impression both about the intern's prospects for immediately moving into a permanent position (for which they would have to compete), and information regarding the types of positions for which the intern is best suited.

Community Outreach

DEQ uses a variety of programs throughout the agency to conduct community outreach. For purposes of recruitment and retention, the Human Resources section sends representatives to career fairs, seminars, and networking events where the agency may connect with community members. DEQ's director travels throughout the state in order to conduct outreach and maintain ties to the community and the Environmental Quality Commission meets in different parts of the state to allow participation from all areas of the state. In addition, the agency has a representative engaged in outreach with local tribes. The agency will continue to engage in these community outreach activities during the 2011-2013 biennium.

Diversity Initiative Programs

The affirmative action officer currently serves as the agency's diversity outreach coordinator and administers the agency's program on diversity awareness. Working with administrators and managers, the diversity outreach coordinator is responsible for the dissemination of affirmative action information, coordinating affirmative action-related activities, monitoring the progress of the program, and reporting periodically to Agency Management and the director on the status of the program. The Affirmative Action officer also provides training support for the goals and objectives of the Affirmative Action Plan.

AFFIRMATIVE ACTION PLAN, 2011-13

The Affirmative Action officer alerts DEQ employees to diversity-related recognition activities, proclamations, and events. DEQ has a training module covering a variety of topics, including managing diverse workforces, proper preparation for and administration of the Americans with Disabilities Act, and the ways in which the agency intends to recruit a diverse workforce reflecting the makeup of the general population. Training for managers is scheduled on a bi-monthly basis, with the interim months reserved for staff training sessions.

The Agency's training and development coordinator continues the process of revamping DEQ's New Employee Orientation program, which the agency will use more effectively in the coming years. New Employee Orientation serves to welcome new employees while allowing them to learn their rights and responsibilities with regard to expanding the agency's diversity efforts.

Some of DEQ's diversity initiatives include:

- A mentorship program, in which employees are matched with mentors working in positions or in parts of the agency into which the employee would like to move. This program allows the employee to receive confidential advice and guidance from someone further along "the path" the employee wants to follow. The relationship also offers employees a low-risk opportunity to examine the potential new work area and determine whether it is really what he or she wants to pursue;
- A targeted training and development program designed to make the best use of energy surrounding a topic, and to address specific problems of which the agency becomes aware. These training sessions have included topics such as maintaining a respectful workplace, cultural competence, conflict resolution, effective communication, and multicultural awareness topics such as tribal relations and environmental justice.
- Third Tuesday Talks, a brown-bag style, once-monthly, presentation featuring a variety of topics including green building, tribal customs, and sustainability.
- Diversity-related e-mails from the affirmative action officer, including links to diversity-related information from the Governor's Office of Affirmative Action, the city of Portland, and other sources. These resources are also posted on the diversity home page of Q-Net, DEQ's intranet site.
- Sending a representative to sit on the steering committee of the annual Northwest Public Employees Diversity Conference. In addition, DEQ purchases several spots at the conference to allow staff and managers to attend. The agency's affirmative action officer presented at the 2010 and 2011 versions of this conference.

DEQ has not participated in the state-wide cultural competency assessment due to budget constraints, but during the 2009-2011 biennium, explored cost-effective mechanisms for accomplishing this goal. DEQ will conduct a cultural competency assessment during the 2011-2013 biennium.

AFFIRMATIVE ACTION PLAN, 2011-13

During 2010, DEQ's director embarked on a tour of all DEQ offices statewide. During this tour, he met with employees and joined them in accomplishing their day-to-day work. After returning from each office, he provided a summary to the entire agency of his activities, highlighting the work done by staff and managers in each location, enhancing DEQ's sense of community and drawing attention to the diverse work done here at the agency, as well as the people performing it.

DEQ includes a diversity-related topic during each of the agency's bi-annual managers' conferences. The February 2010 conference was dedicated entirely to questions of employee engagement, and each conference incorporates coaching on DEQ's initiative to be the Employer of Choice. This Employer of Choice initiative starts with creating a welcoming environment for existing employees, who perform the work of the agency and who are the most effective ambassadors for the agency.

Understanding that diversity is important to many potential employees, DEQ makes affirmative efforts to increase appreciation for all cultural differences, and it is made clear to all employees – generally and specifically – that support for cultural diversity is a core value that DEQ expects management and staff to treat it as such. To reinforce this idea, DEQ has adopted several policies associated with diversity, including anti-discrimination, anti-harassment and reasonable accommodations policies.

Update: Executive Order 08-18

STATUS OF CULTURAL COMPETENCY ASSESSMENT/IMPLEMENTATION

As part of DEQ's 2009-2011 Affirmative Action Plan, the agency planned to complete an assessment of its cultural competence, a project originally scheduled for the 2007-2009 plan year. Though DEQ managers and some staff have participated in cultural competence training during the 2009-2011 biennium, the state cultural competency assessment has been put on hold for budgetary reasons. During the 2009-2011 biennium, DEQ explored cost-effective methods of conducting the cultural competency assessment and of implementing the results, and will complete the assessment by January 31, 2013.

In becoming a more culturally competent organization, DEQ will be able to enhance the use of the policies, people and resources it has to anticipate, recognize and respond to customers' and employees' varying expectations. As an increasingly culturally competent organization, DEQ continues to value individuals for their contributions to a culturally diverse workforce.

Based on the equity audit, and using all available state resources, DEQ will develop a plan to enhance its cultural competence over the 2011-2013 biennium. This effort will continue the training of agency leadership, managers, and staff in cultural competence and will continue to include affirmative action and equal opportunity standards in manager performance appraisals. The agency hopes these plans for enhancement of DEQ's cultural competence will result in:

- The working together of those of diverse backgrounds and experience
- An understanding and appreciation of the differences among people
- Effective communication with and respect for those with cultural backgrounds differing from our own

The plans for enhancing DEQ's cultural competence have and will continue to focus on:

- Greater cultural awareness in DEQ's workforce
- Policy and practice changes to enhance effective communication and capitalize on differing strengths
- Designing and implementing effective interventions within a diverse or specific cultural community
- An increased respect for and understanding of diverse cultures within the workforce and a decrease in discriminatory and/or disrespectful practices by members of the workforce

DEQ has made progress with respect to these focus areas through management and staff training, through individual attention, and through vocal and consistent support from the executive management team.

From the assessment and implementation of plans to enhance DEQ's cultural competence, DEQ will continue to benefit from:

- Using the unique strengths and perspectives of DEQ's employees to solve problems and enrich the work environment
- A stronger, more cohesive workforce
- A decision-making process led and supported by a diverse workforce, resulting in increased ownership and support of the agency's decisions
- A greater understanding of the environment in which we work and the citizens/public we serve
- An ability to prevent and overcome misunderstandings, lost opportunities and conflict

State-Wide Exit Interview Survey

DEQ uses the state-wide exit interview survey in addition to internal management's own efforts to determine why employees leave the agency and/or state service. During the 2009-2011 biennium, the agency placed the survey on its intranet site, Q-Net, and will analyze the results quarterly during the 2011-2013 biennium in order to identify any relevant trends. DEQ will publish this trend analysis and use it as a tool to help direct its employer of choice initiative, which is the cornerstone of the agency's overall diversity effort.

There are a number of specific programs and activities in which the agency engages that will be affected by the results of the trend analysis. First, survey results will be taken into account when considering topics and methods of delivery for management training and

consulting, which represent opportunities for the agency to reinforce or modify management behaviors to continue activities that are helpful and remove reasons for employees to perceive that they are being "pushed out."

To the extent that departing employees feel they are being "pulled out," by other employers, DEQ will make efforts to determine what those other employers are doing to make themselves more attractive. Armed with this knowledge, DEQ can position itself to better compete with some of these agencies and firms.

In addition, survey results might indicate that changes in the new employee orientation program are warranted. In that case, DEQ's Training and Development specialist or designee, will be able to make most of the necessary changes soon after results of the trend analysis are published.

Before any actions are taken with regard to the trend analysis, the Affirmative Action officer and the deputy director discuss the data at their quarterly affirmative action meeting. The director is, and will continue to be, informed of the contents of the trend analysis and any proposed next steps the Affirmative Action officer and the deputy director are contemplating.

Performance Evaluations of Management Personnel

Consistent with Executive Order 08-18, all DEQ 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.

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

During fiscal year 2010, DEQ entered into four contracts with firms certified by Oregon's Office of Minority, Women, and Emerging Small Business. DEQ complies with ORS 200.035 in providing notice of solicitations to the Governor's Advocate for Minority, Women and Emerging Small Businesses. DAS Statewide Policy #107-009-030 provides guidance on how to provide this Notice through the Oregon Procurement Information Network. DEQ's practice, in accordance DAS policy, is to notify all providers in the global market via ORPIN of all DEQ solicitations, including the MWESBs.

In an effort to promote participation by MWESBs, DEQ includes the following clause in DEQ solicitations:

> "Pursuant to Oregon Revised Statute (ORS) Chapter 200, and as a matter of commitment, the DEQ encourages the participation of minority, women, and emerging small business enterprises in all contracting opportunities. The DEQ also encourages joint ventures or subcontracting with minority, women-owned, and emerging small business enterprises. All businesses seeking contracting opportunities as minority, women-owned, or emerging small businesses must be

certified by the Office of Minority, Women and Emerging Small Business (OMWESB). More information may be found at: http://egov.oregon.gov/DCBS/OMWESB/index.shtml"

Roles for Implementation of Affirmative Action Plan

DEQ's predecessor agency, the Oregon State Sanitary Authority, was established in 1939 by an initiative petition passed by the voters of Oregon. DEQ operates under the authority of the Environmental Quality Commission. Statutory authorization for the EQC and DEQ may be found in ORS 468.010 and 468.030, respectively. The agency consists of the five-member EQC, a director, and eight divisions with a total request budget of approximately $349 million, of which $216 million is for agency operations, subject to approval by the 2011 Legislature. The agency currently has 790 full-time equivalents and will stay level with 792 in the 2011-13 Agency Request Budget. DEQ has a strategic plan to achieve the agency's mission, vision and values.

RESPONSIBILITY FOR IMPLEMENTATION

The success of the Affirmative Action Plan depends upon the commitment and leadership of DEQ employees at all levels.

THE DIRECTOR

DEQ's director strongly commits the agency to a policy of equal employment opportunity and affirmative action. The director demonstrates an active interest in the attainment of affirmative action goals and objectives. The director has delegated direct oversight of affirmative action to the deputy director. Both the director and deputy director provide leadership to agency management and staff, and have the overall responsibility to:

- Communicate and implement the Affirmative Action Plan and Policy Statement;
- Review with all division administrators their affirmative action efforts and their ability to manage a diverse workforce;
- Monitor progress toward meeting the goals and objectives of the Affirmative Action Plan.

DEQ's deputy director and the affirmative action officer meet once quarterly to discuss the agency's progress toward its goals and its diversity efforts, allowing the deputy director to monitor the agency's progress in these areas. Specifically, the deputy director and affirmative action officer discuss any changes in the agency's workforce over the previous quarter, paying specific attention to the gain or loss of women, people of color, individuals with disabilities, and veterans, paying specific attention to the agency's affirmative action goals. As it does with all aspects of the director's performance, the Environmental Quality Commission holds the director responsible for the agency's affirmative action goals.

The director and deputy director each take part in training sessions presented by the affirmative action officer, training and development coordinator, and by outside presenters. They also encourage division administrators and managers to participate in diversity efforts.

Managers

Managers are accountable to their administrators. These individuals are responsible for communicating and implementing the Agency's Affirmative Action Plan to employees within their respective programs, sections, or stations, and their affirmative action, EEO, and diversity responsibilities are integrated into their position descriptions. The following responsibilities are assigned to managers:

- As part of the new employee orientation, review DEQ's Affirmative Action Policy Statement and the employee responsibilities for supporting and promoting it with all new employees
- Regularly discuss the Affirmative Action Plan with employees to be certain all components are understood and implemented
- Provide assistance in the identification of problem areas and establish program objectives to meet affirmative action goals
- Attend equal employment opportunity, affirmative action, and workforce diversity training and apply such training in day-to-day management to achieve EEO/AA- related objectives
- Ensure agency training opportunities are offered to employees without discrimination because of race, religion, national origin, age, gender, sexual orientation, marital status, veteran status or disability
- Ensure all meetings sponsored by DEQ occur in barrier-free facilities
- Maintain a work environment free from harassment of any kind, and report incidents of harassment to the Human Resources manager
- Work with the Human Resources analysts to locate and recruit qualified women, minority and disabled candidates for vacant positions
- Encourage upward mobility for employees by becoming familiar with the career development opportunities at DEQ, by evaluating positions for restructuring, and, with the assistance of DEQ's training and development specialist, by reviewing employee training and career plans to determine appropriate developmental assignments
- Involve themselves in local school programs, such as "career days," environmental assemblies, or internships, to introduce students to the field of environmental sciences. Indicate DEQ's interest in protected-class students to guidance counselors and school coordinators.

- Discuss their affirmative action efforts and their demonstrated abilities to manage a diversified work force in conjunction with other managerial responsibilities with their division administrators
- Division administrators will hold managers accountable for their affirmative action/diversity efforts through their annual performance reviews. These efforts are contained in these managers' position descriptions, and failure to perform could subject the manager to corrective action.

Human Resources Manager

The Human Resources manager has responsibility for administration of the agency's Equal Employment Policy and Affirmative Action Plan. The Human Resources manager has responsibility to ensure:

- Appropriate action is taken by all levels of Agency management to achieve the Department's equal employment opportunity and affirmative action objectives
- Compliance with all applicable federal and state laws, rules, and regulations
- All investigations are completed promptly and attempt to resolve all discrimination and harassment complaints
- Managers receive assistance in implementing the Affirmative Action Plan

Affirmative Action Officer

The Affirmative action officer, acting through and with the administrators and managers, is responsible for the dissemination of affirmative action information, coordinating affirmative action-related activities, monitoring the progress of the program, and reporting periodically to Agency Management and the director on the status of the program. This position also provides training support to the Affirmative Action Plan's goals and objectives. Managed via the performance management system, the affirmative action officer is required to:

- Compile, review, and revise the agency's Affirmative Action Plan and submit to the Governor's Office
- Recommend changes and updates to the Affirmative Action Plan in response to changing circumstances
- Develop policies and procedures related to affirmative action and equal employment opportunities
- Develop communication methods to ensure the goals of affirmative action are understood by all staff and are brought to the attention of groups or organizations representing minorities, women, and people with disabilities
- Identify problem areas in practices and procedures and assist in finding solutions to those problems

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- Design and implement audit and reporting systems that will measure effectiveness of DEQ's Affirmative Action Program; indicate the need for remedial action; and determine the degree to which the agency's goals and objectives have been achieved
- Represent DEQ with organizations and community action groups whose members or clients tend to be people of color, people with disabilities, or women
- Foster employee and manager participation in job fairs and career days that have an emphasis on opportunities for women, minorities, and people with disabilities
- Keep management informed of the latest law and rule changes in the EEO/AA area
- Initiate programs to recruit, appoint, retain, and promote qualified women, minorities, and people with disabilities
- In conjunction with other Human Resource Analysts, maintain and update an affirmative action mailing list for recruitment announcements
- Ensure agency training opportunities are offered free of discrimination on the basis of race, religion, national origin, age, gender, sexual orientation, marital status, or disability
- Provide employee counseling related to informal discrimination complaints
- Investigate formal complaints of discrimination made by employees
- Support career counseling for all employees
- Periodically check to assure facilities and Department activities are barrier-free
- Schedule training for all employees that fosters workplace diversity (to include affirmative action and equal employment opportunity)
- Provide managers with skills to manage a diverse workforce effectively

Division and Office Administrators

Division, regional and office administrators are accountable to the director and deputy director. These individuals are responsible for communicating and implementing the Agency's Affirmative Action Plan within their respective divisions or offices, responsibilities that are contained in their position descriptions. The duties of each administrator are to:

- Actively promote a positive climate concerning affirmative action and workforce diversity

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- Maintain a work environment free from harassment of any kind, and discuss the work climate with management staff and employees to be certain DEQ's policies are understood and implemented
- Periodically review the training programs and hiring and promotion patterns within the Division/Office to remove any roadblocks in the attainment of the Plan's goals and objectives
- Ensure managers receive training in affirmative action and workforce diversity concepts and apply such philosophies in his/her day-to-day work
- Discuss the managers' affirmative action efforts and results, and their ability to manage a diverse workforce in conjunction with their other managerial responsibilities
- Include affirmative action and diversity concepts on staff meeting agendas; and assure the Affirmative Action Plan is understood and being implemented as assertively as possible
- The deputy director will hold division administrators accountable for their affirmative action/diversity efforts through their annual performance reviews. These efforts are contained in these managers' position descriptions, and failure to perform them could subject the manager to corrective action.

July 1, 2009- June 30, 2011

2009-2011 Accomplishments

- Provided employees a copy of the current Affirmative Action Policy Statement during new employee orientation. Posted a copy of DEQ's Affirmative Action Policy Statement and Affirmative Action Plan on DEQ's intranet site.
- The Human Resources section continued its professional relationships with agencies, organizations, and individuals representing women, people of color and individuals with disabilities, such as the Center for Diversity and the Environment and the Oregon Business Leadership Network.
- The deputy director holds division administrators accountable for their affirmative action/diversity efforts through their annual performance reviews. In turn, the division administrators hold managers accountable for their efforts. Affirmative Action and diversity efforts are contained in managers' position descriptions, and failure to perform could subject the manager to corrective action.
- DEQ used the services of qualified rehabilitation facilities, including Galt, Goodwill Temporary, St. Vincent de Paul Services, and Vocational Rehabilitation for temporary staffing needs.

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- DEQ awarded several paid and unpaid internships in 2009 and 2010 through its internship program and through DEQ's relationships with local colleges and universities, most especially Portland State University, Lewis and Clark School of Law, and Mount Hood Community College.
- DEQ continued to expand its database of colleges, organizations, and professionals and will continue to increase the focus for job announcements to target audiences.
- DEQ provided training opportunities such as brown-bag discussions and related workshops, educational tools, and games to increase staff's effectiveness working with various multicultural groups. The Air Quality section showed Lee Mun Wah's Color of Fear, followed by a facilitated discussion, as part of its "Diversity University" initiative to help employees understand diversity.
- The agency provided training opportunities—such as brown bag discussions, related workshops, educational tools and games—designed to increase staff effectiveness in working with various multicultural groups.
- DEQ's Training and Development Specialist maintains a process to track employee training electronically through iLearn. Employees may register for, record, and even participate in training through the iLearn system.
- In order to help advance employees' careers within DEQ or state service, increased reimbursement under the Career Development Education Tuition Reimbursement Plan from $1,000 to $2,500 in a twelve-month period and revised the start of the year to make it coincide with the first reimbursement payment. Reimbursement is not to exceed $2,500. Employees at salary range 25 or below are reimbursed at 75 percent of the cost of tuition and fees related to relevant courses, an amount that is pro-rated for part-time employees. These changes also reflect increases in tuition and fees.
- DEQ's New Employee Orientation program, under the leadership of the agency's Training and Development specialist, continues to provide a welcoming environment to all new employees.
- Since June 30, 2008, the numbers of women, people of color and people with disabilities have declined, as follows:
    - The number of women at DEQ declined by 12, or 3.8 percent
    - The number of people of color declined by one (1.5 percent)
    - The number of people with disabilities declined by 11.1 percent, or three employees

  During the same period, the agency lost 23 employees—or 3.18 percent of its workforce—bringing the total number of employees down to 699 as of June 30, 2010. Due to budget concerns, the agency has done less hiring during the 2009-2011 biennium than in previous biennia. As such, DEQ has not been in a position to increase the number of employees in any category. Nevertheless, DEQ is engaged in activities designed to make it more attractive to a wide variety of candidates so that when robust hiring resumes, a more diverse applicant pool will be available.

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- Increased access to agency-sponsored training through more aggressive use of the agency's mentoring and performance evaluation processes. Mentors who volunteered during the 2009-2011 biennium included DEQ's: legislative liaison; Management Service Division administrator; and senior policy analyst; along with an office specialist, an administrative specialist, and several managers and acting managers.

Despite the overall decrease in employees, people of color, women, and individuals with disabilities during the 2009-2011 biennium (as of June 30, 2010), DEQ promoted 16 employees, of whom seven were women. None of the agency's 65 people of color were promoted.

In summer 2008, DEQ's director issued a directive that management engage in fewer statewide Program Management Team meetings, in response to employee poll results indicating that managers were not available enough to their employees. This directive continued in force through the first half of the 2009-2011 biennium: follow-up poll results are pending.

DEQ has identified the presence of members of four distinct generations within its workforce: the so-called "Silent Generation"; the "Baby Boomers"; "Generation X"; and "Generation Y" (or the "Millennials"). Members of the Silent Generation and many Baby Boomers are at or near retirement age; the agency continues to promote members of these groups and to use the significant amount of institutional knowledge possessed by members of these groups. These strategies help retain members of these generations, in turn allowing the agency to gather and document institutional knowledge to pass on to members of Generations X and Y. Failure to account for the differences among members of different generations will likely result in employees with considerable institutional memory departing DEQ before the agency has been able to memorialize such memory for use by the agency after the employee has retired.

The retention strategies for members of Generations X and Y are somewhat different from those of the Silent and Baby Boomer generations. Most notably, trends indicate that members of these younger generations are less likely to work long-term with one employer and will seek and expect to find employers that allow flexibility in work schedules, dress codes, and freedom to pursue outside interests. DEQ, through its training and development plan, has integrated training about managing members of different generations into its manager training sessions.

Among notable challenges to the agency is the historically minimal degree of scheduling flexibility traditionally allowed in state service jobs. On the other hand, mentoring efforts aimed at putting Generation X and Millennial employees into position to be promoted within the agency should counteract some of the inflexibility inherent to state service. DEQ has engaged in mentoring activities, but few promotional opportunities for members of generations X and Y have emerged due to budget concerns directly and to the inability or unwillingness of some members of the Silent and Baby Boom generations to retire as originally scheduled. Nevertheless, employers such as DEQ continue to have an advantage with some segments of the market, since many potential employees, particularly Millennials, identify so closely with the agency's mission.

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Many of the positions representing promotional opportunities for current employees have been recruited for through the open competitive recruitment process in order to attract the most diverse applicant pools possible. Managers are encouraged, nevertheless, to consider internal applicants for promotional opportunities, and internal applicants who are unsuccessful in applying for promotion are routinely offered feedback regarding how to improve their performance. DEQ sends job announcements agency-wide via e-mail in order to ensure that current employees have equal access to job postings. In addition, DEQ expects the increased emphasis on and participation in mentoring programs by DEQ management to contribute to the success rate of those employees seeking promotion when opportunities present themselves.
In July 2010, the division administrator for DEQ's Northwest Region office took a Spanish immersion course, during which she learned a great deal of conversational and environment-related Spanish. When she returned, she delivered, in Spanish, two presentations to DEQ employees on environmental topics. Through her knowledge (and her example), DEQ becomes stronger at one specific aspect of multicultural communication.

Beginning in the fall of 2010, the land quality division began hosting an Oregon Sea Grant fellow. The fellowship lasted one year and was paid for by the Oregon Sea Grant. This program represented an opportunity for the agency to gain another "ambassador" who can help advance the Employer of Choice initiative.

Progress Made or Lost Since 2009-2011 Biennium

Overall, DEQ employs fewer people of color and women than it would expect given the state-wide demographic information. Though there are individual job groups in which DEQ employs as many or more people from one of these categories as would otherwise have been expected, more progress can be made. Most specifically:

- In the "Officials and Administrators" job groups, the numbers of people of color and women employed is lower than what would be expected based on the parity number for these groups.
- The "Professionals" job groups include fewer people of color and women than would be expected based on the parity numbers associated with those job groups.
- DEQ employs fewer women and people of color in the "Technicians" job group than would be suggested by the parity numbers, but in the case of people of color, the difference is less than "one whole person" and does not trigger a placement goal.
- In the "Administrative Support" job groups, DEQ is meeting its placement goals as to people of color and women.
- By percentage, women and people of color are underrepresented in the "Skilled Craft Worker" job group, but this is not statistically significant given that there was only one employee in the job group as of June 30, 2010.
- In the "Service Maintenance Worker" category, the agency is under parity for women, but not for people of color.

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DEQ sets placement goals in job groups in which the difference between parity (the number of women and employees of color) is more than "one whole person" different from representation (the number of people actually employed in a given job group.

People of Color

Between June 2008 and June 2010, the number of people of color **decreased** by one, from 66 to 65. (DNA = Data Not Available)

	June 1999 (historical)	June 2001	June 2003	March 2005	September 2006	June 2008	June 2010
Total People of Color	**59**	**63**	**76**	**76**	**67**	**66**	**65**
African American	18	17	14	13	11	14	11
Asian/Pacific Islander	18	27	34	35	30	33	36
Hispanic American	17	14	17	19	17	14	13
Native American	6	5	11	9	8	5	5
People of Color by Job Group		DNA=Data Not Available					
Officials/Administrators	3	2	3	3	2	2	1
Professionals	34	40	42	39	36	38	39
Technicians	1	0	0	1	1	1	1
Administrative Support	DNA	DNA	DNA	DNA	11	0	9
Skilled Craft Workers	DNA	DNA	DNA	DNA	0	0	0
Service Maintenance Workers	6	6	18	19	17	13	15
Statewide Labor Force	DNA	DNA	DNA	DNA	4379	DNA	4383
Total Employees @ DEQ	712	758	797	776	731	722	699

Women

The number of women in the agency **decreased** from 313 in June 2008 to 301 in June 2010. (DNA = Data Not Available)

	June 1999 (historical)	June 2001	June 2003	March 2005	September 2006	June 2008	June 2010
Total Women	**268**	**303**	**318**	**313**	**301**	**313**	**301**
Women by Job Group							
Officials/Administrators	24	28	29	33	23	21	20
Professionals	142	165	162	162	239	185	183
Technicians	1	0	1	2	0	4	4
Administrative Support	DNA	DNA	DNA	DNA	DNA	78	70
Skilled Craft Workers	DNA	DNA	DNA	DNA	DNA	0	0
Service Maintenance Workers	11	14	37	29	39	25	24
Statewide Labor Force	DNA	DNA	DNA	DNA	19,691	DNA	18,208
Total Employees @ DEQ	712	758	797	776	731	722	699

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DNA=Data Not Available

Individuals with Beneficiaries

The number of employees self-identifying as individuals with disabilities in the agency **decreased** from 27 in June 2008 to 24 in June 2010.

	June 1999 (historical)	June 2001	June 2003	March 2005	September 2006	June 2008	June 2010
Total Individuals with disabilities	**24**	**22**	**43**	**37**	**34**	**27**	**24**
Individuals with disabilities by Job Group							
Officials/Administrators	0	0	3	4	3	1	1
Professionals	11	8	18	14	16	14	13
Technicians	0	0	0	0	0	0	0
Administrative Support	DNA	DNA	DNA	DNA	11	10	8
Skilled Craft Workers	DNA	DNA	DNA	DNA	0	0	0
Service Maintenance Workers	1	1	5	4	4	2	2
Statewide Labor Force	DNA	DNA	DNA	DNA	1248	DNA	1186
Total Employees @ DEQ	712	758	797	776	731	722	699

DNA=Data Not Available

Economic factors limited the number of positions for which DEQ was able to recruit, so during the 2009-2011 biennium, the agency's recruiting and retention efforts focused on its "Employer of Choice" initiatives. These initiatives permeate the agency's activities and are designed to make DEQ a more desirable destination for current and potential employees. One example of a retention effort is the focus placed on manager engagement with staff members. This step was taken in response to an employee engagement survey.

In addition to general employee engagement efforts, DEQ's mentorship program, designed to encourage and enable employees—including individuals with disabilities, women, and people of color—to garner promotions within the agency, has broadened the internal talent pool from which DEQ will draw its higher level staff and management positions over the coming biennium. Without a comprehensive retention plan, DEQ would experience immediate and severe loss of institutional memory, given the relatively large number of employees with 20 or more years' experience in the agency. It will remain necessary to find and develop methods of maintaining this knowledge when current employees inevitably retire.

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Due to the small number of recruitments requested during the 2009-2011 biennium and Oregon's high unemployment rate, few positions have fallen into the "hard to fill positions" category, though when these positions arise, the agency will forward them to the Governor's Office of Affirmative Action for assistance in attracting a larger candidate pool. Despite these challenges, DEQ enjoys competitive advantages such as: the agency's mission, which draws and retains many passionate, dedicated employees and applicants; the location of its headquarters in the downtown area of Oregon's largest metropolitan area; and the existence of several offices around the state, providing employees and applicants with potential opportunities to live in the climate that suits them best.

July 1, 2011 – June 30, 2013

2011-2013 Goals

DEQ strives for a workforce reflective of the diversity present in Oregon, and understand that attracting quality applicants who are women, people of color, or individuals with disabilities goes a long way toward reaching that goal. In order to increase the diversity of DEQ's applicant pool, DEQ took a number of steps during the 2009-2010 biennium designed to make the agency more attractive to these quality individuals so they will apply for positions when they become available. Accordingly, DEQ expanded its outreach efforts along with its internal mentoring and professional development opportunities. For 2011-2013, DEQ will continue to explore innovative recruiting methods and to prepare highly qualified applicants for career opportunities at DEQ.

Over the past biennium, the human resources section has carefully allocated its limited resources to optimize affirmative action and equal employment opportunity activities. Participation of staff, management, and administrators remains vital to accomplishing DEQ's affirmative action goals. DEQ executives and this affirmative action plan expect managers, supervisors, and professional staff members to contribute to raising DEQ's profile and making it the employer of choice that will attract diverse pools for a variety of positions.

The following tables summarize agency goals by EEO-4 Job Category. For definitions of Equal Employment Opportunity (EEO) categories, please see Appendix A.

AFFIRMATIVE ACTION PLAN, 2011-13

People of Color

Information collected from 2009-2011 statistical data.

Total Employees @ DEQ	People of Color @ DEQ	Group Parity %	Group Goal	Need to Hire to Meet Goal	Target Date
699	**65**	**9.3%**	**80.5**	**15**	**6/30/2013**

EEO-Categories	DEQ Employees in Group	DEQ People of Color
A. Officials/Administrators		
A01 Middle Management (SR 24-30)	8	0
A02 Upper Management (SR 31+)	59	1
B. Professionals		
B01 Environmental Engineers	36	5
B02 Communications	3	0
B07 Purchasing Agent/Analyst	5	0
B08 Natural Resources	329	16
B10 Personnel	9	1
B12Computer Analyst	43	11
B15 Accounting/Finance/Revenue	15	2
B16 Program Coordinator/Analyst	27	4
C. Technicians		
C03 Science	5	1
C04 Computers	3	0
C05 Audio-visual	2	0
F. Administrative Support		
F00 Office Assistant/Specialist	79	9
G. Skilled Craft Workers		
G03 Trades/Maintenance Repair	1	0
H. Service Maintenance		
H00 Vehicle Emissions Tech	75	15

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Women

Information collected from 2009-2011 statistical data.

Total Employees @ DEQ	Women @ DEQ	Group Parity %	Group Goal	Need to Hire to Meet Goal	Target Date
699	**301**	**43.06%**	**316**	**15**	**6/30/2011**

EEO-Categories	DEQ Employees in Group	DEQ Women
A. Officials/Administrators		
A01 Middle Management (SR 24-30)	8	2
A02 Upper Management (SR 31+)	59	18
B. Professionals		
B01 Environmental Engineers	36	8
B02 Communications	3	1
B07 Purchasing Agent/Analyst	5	4
B08 Natural Resources	329	130
B10 Personnel	9	5
B12Computer Analyst	43	10
B15 Accounting/Finance/Revenue	15	9
B16 Program Coordinator/Analyst	27	16
C. Technicians		
C03 Science	5	0
C04 Computers	3	2
C05 Audio-visual	2	2
F. Administrative Support		
F00 Office Assistant/Specialist	79	70
G. Skilled Craft Workers		
G03 Trades/Maintenance Repair	1	0
H. Service Maintenance		
H00 Vehicle Emissions Tech	75	24

AFFIRMATIVE ACTION PLAN, 2011-13

Individuals with Disabilities

*** Data collected from 2007-2009 statistical data.**

Total Employees @ DEQ	DEQ People w/Disabilities @ DEQ	Group Parity %	Group Goal	Need to Hire to Meet Goal	Target Date
699	**24**	**3.43%**	**44**	**20**	**6/30/2011**

EEO-Categories	DEQ Employees in Group	DEQ People w/Disabilities
A. Officials/Administrators		
A01 Middle Management SR 24-30	8	0
A02 Upper Management SR 31+	59	1
B. Professionals		
B01 Environmental Engineers	36	0
B02 Communications	3	0
B07 Purchasing Agent/Analyst	5	0
B08 Natural Resources	329	10
B10 Personnel	9	0
B12 Computer Analyst	43	2
B15 Accounting/Finance/Revenue	15	0
B16 Program Coordinator/Analyst	27	1
C. Technicians		
C03 Science	5	0
C04 Computers	3	0
C05 Audio-visual	2	0
F. Administrative Support		
F00 Office Assistant/Specialist	79	10
G. Skilled Craft Workers		
G03 Trades/Maintenance Repair	1	0
H. Service Maintenance		
H00 Vehicle Emissions Tech	75	2

AFFIRMATIVE ACTION PLAN, 2011-13

Strategies and Timeline for Implementation

A) In accordance with state guidelines and policy, applicants for any position will be chosen from the following lists, listed in the order of consideration:

1) Injured Worker
2) DEQ Layoff
3) Statewide Reemployment Layoff
4) Agency Transfer

B) The sequence for consideration of other lists is optional. These other lists include:

a) Agency Promotion
b) Statewide Promotion
c) Statewide Transfer
d) Open Competitive

C) Job announcements will be posted for a minimum of five days and will be distributed widely throughout the Agency. Internal candidates who are qualified to interview—or who were close to qualifying to interview—but who are not selected are offered opportunities to meet with managers and human resources personnel to discuss ways in which to improve their performance in subsequent interviews.

D) Oral interviews will be held and applicant references checked before a hiring decision is made. Upon selection of a candidate for a position, managers will announce the selection to all DEQ employees.

Guidelines:
Managers must first balance the task to be completed against current employee developmental opportunities. Consideration must be given each time to the employee's view as to whether the position is a potential developmental opportunity. Managers must consider developmental opportunities before hiring a temporary employee. Please see DEQ Policy 40.040 on Alternative Methods of Filling Positions.

Post-selection interviews may be offered to the unsuccessful DEQ candidates. These interviews include the basis for non-selection, potential areas of improvement, and identification of training and/or continuing education needs.
The following tables summarize agency target, goal, and planned action for People of Color, Women and Individuals with disabilities, respectively.

AFFIRMATIVE ACTION PLAN, 2011-13

Staff

Target: **All Employees**

Goal: **Ensure employees are engaged in maintaining a diverse workplace**

Planned Action	Target Date
Progress toward affirmative action goals will be made part of evaluation of management and supervisory personnel.	Ongoing
Provide prompt investigation of discrimination and harassment complaints and take appropriate action in a timely manner.	Ongoing
Distribute monthly diversity events information to all staff and update the intranet diversity section with a summary of the observances for the month. Include a calendar on the intranet page.	Ongoing
Hold diversity events such as a Diversity Month, and diversity potlucks to raise staff's cultural awareness.	Ongoing
Maintain the resources in the Diversity Center on DEQ's intranet.	Ongoing
Actively encourage employees to participate in agency efforts to reach its affirmative action goals.	Ongoing
Provide training opportunities to increase staff's effectiveness while working with various multicultural groups such as brown bag discussions, related workshops, educational tools and games. Continue to offer showings of educational videos such as Color of Fear, followed by a facilitated dialogue.	Ongoing
Continue to develop closer and more meaningful relationships with colleges and universities and local ethnic groups in order to increase awareness of DEQ and state service positions among recent graduates.	Ongoing
Monitor opportunities for and promote people of color, individuals with disabilities, and women within the agency.	Ongoing
Use strategies gathered from AAEO workshops to streamline job announcements placed online to make the application process less cumbersome.	Ongoing
Send all job announcements to the Governor's Office of Affirmative Action for dissemination.	Ongoing
Continue to develop a comprehensive retention strategy.	Ongoing
Affirmative Action Representative or designee will continue to attend monthly Affirmative Action Workgroup meetings.	Ongoing
Actively encourage participation by the affirmative action officer or designee in monthly affirmative action workshops.	Ongoing
Provide staff with methods in successfully communicating issues and provide staff with understanding of whom to talk to inside and outside the organization.	2009

AFFIRMATIVE ACTION PLAN, 2011-13

People of Color

Target: **People of Color**
Goal: **Achieve a MINORITY WORKFORCE representation at DEQ to reach parity with the civilian workforce.**

Planned Action	Target Date
Review job classifications and identify opportunities to establish more entry-level positions in the professional categories.	Ongoing
Actively recruit and interview people of color for the upper and middle managerial, and natural resource positions through effective networking, classified advertising, websites, and trade publications.	Ongoing
Actively encourage employees to refer applicants.	Ongoing
Review all hiring practices to identify and eliminate all employment barriers for people of color.	Ongoing
Encourage employees to participate in networking activities including career day and related activities sponsored by schools and community organizations.	Ongoing
Actively encourage employees to participate in agency efforts to reach its affirmative action goals with respect to people of color via activities such as: interaction and strategy sessions with managers; involvement in community activities; and word-of-mouth recruiting.	Ongoing
Continue to participate in internship programs that recruit people of color, e.g., Promise, In-roads.	Ongoing
Participate in job fairs, career fairs and other related activities to increase outreach, such as the Minority in Agriculture, Natural Resources and Related Sciences (MANRRS) Career Fair.	Ongoing
Establish and maintain professional relationships with college multicultural programs, and advocacy commissions and organizations whose members or clients tend to be people of color.	Ongoing
Promote participation in DEQ's mentorship and career development programs.	Ongoing
Diversify interview panels.	Ongoing
Develop recruiting materials to attract a diverse workforce.	Ongoing
Explore job rotation as a way to assist people of color in entering permanent positions. Provide necessary training in order to increase the likelihood of success.	Ongoing
Explore temporary job rotation as a method of assisting people of color in gaining experience necessary for promotion. Provide training for employees embarking on these opportunities in order to prepare for their new role.	Ongoing
Identify and establish a link with a college that focuses on the sciences and has a large minority population.	July 1, 2011
"Adopt" a classroom, science lab, or related special activity at a local school with a large minority population.	Biannually
Actively encourage participation by the affirmative action officer or designee in monthly affirmative action workshops.	Ongoing
Develop student trainee work-study programs, and other special employment programs to introduce people of color to DEQ.	September 30, 2011

AFFIRMATIVE ACTION PLAN, 2011-13

Women

Target: **Women**

Goal: **Achieve FEMALE REPRESENTATION in all categories at DEQ to reach parity with the civilian work force.**

Planned Action	Target Date
Review job classifications and identify opportunities to establish more entry-level positions in the professional categories.	Ongoing
Actively recruit female candidates for middle managerial, engineering, science, vehicle emission technician positions through targeted classified advertising, websites, and trade publications.	Ongoing
Review all hiring practices to identify and eliminate all employment barriers for women.	Ongoing
Participate in job fairs, career fairs, and other related activities to increase outreach.	Ongoing
Encourage employees to participate in networking activities, including career day and related activities sponsored by schools and community organizations.	Ongoing
Actively encourage employees to participate in agency efforts to reach its affirmative action goals with respect to women. This may be accomplished through: interaction and strategy sessions with managers; involvement in community activities; and word-of-mouth recruiting, among other activities.	Ongoing
Promote participation in DEQ's mentorship and career development programs.	Ongoing
Diversify interview panels.	Ongoing
Develop recruiting materials to attract a diverse workforce.	Ongoing
Explore job rotation as a way to assist women in entering permanent positions. Provide necessary training in order to increase the likelihood of success.	Ongoing
Explore temporary job rotation as a method of assisting women in gaining experience necessary for promotion. Provide training for employees embarking on these opportunities in order to prepare for their new role.	Ongoing
Actively encourage participation by the affirmative action officer or designee in monthly affirmative action workshops.	Ongoing
Develop student trainee work-study programs and other special employment programs to introduce women to DEQ.	September 30, 2011

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Individuals with Disabilities

Target: **Individuals with disabilities**

Goal: **Achieve representation of INDIVIDUALS WITH DISABILITIES at DEQ to reach parity with the civilian workforce.**

Planned Action	Target Date
Review all hiring practices to identify and eliminate all employment barriers for individuals with disabilities.	Ongoing
Actively recruit and interview individuals with disabilities for all positions, particularly in the management, Professional, and Vehicle Emission Technician positions through effective networking, classified advertising, websites, and trade publications.	Ongoing
Establish and maintain professional relationships with agencies and organizations whose members or clients are primarily individuals with disabilities.	Ongoing
Participate in job fairs, career fairs, and other related activities to increase outreach.	Ongoing
Use a qualified rehabilitation facility for temporary services. This will provide work experience for individuals with disabilities, and may increase the number of individuals with disabilities in our applicant pool.	Ongoing
Encourage employees to participate in networking activities, including career day and related activities sponsored by schools and community organizations.	Ongoing
Actively encourage employees to participate in agency efforts to reach its affirmative action goals with respect to individuals with disabilities via interaction and strategy sessions with managers, involvement in community activities, and word-of-mouth recruiting.	Ongoing
Promote participation in DEQ's mentorship and career development programs.	Ongoing
Ensure that all DEQ facilities are accessible and ADA compliant.	Ongoing
Explore temporary job rotation as a way to assist employees with disabilities in entering permanent promotional positions. Provide necessary training in order to increase the likelihood of success.	Ongoing
Explore job rotation as a method of assisting employees with disabilities in gaining experience necessary for promotion. Provide training for employees embarking on these opportunities in order to prepare for their new role	Ongoing
Diversify interview panels.	Ongoing
Develop recruiting materials to attract a diverse workforce.	Ongoing
Actively encourage participation by the affirmative action officer or designee in monthly affirmative action workshops.	Ongoing
Develop student trainee work-study programs, and other special employment programs to introduce individuals with disabilities to DEQ.	September 30, 2011

Appendix A

Policy Documentation

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

Statewide Policy

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.

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

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

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

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

Major Life Activities – This term means the basic activities the average person in the general population can perform with little or no difficulty. These including breathing; walking; hearing; thinking; concentrating; seeing; communicating; speaking; reading; learning; eating; self-care; performing manual tasks such as reaching, bending, standing and lifting; sleeping; or working (working in general, not the ability to perform a specific job).

The term also includes but not limited to "major bodily functions," such as functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions.

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

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

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

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

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

"Reasonable accommodation" does not mean providing personal auxiliary aids or services, such as service dogs or hearing aids that person uses both on and off the job. A reasonable accommodation does not include lowering production standards, promoting or assigning an employee to a higher-paying job, creating a position or reassigning essential functions to another worker.

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

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

POLICY:

(1) Each state agency director or authorized designee (agency) administers State HR Policy 50.020.10 as the agency's policy. Compliance with the ADA is mandatory.

(a) Each agency identifies an ADA Coordinator for the agency to coordinate ADA accommodation requests and function as an agency resource on ADA matters.
(b) Each agency develops and follows its own procedures for receiving, processing and documenting accommodation requests under this policy. The attached tool kit will assist in this process.

(2) An employee may request an accommodation under this policy by following agency procedures.

(3) The agency must review and respond in a timely manner to each request for accommodation. The agency must engage in an interactive dialogue with the employee to determine whether the accommodation is necessary and will be effective.

(4) Each accommodation is unique to the person, the disability and the nature of the job. No specific form of accommodation can guarantee success for all people in any particular job. The agency must give primary consideration to the specific accommodation requested by the employee. Through the interactive process the agency may identify and provide an alternative accommodation.

(5) The duty to provide reasonable accommodation is ongoing. The agency and the employee must engage in the interactive process again if an accommodation proves ineffective.

(6) The agency may deny an accommodation if it is not effective, if it will cause undue hardship to the agency, or if the agency identifies imminent physical harm or risk. The undue hardship exception is available only after careful consideration. The agency must consider alternative accommodations, should a requested accommodation pose undue hardship.

(7) Federal and state law prohibit retaliation against an employee with respect to hiring or any other term or condition of employment because the employee asked about, requested, or was previously accommodated under the ADA.

Policy: 50.020.10 **Effective: 6/7/10**
SUBJECT: Discrimination and Harassment Free Workplace
NUMBER: 50.010.10
DIVISION: Human Resource Services Division
EFFECTIVE DATE: 1/25/08
APPROVED: Signature on File with Human Resources Services Division

Statewide Policy

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.

AFFIRMATIVE ACTION PLAN, 2011-13

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.

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

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

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

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

(A) A complaint may be made orally or in writing.
(B) A complaint must be filed within one year of the occurrence.
(C) An oral or written complaint should contain the following:
(i) the name of the person filing the report;
(ii) the name of the complainant;
(iii) the names of all parties involved, including witnesses;
(iv) a specific and detailed description of the conduct or action that the employee believes is discriminatory or harassing;
(v) the date or time period in which the alleged conduct occurred; and
(vi) a description of the remedy the employee desires.

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

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

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

(A) All complaints will be taken seriously and an investigation will be initiated as quickly as possible.
(B) The agency, board or commission may need to take steps to ensure employees are protected from further potential discrimination or harassment.
(C) Complaints will be dealt with in a discreet and confidential manner, to the extent possible.
(D) All parties are expected to cooperate with the investigation and keep information regarding the investigation confidential.
(E) The agency, board or commission will notify the accused and all witnesses that retaliating against a person for making a report of discrimination, workplace harassment or sexual harassment will not be tolerated.
(F) The agency, board or commission will notify the complainant and the accused when the investigation is concluded.
(G) Immediate and appropriate action will be taken if a complaint is substantiated.
(H) The agency, board or commission will inform the complainant if any part of a complaint is substantiated and that action has been taken. The complainant will not be given the specifics of the action.
(I) The complainant and the accused will be notified by the agency, board or commission if a complaint is not substantiated.

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

(A) Employees engaging in conduct in violation of this policy may be subject to disciplinary action up to and including dismissal.
(B) State temporary employees and volunteers who engage in conduct in violation of this policy may be subject to termination of their working or volunteer relationship with the agency, board or commission.
(C) An agency, board or commission may be liable for discrimination, workplace harassment or sexual harassment if it knows of or should know of conduct in violation of this policy and fails to take prompt, appropriate action.
(D) Managers and supervisors who know or should know of conduct in violation of this policy and who fail to report such behavior or fail to take prompt, appropriate action may be subject to disciplinary action up to and including dismissal.
(E) An employee who engages in harassment of other employees while away from the workplace and outside of working hours may be subject to the provisions of this policy if that conduct has a negative impact on the work environment and/or working relationships.
(F) If a complaint involves the conduct of a contracted employee or a contractor, the agency, board, or commission Human Resource section, Executive Director, chair, or designee must inform the contractor of the problem behavior and require prompt, appropriate action.
(G) If a complaint involves the conduct of a client, customer, or visitor, the agency, board or commission should follow its own internal procedures and take prompt, appropriate action.

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

(A) Employees who believe they have been retaliated against because they filed a complaint, participated in an investigation, or reported observing discrimination, workplace harassment or sexual harassment, should report this behavior to the employee's supervisor, another manager, the Human Resource section, the Executive Director, or the chair, as applicable. Complaints of retaliation will be investigated promptly.
(B) Employees who violate this policy by retaliating against others may be subject to disciplinary action, up to and including dismissal.
(C) State temporary employees and volunteers who retaliate against others may be subject to termination of their working or volunteer relationship with the agency, board or commission.

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(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%

Policy: 50.010.01 **Effective: 01/25/08**

Education and Training

Policy Number 090.007.2009	
Effective Date: October 15, 2009	Next Scheduled Revision Date: February 2011
Approval: Kerri Nelson (signature on file)	Title: MSD Administrator

State of Oregon Department of Environmental Quality

Intent/Purpose/ Statement of Need	DEQ will provide employees with opportunities to increase skills in their current position and encourage career development and planning for employment opportunities. In accordance with the Governor's Balanced Budget Benchmarks, DEQ will require a minimum of 20 hours of education and training related to work skills and knowledge for at least 50 percent of the agency's permanent employees each fiscal year, increasing to 75 percent by 2010 (http://benchmarks.oregon.gov/). DEQ has determined these standards will be achieved in two ways: a current, completed written agency training plan for each employee, each biennium and current written individual training plans for 100 percent of agency employees. DEQ will, as far as it is reasonably practical to do so, provide training, education and career development opportunities for all employees. Examples of opportunities include, but are not limited to, job related and career development training, participation in conferences and workshops, job rotations, mentorships, job-shadowing, self-paced training (e.g., online, study guides) and special assignments. Whenever possible, DEQ will obtain and share information about available training and education opportunities. Employees share responsibility for identifying, researching, and applying for training, education, and career development opportunities and are encouraged to discuss their career goals with their supervisors. It is expected that all employees will have a training plan on file that will at minimum address core training and job related education.
Authority	ORS.240.145(3)(4); 240.250; 240.551; OAR 839.020.0044(7); Oregon Benchmarks (http://benchmarks.oregon.gov/); State of Oregon/DAS/AFSCME/DEQ Collective Bargaining Agreement
Applicability	Except as noted, this policy applies to all DEQ employees, including temporary employees.
POLICY	
Core training	Core training, or mandatory training expected of all DEQ employees, is paid 100 percent with program funds. Core training includes topics such as agency policy and driver training. Depending on the type of work an employee performs, additional core training may be identified. All core training is during work hours. Time spent in training outside regular

	working hours at a study course required for certification is on the employee's own time and would be unpaid (OAR 839.020.0044(7)). All new managers will complete the appropriate Department of Administrative Services Management Development Series course within six months of hire.
Job related education	• All DEQ employees are eligible for job related education. • Classes, seminars, or workshops and fees and books pertaining to job related education will be paid 100 percent with program funds. Any books purchased in conjunction with such training are the property of DEQ. Attendance is during work hours.
Career development education	All regular and limited duration employees are eligible for career development education. Trial service employees, temporary employees, employees who have a current work improvement plan and employees who have had a disciplinary action within the last year are not eligible to participate. Career development education is reimbursed from program funds. Employees must obtain prior authorization from their manager for a course and file an approved Career Plan with the Agency Training and Development Specialist in charge of this program in order to receive reimbursement for career development education. Based on available funding, up to75 employees agency wide may participate in the Career Development program at any given time. Attendance at training for career development education is on the employee's own time and not during work hours.
Tuition reimbursement	Employees are eligible for tuition reimbursement if they have an approved career development plan on file with Human Resources. For employees at salary range 20 and above, 50 percent of tuition and fees related to the class (this amount is prorated for part-time employees) are reimbursed. For employees at salary range 19 and below, 75 percent tuition and fees related to the class (prorated for part-time employees) are reimbursed. Reimbursement shall not exceed $2,500 in a twelve-month period (one year). The year begins with the first reimbursement payment. No funds shall be carried over from year to year. Career Development Plans shall be completed within three consecutive years. If the Career Development Plan is not completed within three years, a new Career Development Plan will need to be developed. To receive reimbursement, the employee must submit documentation to the Agency Training and Development Specialist in charge of the Career Development Program that they have received a "pass" or grade of "C" or better in the class. If the class is credit/no credit, the employee must receive credit status.
Other training	• Program funds will cover 100 percent of Public Employees Retirement System sponsored retirement and investment seminar costs. These seminars will be on paid time if occurring during an employee's regular work hours. If the seminar takes place outside the regular working hours, it is on the employee's own time. • A manager may deny an education/training request. Reasons may include, but are not limited to, budget constraints, workload, or other operational reasons. The manager will provide the reason for denial to the employee in writing and

	forward a copy to Human Resources. An employee who receives a denial notice is encouraged to apply again once conditions related to the denial have changed. • Education and training will be made available to employees without regard to race, color, religion, gender, national origin, age, sexual orientation, or mental or physical disability.
Memberships and registrations	DEQ will reimburse employees for professional membership and registrations as follows: • When a professional registration or license for a (a) certified public accountant, (b) professional engineer, (c) registered geologist or (d) registered sanitarian is required as part of the job duties of an employee <u>and</u> identified as a requirement of the position in the position description, the entire cost of the annual professional registration or license will be reimbursed by the department; or • Up to $150 for one (1) job-related professional membership when pre-approved by the immediate supervisor; or • Up to $150 for one (1) non-required professional registration when pre-approved by the immediate supervisor. Where a second professional membership will benefit an entire section of people at DEQ and no other staff member is eligible to obtain this membership, the manager of the section may request an exception to the professional membership limit through the Management Services Division Administrator. In situations such as this, the second professional registration must rotate among staff within the section. Under no circumstance will any employee be reimbursed for more than two memberships per year.
Definitions	**Career plan:** A written plan used to identify internal and external training for the employee to aid in promotion or job changes at DEQ or another state agency. **Job related education:** Education or training necessary to prepare an employee to execute his/her current job or to improve the employee's job performance. This may also include classes about the value of diversity in the workplace, safety, organizational perspectives, workplace harassment, and other programs to build understanding of state government or organization priorities and activities. **Career development education:** Education and training that helps an employee obtain or improve skills for promotion or job changes within DEQ or state service. **Educational leave:** Unpaid leave granted by DEQ for completing course work to upgrade skills, complete a degree, or learn a trade.
History	Revision Dates March 30, 2006 (format only); September 25, 2005; June 10, 2004 ; August 13, 2003; October 15, 2009

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Attachments	Job Related Training and Career Development Forms, and Educational Leave Information: http://deq05/intranet/MSD/Hr/training/Programs.htm#Career Training requisition forms: http://deq05/intranet/MSD/Hr/training/requisition.htm Travel forms and procedures: http://deq05/intranet/msd/Accounting/Travel/LinksToTravelInfo.htm Governor's Balanced Budget Benchmarks: http://benchmarks.oregon.gov/

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SUBJECT: Maintaining a Professional Workplace
NUMBER: 50.010.03
DIVISION: Human Resource Services Division
EFFECTIVE DATE: 08/27/07
APPROVED: Signature on file with the Human Resource Services Division

POLICY STATEMENT: It is the policy of the State of Oregon to create and maintain a work environment that is respectful, professional and free from inappropriate workplace behavior.

AUTHORITY: ORS 240.145 and ORS 240.250

APPLICABILITY: All employees, including state temporary employees

ATTACHMENTS: N/A

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

Agency: Refers to state agencies, boards and commissions

Professional Workplace Behavior: Supporting the values and mission of the State of Oregon and the agency, building positive relationships with others, communicating in a respectful manner, holding oneself accountable and pursuing change within the system.

Inappropriate Workplace Behavior: Unwelcome or unwanted conduct or behavior that causes a negative impact or disruption to the workplace or the business of the state, or results in the erosion of employee morale and is not associated with an employee's protected class status.
Examples of inappropriate workplace behavior include but are not limited to, comments or behaviors of an individual or group that disparage, demean or show disrespect for another employee, a manager, a subordinate, a customer, a contractor or a visitor in the workplace.
Inappropriate workplace behavior does not include actions of performance management such as supervisor instructions, expectations or feedback, administering of disciplinary actions, or investigatory meetings.

Inappropriate workplace behavior does not include assigned, requested or unsolicited constructive peer feedback on projects or work.

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

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

POLICY

(1) It is the policy of the State of Oregon to create and maintain a work environment that is respectful, professional and free from inappropriate workplace behavior.

(a) Conduct

Employees at every level of the agency should foster an environment that encourages professionalism and discourages disrespectful behavior. All employees are expected to behave respectfully and professionally and refrain from engaging in inappropriate workplace behavior.

(b) Addressing Inappropriate Workplace Behavior

(A) Supervisors must address inappropriate behavior that they observe or experience and should do so as close to the time of the occurrence as possible and appropriate.

(B) If an employee observes or experiences inappropriate workplace behavior and the employee feels comfortable in doing so, they should:

(i) redirect inappropriate conversations or behavior to workplace business; and/or
(ii) tell an offending employee his/her behavior is offensive and ask him/her to stop.

(c) Reporting Inappropriate Workplace Behavior

(A) An employee should report inappropriate workplace behavior he/she experiences or observes to his/her immediate supervisor as soon as practicable. If the employee's immediate supervisor is the one engaging in the inappropriate behavior, the employee should report the behavior to upper management, the agency head or Human Resource section, as soon as practicable. The report may be made orally or in writing.

(B) If past practice exists in the agency, an employee who is represented by a labor union may have a union representative present during regular work hours, when reporting inappropriate workplace behavior and through the process set forth in this policy. The union representative must not be a witness or party to the investigation.

(C) Reporting behavior or conduct directed toward an employee because of his/her protected class status is addressed in DAS Statewide Policy 50.010.01, Discrimination and Harassment Free Workplace.

(d) Responding to a Report of Inappropriate Workplace Behavior

Inappropriate workplace behavior must be addressed and corrected before it becomes pervasive, causes further workplace disruption or lowers employee morale. Unless the agency decides otherwise, the supervisor of the employee allegedly engaging in the inappropriate workplace behavior must investigate the report as soon as possible.

(e) Consequences

(A) Any employee found to have engaged in inappropriate workplace behavior, will be counseled, or, depending on the severity of the behavior, may be subject to discipline, up to and including dismissal.
(B) A supervisor who fails to address inappropriate behavior, will be counseled, or, depending on the severity of the behavior, may be subject to disciplinary action, up to and including dismissal.

(f) Retaliation Retaliating against someone for reporting or addressing inappropriate workplace behavior is prohibited. The agency will investigate reports of retaliation. Any employee found to have engaged in retaliation may be subject to discipline, up to and including dismissal.

105-040-0015

Veteran's Preference in Employment

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Stat. Auth: ORS 240.145(3) & 240.250
Stats. Implemented: ORS 408.225, 408.230 & 408.235
Hist.: HRSD 3-2007(Temp), f. & cert ef. 9-5-07 thru 3-3-08; HRSD 1-2008, f. 2-27-08, cert. ef. 3-1-08; HRSD 3-2009, f. 12-30-09, cert. ef. 1-1-10

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Invitation to Self-Identify

<Date>

<Employee Name>
<Street Address>
<State, OR 97XXX>

Re: Request for Self-Identification of Race/Ethnicity, and Veteran Status for Affirmative Action/Equal Opportunity Employment (EEO) Data Reporting

Dear <Employee>,

As you may know, the Oregon is required to report EEO data to the federal government. To date, we have asked employees to self-identify their race/ethnicity, and have given the option for employees to decline to self-identify. We have recently learned that in order to be in compliance with federal EEO reporting requirements, agencies are required to provide race/ethnic information for all employees, even those who wish not to self-disclose. You have received this letter because your employee record on the statewide personnel data system indicates that we either do not have race/ethnic data recorded for you, or that you have declined to self-identify in the past.

In light of this new information, we are giving employees who have previously declined to self-identify an opportunity to do so now. The conditions under which this data is collected and used are explained on the attached "Self-Identification Form." Submission of this information is voluntary; refusal to provide it will not subject you to any adverse treatment. The information obtained will be kept confidential and may only be used in accordance with the provisions of applicable federal laws, executive orders, and regulations, including those which require the information to be summarized and reported to the federal government for civil rights-enforcement purposes. We hope you will consider completing the attached form. Completed forms may be returned to me via inter-office shuttle at: **811 S.W. Sixth Av.; Portland, OR 97204.**

Please keep in mind that if you choose not to identify your race/ethnicity at this time, the federal government requires the state to determine this information by visual assessment: As you might imagine, this rarely results in accurate information. Agencies are required to take this step to update their records. If you intend to send in your Self-Identification Form, please do so prior to this date.

We appreciate your consideration. Please feel free to contact me with any questions via email or phone at: 503-229-6528.

Sincerely,

HR Manager
Attachment

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Voluntary Self-Identify Race/Ethnicity and Veteran Status for Affirmative Action/Equal Opportunity Employment (EEO) Data Reporting

The information below will be used for statistical purposes to comply with federal reporting requirements and to help in developing and monitoring our Affirmative Action Plan and diversity initiatives. Thank you for your participation.

Sex

❒ Male ❒ Female

Race/Ethnicity

Please check one or more of the following categories to identify your race/ethnicity.

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

❒ **Asian:** All persons having origins in any of the originals peoples of the Far East, Southeast Asia or the Indian subcontinent. This area includes, for example, China, Japan and Korea.

❒ **Black or African-American:** All persons having origins in any of the black ethnic groups.

❒ **Hispanic or Latino:** All persons having origins in any of the Mexican, Puerto Rican, Cuban, Central or South America, or other Spanish cultures, regardless of race.

❒ **Native-Hawaiian or Other Pacific Islander:** All persons having origins in any of the original peoples of the Pacific Islands. This area includes, for example, Hawaii, the Philippine Islands and Samoa.

❒ **White (Not of Hispanic origin):** All persons having origins in any of the original peoples of Europe, North African or the Middle East.

❒ **Two or More Races:** All persons claiming origins in more than one of the above racial/ethnic categories.

❒ Decline to answer

Veteran

Are you a Veteran of the United States Armed Forces?

❒ Yes ❒ No

Employee Signature: _____ Date: _____

Employee Print Name: _____

Appendix B

Prohibited Employment Policies/Practices

Under the laws enforced by EEOC, it is illegal to discriminate against someone (applicant or employee) because of that person's race, color, religion, sex (including pregnancy), national origin, age (40 or older), disability or genetic information. It is also illegal to retaliate against a person because he or she complained about discrimination, filed a charge of discrimination, or participated in an employment discrimination investigation or lawsuit.
The law forbids discrimination in every aspect of employment.

The laws enforced by EEOC prohibit an employer or other covered entity from using neutral employment policies and practices that have a disproportionately negative effect on applicants or employees of a particular race, color, religion, sex (including pregnancy), or national origin, or on an individual with a disability or class of individuals with disabilities, if the polices or practices at issue are not job-related and necessary to the operation of the business. The laws enforced by EEOC also prohibit an employer from using neutral employment policies and practices that have a disproportionately negative impact on applicants or employees age 40 or older, if the policies or practices at issue are not based on a reasonable factor other than age.

Job Advertisements

It is illegal for an employer to publish a job advertisement that shows a preference for or discourages someone from applying for a job because of his or her race, color, religion, sex (including pregnancy), national origin, age (40 or older), disability or genetic information. For example, a help-wanted ad that seeks "females" or "recent college graduates" may discourage men and people over 40 from applying and may violate the law.

Recruitment

It is also illegal for an employer to recruit new employees in a way that discriminates against them because of their race, color, religion, sex (including pregnancy), national origin, age (40 or older), disability or genetic information.
For example, an employer's reliance on word-of-mouth recruitment by its mostly Hispanic work force may violate the law if the result is that almost all new hires are Hispanic.

Application & Hiring

It is illegal for an employer to discriminate against a job applicant because of his or her race, color, religion, sex (including pregnancy), national origin, age (40 or older), disability or genetic information. For example, an employer may not refuse to give employment applications to people of a certain race.

An employer may not base hiring decisions on stereotypes and assumptions about a person's race, color, religion, sex (including pregnancy), national origin, age (40 or older), disability or genetic information.
If an employer requires job applicants to take a test, the test must be necessary and related to the job and the employer may not exclude people of a particular race, color, religion, sex (including pregnancy), national origin, or individuals with disabilities. In addition, the employer may not use a test that excludes applicants age 40 or older if the test is not based on a reasonable factor other than age.

If a job applicant with a disability needs an accommodation (such as a sign language interpreter) to apply for a job, the employer is required to provide the accommodation, so long as the accommodation does not cause the employer significant difficulty or expense.

Job Referrals

It is illegal for an employer, employment agency or union to take into account a person's race, color, religion, sex (including pregnancy), national origin, age (40 or older), disability or genetic information when making decisions about job referrals.

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Job Assignments & Promotions

It is illegal for an employer to make decisions about job assignments and promotions based on an employee's race, color, religion, sex (including pregnancy), national origin, age (40 or older), disability or genetic information. For example, an employer may not give preference to employees of a certain race when making shift assignments and may not segregate employees of a particular national origin from other employees or from customers. 1

An employer may not base assignment and promotion decisions on stereotypes and assumptions about a person's race, color, religion, sex (including pregnancy), national origin, age (40 or older), disability or genetic information.

If an employer requires employees to take a test before making decisions about assignments or promotions, the test may not exclude people of a particular race, color, religion, sex (including pregnancy), or national origin, or individuals with disabilities, unless the employer can show that the test is necessary and related to the job. In addition, the employer may not use a test that excludes employees age 40 or older if the test is not based on a reasonable factor other than age.

Pay And Benefits

It is illegal for an employer to discriminate against an employee in the payment of wages or employee benefits on the bases of race, color, religion, sex (including pregnancy), national origin, age (40 or older), disability or genetic information. Employee benefits include sick and vacation leave, insurance, access to overtime as well as overtime pay, and retirement programs. For example, an employer many not pay Hispanic workers less than African-American workers because of their national origin, and men and women in the same workplace must be given equal pay for equal work.

In some situations, an employer may be allowed to reduce some employee benefits for older workers, but only if the cost of providing the reduced benefits is the same as the cost of providing benefits to younger workers.

Discipline & Discharge

An employer may not take into account a person's race, color, religion, sex (including pregnancy), national origin, age (40 or older), disability or genetic information when making decisions about discipline or discharge. For example, if two employees commit a similar offense, an employer many not discipline them differently because of their race, color, religion, sex (including pregnancy), national origin, age (40 or older), disability or genetic information.

When deciding which employees will be laid off, an employer may not choose the oldest workers because of their age. Employers also may not discriminate when deciding which workers to recall after a layoff.

Employment References

It is illegal for an employer to give a negative or false employment reference (or refuse to give a reference) because of a person's race, color, religion, sex (including pregnancy), national origin, age (40 or older), disability or genetic information.

Reasonable Accommodation & Disability

The law requires that an employer 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 workplace (or in the ways 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, providing a ramp for a wheelchair user or providing a reader or interpreter for a blind or deaf employee or applicant.

Reasonable Accommodation & Religion

The law requires an employer to reasonably accommodate an employee's religious beliefs or practices, unless doing so would cause difficulty or expense for the employer. This means an employer may have to make reasonable adjustments at work that will allow the employee to practice his or her religion, such as allowing an employee to voluntarily swap shifts with a co- worker so that he or she can attend religious services.

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Training & Apprenticeship Programs

It is illegal for a training or apprenticeship program to discriminate on the bases of race, color, religion, sex (including pregnancy), national origin, age (40 or older), disability or genetic information. For example, an employer may not deny training opportunities to African-American employees because of their race.

In some situations, an employer may be allowed to set age limits for participation in an apprenticeship program.

Harassment

It is illegal to harass an employee because of race, color, religion, sex (including pregnancy), national origin, age (40 or older), disability or genetic information.

It is also illegal to harass someone because they have complained about discrimination, filed a charge of discrimination, or participated in an employment discrimination investigation or lawsuit.

Harassment can take the form of slurs, graffiti, offensive or derogatory comments, or other verbal or physical conduct. Sexual harassment (including unwelcome sexual advances, requests for sexual favors, and other conduct of a sexual nature) is also unlawful. Although the law does not prohibit simple teasing, offhand comments, or isolated incidents that are not very serious, harassment is illegal if it is so frequent or severe that it creates a hostile or offensive work environment or if 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.

Harassment outside of the workplace may also be illegal if there is a link with the workplace. For example, if a supervisor harasses an employee while driving the employee to a meeting.

Read more about harassment.

Terms & Conditions Of Employment

The law makes it illegal for an employer to make any employment decision because of a person's race, color, religion, sex (including pregnancy), national origin, age (40 or older), disability or genetic information. That means an employer may not discriminate when it comes to such things as hiring, firing, promotions, and pay. It also means an employer may not discriminate, for example, when granting breaks, approving leave, assigning work stations, or setting any other term or condition of employment - however small.

Pre-Employment Inquiries (General)

As a general rule, the information obtained and requested through the pre-employment process should be limited to those essential for determining if a person is qualified for the job; whereas, information regarding race, sex, national origin, age, and religion are irrelevant in such determinations.

Employers are explicitly prohibited from making pre-employment inquiries about disability.

Although state and federal equal opportunity laws do not clearly forbid employers from making pre-employment inquiries that relate to, or disproportionately screen out members based on race, color, sex, national origin, religion, or age, such inquiries may be used as evidence of an employer's intent to discriminate unless the questions asked can be justified by some business purpose.

Therefore, inquiries about organizations, clubs, societies, and lodges of which an applicant may be a member or any other questions, which may indicate the applicant's race, sex, national origin, disability status, age, religion, color or ancestry if answered, should generally be avoided.

Similarly, employers should not ask for a photograph of an applicant. If needed for identification purposes, a photograph may be obtained after an offer of employment is made and accepted.

Pre-Employment Inquiries and:

Race
Height & Weight
Credit Rating Or Economic Status
Religious Affiliation Or Beliefs 3
Citizenship
Marital Status, Number Of Children
Gender
Arrest & Conviction
Security/Background Checks For Certain Religious Or Ethnic Groups
Disability
Medical Questions & Examinations

Dress Code

In general, an employer may establish a dress code which applies to all employees or employees within certain job categories. There are a few possible exceptions.

A dress code must not treat some employees less favorably because of their national origin. For example, a dress code that prohibits certain kinds of ethnic dress, such as traditional African or East Indian attire, but otherwise permits casual dress would treat some employees less favorably because of their national origin.

An employer may require all workers to follow a uniform dress code even if the dress code conflicts with some workers' ethnic beliefs or practices.

If the dress code conflicts with an employee's religious practices and the employee requests an accommodation, the employer must modify the dress code or permit an exception to the dress code unless doing so would result in undue hardship. Similarly, if an employee requests an accommodation to the dress code because of his disability, the employer must modify the dress code or permit an exception to the dress code, unless doing so would result in undue hardship.

If an employee needs to modify a dress requirement because of a disability, the employer may need to grant that employee a reasonable accommodation.

Constructive Discharge/Forced To Resign

Discriminatory practices under the laws EEOC enforces also include constructive discharge or forcing an employee to resign by making the work environment so intolerable a reasonable person would not be able to stay.

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. 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*

U.S. Equal Employment Opportunity Commission

FACT SHEET

FIND THIS ARTICLE ON THE WEB AT: SEE ALSO:
Facts About Age Discrimination FSE/9 Filing a Charge of Discrimination
http://www.eeoc.gov/eeoc/publications/age.cfm http://www.eeoc.gov/employees/charge.cfm
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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

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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*

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
Veterans with Service-Connected Disabilities in the Workplace and the ADA
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 with Service-Connected Disabilities in the Workplace 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 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)

Facts About the Americans with Disabilities Act

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.

The Equal Pay Act of 1963

EDITOR'S NOTE: The following is the text of the Equal Pay Act of 1963 (Pub. L. 88-38) (EPA), as amended, as it appears in volume 29 of the United States Code, at section 206(d). The EPA, which is part of the Fair Labor Standards Act of 1938, as amended (FLSA), and which is administered and enforced by the EEOC, prohibits sex-based wage discrimination between men and women in the same establishment who perform jobs that require substantially equal skill, effort and responsibility under similar working conditions. Cross references to the EPA as enacted appear in italics following the section heading. Additional provisions of the Equal Pay Act of 1963, as amended, are included as they appear in volume 29 of the United States Code.

MINIMUM WAGE

SEC. 206. *[Section 6]*
(d) Prohibition of sex discrimination
(1) No employer having employees subject to any provisions of this section shall discriminate, within any establishment in which such employees are employed, between employees on the basis of sex by paying wages to employees in such establishment at a rate less than the rate at which he pays wages to employees of the opposite sex in such establishment for equal work on jobs the performance of which requires equal skill, effort, and responsibility, and which are performed under similar working conditions, except where such payment is made pursuant to (i) a seniority system; (ii) a merit system; (iii) a system which measures earnings by quantity or quality of production; or (iv) a differential based on any other factor other than sex: *Provided*, That an employer who is paying a wage rate differential in violation of this subsection shall not, in order to comply with the provisions of this subsection, reduce the wage rate of any employee.

(2) No labor organization, or its agents, representing employees of an employer having employees subject to any provisions of this section shall cause or attempt to cause such an employer to discriminate against an employee in violation of paragraph (1) of this subsection.

(3) For purposes of administration and enforcement, any amounts owing to any employee which have been withheld in violation of this subsection shall be deemed to be unpaid minimum wages or unpaid overtime compensation under this chapter.

(4) As used in this subsection, the term "labor organization" means any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.

ADDITIONAL PROVISIONS OF EQUAL PAY ACT OF 1963

An Act
To prohibit discrimination on account of sex in the payment of wages by employers engaged in commerce or in the production of goods for commerce.
Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Equal Pay Act of 1963."
***

DECLARATION OF PURPOSE

Not Reprinted in U.S. Code *[Section 2]*
(a) The Congress hereby finds that the existence in industries engaged in commerce or in the production of goods for commerce of wage differentials based on sex-
(1) depresses wages and living standards for employees necessary for their health and efficiency;
(2) prevents the maximum utilization of the available labor resources;
(3) tends to cause labor disputes, thereby burdening, affecting, and obstructing commerce;
(4) burdens commerce and the free flow of goods in commerce; and
(5) constitutes an unfair method of competition.
(b) It is hereby declared to be the policy of this Act, through exercise by Congress of its power to regulate commerce among the several States and with foreign nations, to correct the conditions above referred to in such industries.
[Section 3 of the Equal Pay Act of 1963 amends section 6 of the Fair Labor Standards Act by adding a new subsection (d). The amendment is incorporated in the revised text of the Fair Labor Standards Act.]

EFFECTIVE DATE

Not Reprinted in U.S. Code *[Section 4]*
The amendments made by this Act shall take effect upon the expiration of one year from the date of its enactment: Provided, That in the case of employees covered by a bona fide collective bargaining agreement in effect at least thirty days prior to the date of enactment of this Act entered into by a labor organization (as defined in section 6(d)(4) of the Fair Labor Standards Act of 1938, as amended) [subsection (d)(4) of this section], the amendments made by this Act shall take effect upon the termination of such collective bargaining agreement or upon the expiration of two years from the date of enactment of this Act, whichever shall first occur.

Approved June 10, 1963, 12 m.

[In the following excerpts from the Fair Labor Standards Act of 1938, as amended, authority given to the Secretary of Labor is exercised by the Equal Employment Opportunity Commission for purposes of enforcing the Equal Pay Act of 1963.]

ATTENDANCE OF WITNESSES

SEC. 209 *[Section 9]*

For the purpose of any hearing or investigation provided for in this chapter, the provisions of sections 49 and 50 of title 15 *[Federal Trade Commission Act of September 16, 1914, as amended (U.S.C., 1934 edition)]* (relating to the attendance of witnesses and the production of books, papers, and documents), are made applicable to the jurisdiction, powers, and duties of the Administrator, the Secretary of Labor, and the industry committees.

COLLECTION OF DATA

SEC. 211 *[Section 11]*

(a) Investigations and inspections

The Administrator or his designated representatives may investigate and gather data regarding the wages, hours, and other conditions and practices of employment in any industry subject to this chapter, and may enter and inspect such places and such records (and make such transcriptions thereof), question such employees, and investigate such facts, conditions, practices, or matters as he may deem necessary or appropriate to determine whether any person has violated any provision of this chapter, or which may aid in the enforcement of the provisions of this chapter. Except as provided in section 212 *[section 12]* of this title and in subsection (b) of this section, the Administrator shall utilize the bureaus and divisions of the Department of Labor for all the investigations and inspections necessary under this section. Except as provided in section 212 *[section 12] of this title*, the Administrator shall bring all actions under section 217 *[section 17]* of this title to restrain violations of this chapter.

(b) State and local agencies and employees

With the consent and cooperation of State agencies charged with the administration of State labor laws, the Administrator and the Secretary of Labor may, for the purpose of carrying out their respective functions and duties under this chapter, utilize the services of State and local agencies and their employees and, notwithstanding any other provision of law, may reimburse such State and local agencies and their employees for services rendered for such purposes.

(c) Records

Every employer subject to any provision of this chapter or of any order issued under this chapter shall make, keep, and preserve such records of the persons employed by him and of the wages, hours, and other conditions and practices of employment maintained by him, and shall preserve such records for such periods of time, and shall make such reports therefrom to the Administrator as he shall prescribe by regulation or order as necessary or appropriate for the enforcement of the provisions of this chapter or the regulations or orders thereunder. The employer of an employee who performs substitute work described in section 207(p)(3) *[section 7(p)(3)]* of this title may not be required under this subsection to keep a record of the hours of the substitute work.

(d) Homework regulations

The Administrator is authorized to make such regulations and orders regulating, restricting, or prohibiting industrial homework as are necessary or appropriate to prevent the circumvention or evasion of and to safeguard the minimum wage rate prescribed in this chapter, and all existing regulations or orders of the Administrator relating to industrial homework are continued in full force and effect.

EXEMPTIONS

SEC. 213 *[Section 13]*

(a) Minimum wage and maximum hour requirements

The provisions of sections 206 *[section 6]* (except subsection (d) in the case of paragraph (1) of this subsection) and section 207 *[section 7]* of this title shall not apply with respect to-
(1) any employee employed in a bona fide executive, administrative, or professional capacity (including any employee employed in the capacity of academic administrative personnel or teacher in elementary or secondary schools), or in the capacity of outside salesman (as such terms are defined and delimited from time to time by regulations of the Secretary, subject to the provisions of subchapter II of chapter 5 of Title 5 *[the Administrative Procedure Act]*, except that an employee of a retail or service establishment shall not be excluded from the definition of employee employed in a bona fide executive or administrative capacity because of the number of hours in his workweek which he devotes to

activities not directly or closely related to the performance of executive or administrative activities, if less than 40 per centum of his hours worked in the workweek are devoted to such activities); or
(2) *[Repealed]*

[Note: Section 13(a)(2) (relating to employees employed by a retail or service establishment) was repealed by Pub. L. 101-157, section 3(c)(1), November 17, 1989.]

(3) any employee employed by an establishment which is an amusement or recreational establishment, organized camp, or religious or non-profit educational conference center, if (A) it does not operate for more than seven months in any calendar year, or (B) during the preceding calendar year, its average receipts for any six months of such year were not more than 33 1/3 per centum of its average receipts for the other six months of such year, except that the exemption from sections 206 and 207 *[sections 6 and 7]* of this title provided by this paragraph does not apply with respect to any employee of a private entity engaged in providing services or facilities (other than, in the case of the exemption from section 206 *[section 6]* of this title, a private entity engaged in providing services and facilities directly related to skiing) in a national park or a national forest, or on land in the National Wildlife Refuge System, under a contract with the Secretary of the Interior or the Secretary of Agriculture; or

(4) *[Repealed]*
[Note: Section 13(a)(4) (relating to employees employed by an establishment which qualified as an exempt retail establishment) was repealed by Pub. L. 101-157, Section 3(c)(1), November 17, 1989.]

(5) any employee employed in the catching, taking, propagating, harvesting, cultivating, or farming of any kind of fish, shellfish, crustacea, sponges, seaweeds, or other aquatic forms of animal and vegetable life, or in the first processing, canning or packing such marine products at sea as an incident to, or in conjunction with, such fishing operations, including the going to and returning from work and loading and unloading when performed by any such employee; or

(6) any employee employed in agriculture (A) if such employee is employed by an employer who did not, during any calendar quarter during the preceding calendar year, use more than five hundred man-days of agricultural labor, (B)
if such employee is the parent, spouse, child, or other member of his employer's immediate family, (C) if such employee (i) is employed as a hand harvest laborer and is paid on a piece rate basis in an operation which has been, and is customarily and generally recognized as having been, paid on a piece rate basis in the region of employment, (ii) commutes daily from his permanent residence to the farm on which he is so employed, and (iii) has been employed in agriculture less than thirteen weeks during the preceding calendar year, (D) if such employee (other than an employee described in clause (C) of this subsection) (i) is sixteen years of age or under and is employed as a hand harvest laborer, is paid on a piece rate basis in an operation which has been, and is customarily and generally recognized as having been, paid on a piece rate basis in the region of employment, (ii) is employed on the same farm as his parent or person standing in the place of his parent, and (iii) is paid at the same piece rate as employees over age sixteen are paid on the same farm, or (E) if such employee is principally engaged in the range production of livestock; or

(7) any employee to the extent that such employee is exempted by regulations, order, or certificate of the Secretary issued under section 214 *[section 14]* of this title; or

(8) any employee employed in connection with the publication of any weekly, semiweekly, or daily newspaper with a circulation of less than four thousand the major part of which circulation is within the county where published or counties contiguous thereto; or

(9) *[Repealed]*

[Note: Section 13(a)(9) (relating to motion picture theater employees) was repealed by section 23 of the Fair Labor Standards Amendments of 1974. The 1974 amendments created an exemption for such employees from the overtime provisions only in section 13(b)27.]

(10) any switchboard operator employed by an independently owned public telephone company which has not more than seven hundred and fifty stations; or

(11) *[Repealed]*
[Note: Section 13(a)(11) (relating to telegraph agency employees) was repealed by section 10 of the Fair Labor Standards Amendments of 1974. The 1974 amendments created an exemption from the overtime provisions only in section 13(b)(23), which was repealed effective May 1, 1976.]

(12) any employee employed as a seaman on a vessel other than an American vessel; or

(13) *[Repealed]*
[Note: Section 13(a)(13) (relating to small logging crews) was repealed by section 23 of the Fair Labor Standards Amendments of 1974. The 1974 amendments created an exemption for such employees from the overtime provisions only in section 13(b)(28).]

(14) *[Repealed]*
[Note: Section 13(a)(14) (relating to employees employed in growing and harvesting of shade grown tobacco) was repealed by section 9 of the Fair Labor Standards Amendments of 1974. The 1974 amendments created an exemption for certain tobacco producing employees from the overtime provisions only in section 13(b)(22). The section 13(b)(22) exemption was repealed, effective January 1, 1978, by section 5 of the Fair Labor Standards Amendments of 1977.]

(15) any employee employed on a casual basis in domestic service employment to provide babysitting services or any employee employed in domestic service employment to provide companionship services for individuals who (because of age or infirmity) are unable to care for themselves (as such terms are defined and delimited by regulations of the Secretary); or

(16) a criminal investigator who is paid availability pay under section 5545a of Title 5 *[Law Enforcement Availability Pay Act of 1994]*; or

(17) any employee who is a computer systems analyst, computer programmer, software engineer, or other similarly skilled worker, whose primary duty is—
(A) the application of systems analysis techniques and procedures, including consulting with users, to determine hardware, software, or system functional specifications;
(B) the design, development, documentation, analysis, creation, testing, or modification of computer systems or programs, including prototypes, based on and related to user or system design specifications;
(C) the design, documentation, testing, creation, or modification of computer programs related to machine operating systems; or
(D) a combination of duties described in subparagraphs (A), (B), and (C) the performance of which requires the same level of skills, and who, in the case of an employee who is compensated on an hourly basis, is compensated at a rate of not less than $27.63 an hour.
***

(g) Certain employment in retail or service establishments, agriculture

The exemption from section 206 *[section 6]* of this title provided by paragraph (6) of subsection (a) of this section shall not apply with respect to any employee employed by an establishment (1) which controls, is controlled by, or is under common control with, another establishment the activities of which are not related for a common business purpose to, but materially support the activities of the establishment employing such employee; and (2) whose annual gross volume of sales made or business done, when combined with the annual gross volume of sales made or business done by each establishment which controls, is controlled by, or is under common control with, the establishment employing such employee, exceeds $10,000,000 (exclusive of excise taxes at the retail level which are separately stated).

PROHIBITED ACTS

SEC. 215 *[Section 15]*

(a) After the expiration of one hundred and twenty days from June 25, 1938 *[the date of enactment of this Act]*, it shall be unlawful for any person-
(1) to transport, offer for transportation, ship, deliver, or sell in commerce, or to ship, deliver, or sell with knowledge that shipment or delivery or sale thereof in commerce is intended, any goods in the production of which any employee was employed in violation of section 206 *[section 6]* or section 207 *[section 7]* of this title, or in violation of any regulation or order of the Secretary issued under section 214 *[section 14]* of this title, except that no provision of this chapter shall impose any liability upon any common carrier for the transportation in commerce in the regular course of its business of any goods not produced by such common carrier, and no provision of this chapter shall excuse any common carrier from its obligation to accept any goods for transportation; and except that any such transportation, offer, shipment, delivery, or sale of such goods by a purchaser who acquired them in good faith in reliance on written assurance from the producer that the goods were produced in compliance with the requirements of this chapter, and who acquired such goods for value without notice of any such violation, shall not be deemed unlawful;

(2) to violate any of the provisions of section 206 *[section 6]* or section 207 *[section 7]* of this title, or any of the provisions of any regulation or order of the Secretary issued under section 214 *[section 14]* of this title;
(3) to discharge or in any other manner discriminate against any employee because such employee has filed any complaint or instituted or caused to be instituted any proceeding under or related to this chapter, or has testified or is about to testify in any such proceeding, or has served or is about to serve on an industry committee;
(4) to violate any of the provisions of section 212 *[section 12]* of this title;
(5) to violate any of the provisions of section 211(c) *[section 11(c)]* of this title, or any regulation or order made or continued in effect under the provisions of section 211(d) *[section 11(d)]* of this title, or to make any statement, report, or record filed or kept pursuant to the provisions of such section or of any regulation or order thereunder, knowing such statement, report, or record to be false in a material respect.

(b) For the purposes of subsection (a)(1) of this section proof that any employee was employed in any place of employment where goods shipped or sold in commerce were produced, within ninety days prior to the removal of the goods from such place of employment, shall be prima facie evidence that such employee was engaged in the production of such goods.

PENALTIES

SEC. 216 *[Section 16]*

(a) Fines and imprisonment
Any person who willfully violates any of the provisions of section 215 *[section 15]* of this title shall upon conviction thereof be subject to a fine of not more than $10,000, or to imprisonment for not more than six months, or both. No person shall be imprisoned under this subsection except for an offense committed after the conviction of such person for a prior offense under this subsection.

(b) Damages; right of action; attorney's fees and costs; termination of right of action
Any employer who violates the provisions of section 206 *[section 6]* or section 207 *[section 7]* of this title shall be liable to the employee or employees affected in the amount of their unpaid minimum wages, or their unpaid overtime compensation, as the case may be, and in an additional equal amount as liquidated damages. Any employer who violates the provisions of section 215(a)(3) *[section 15(a)(3)]* of this title shall be liable for such legal or equitable relief as may be appropriate to effectuate the purposes of section 215(a)(3) *[section 15(a)(3)]* of this title, including without limitation employment, reinstatement, promotion, and the payment of wages lost and an additional equal amount as liquidated damages. An action to recover the liability prescribed in either of the preceding sentences may be maintained against any employer (including a public agency) in any Federal or State court of competent jurisdiction by any one or more employees for and in behalf of himself or themselves and other employees similarly situated. No employee shall be a party plaintiff to any such action unless he gives his consent in writing to become such a party and such consent is filed in the court in which such action is brought. The court in such action shall, in addition to any judgment awarded to the plaintiff or plaintiffs, allow a reasonable attorney's fee to be paid by the defendant, and costs of the action. The right provided by this subsection to bring an action by or on behalf of any employee, and the right of any employee to become a party plaintiff to any such action, shall terminate upon the filing of a complaint by the Secretary of Labor in an action under section 217 *[section 17]* of this title in which (1) restraint is sought of any further delay in the payment of unpaid minimum wages, or the amount of unpaid overtime compensation, as the case may be, owing to such employee under section 206 *[section 6]* or section 207 *[section 7]* of this title by an employer liable therefor[*sic*] under the provisions of this subsection or (2) legal or equitable relief is sought as a result of alleged violations of section 215(a)(3) *[section 15(a)(3)]* of this title.

(c) Payment of wages and compensation; waiver of claims; actions by the Secretary; limitation of actions
The Secretary is authorized to supervise the payment of the unpaid minimum wages or the unpaid overtime compensation owing to any employee or employees under section 206 *[section 6]* or section 207 *[section 7]* of this title, and the agreement of any employee to accept such payment shall upon payment in full constitute a waiver by such employee of any right he may have under subsection (b) of this section to such unpaid minimum wages or unpaid overtime compensation and an additional equal amount as liquidated damages. The Secretary may bring an action in any court of competent jurisdiction to recover the amount of the unpaid minimum wages or overtime compensation and an equal amount as liquidated damages. The right provided by subsection (b) of this section to bring an action by or on behalf of any employee to recover the liability specified in the first sentence of such subsection and of any employee to become a party plaintiff to any such action shall terminate upon the filing of a complaint by the Secretary in an action under this subsection in which a recovery is sought of unpaid minimum wages or unpaid overtime compensation under sections 206 and 207 *[sections 6 and 7]* of this title or liquidated or other damages provided by this subsection owing to such employee by an employer liable under the provisions of subsection (b) of this section, unless such action is dismissed without prejudice on

motion of the Secretary. Any sums thus recovered by the Secretary of Labor on behalf of an employee pursuant to this subsection shall be held in a special deposit account and shall be paid, on order of the Secretary of Labor, directly to the employee or employees affected. Any such sums not paid to an employee because of inability to do so within a period of three years shall be covered into the Treasury of the United States as miscellaneous receipts. In determining when an action is commenced by the Secretary of Labor under this subsection for the purposes of the statutes of limitations provided in section 255(a) of this title *[section 6(a) of the Portal-to-Portal Act of 1947]*, it shall be considered to be commenced in the case of any individual claimant on the date when the complaint is filed if he is specifically named as a party plaintiff in the complaint, or if his name did not so appear, on the subsequent date on which his name is added as a party plaintiff in such action.

(d) Savings provisions
In any action or proceeding commenced prior to, on, or after August 8, 1956 *[the date of enactment of this subsection]*, no employer shall be subject to any liability or punishment under this chapter or the Portal-to-Portal Act of 1947 [29 U.S.C. 251 et seq.] on account of his failure to comply with any provision or provisions of this chapter or such Act (1) with respect to work heretofore or hereafter performed in a workplace to which the exemption in section 213(f) *[section 13(f)]* of this title is applicable, (2) with respect to work performed in Guam, the Canal Zone or Wake Island before the effective date of this amendment of subsection (d), or (3) with respect to work performed in a possession named in section 206(a)(3) *[section 6(a)(3)]* of this title at any time prior to the establishment by the Secretary, as provided therein, of a minimum wage rate applicable to such work.

(e)(1)(A) Any person who violates the provisions of sections 212 or 213(c) *[sections 12 or 13(c)]* of this title, relating to child labor, or any regulation issued pursuant to such sections, shall be subject to a civil penalty of not to exceed—
(i) $11,000 for each employee who was the subject of such a violation; or
(ii) $50,000 with regard to each such violation that causes the death or serious injury of any employee under the age of 18 years, which penalty may be doubled where the violation is a repeated or willful violation.
(B) For purposes of subparagraph (A), the term "serious injury" means—
(i) permanent loss or substantial impairment of one of the senses (sight, hearing, taste, smell, tactile sensation);
(ii) permanent loss or substantial impairment of the function of a bodily member, organ, or mental faculty, including the loss of all or part of an arm, leg, foot, hand or other body part; or
(iii) permanent paralysis or substantial impairment that causes loss of movement or mobility of an arm, leg, foot, hand or other body part.
(2) Any person who repeatedly or willfully violates section 206 or 207 *[section 6 or 7]*, relating to wages, shall be subject to a civil penalty not to exceed $1,100 for each such violation.
(3) In determining the amount of any penalty under this subsection, the appropriateness of such penalty to the size of the business of the person charged and the gravity of the violation shall be considered. The amount of any penalty under this subsection, when finally determined, may be-
(A) deducted from any sums owing by the United States to the person charged;
(B) recovered in a civil action brought by the Secretary in any court of competent jurisdiction, in which litigation the Secretary shall be represented by the Solicitor of Labor; or
(C) ordered by the court, in an action brought for a violation of section 215(a)(4) *[section 15(a)(4)]* of this title or a repeated or willful violation of section 215(a)(2) *[section 15(a)(2)]* of this title, to be paid to the Secretary.
(4) Any administrative determination by the Secretary of the amount of any penalty under this subsection shall be final, unless within 15 days after receipt of notice thereof by certified mail the person charged with the violation takes exception to the determination that the violations for which the penalty is imposed occurred, in which event final determination of the penalty shall be made in an administrative proceeding after opportunity for hearing in accordance with section 554 of Title 5 *[Administrative Procedure Act]*, and regulations to be promulgated by the Secretary.
(5) Except for civil penalties collected for violations of section 212 *[section 12]* of this title, sums collected as penalties pursuant to this section shall be applied toward reimbursement of the costs of determining the violations and assessing and collecting such penalties, in accordance with the provision of section 9a of Title 29 *[An Act to authorize the Department of Labor to make special statistical studies upon payment of the cost thereof and for other purposes]*. Civil penalties collected for violations of section 212 *[section 12]* of this title shall be deposited in the general fund of the Treasury.

INJUNCTION PROCEEDINGS

SEC. 217 *[Section 17]*

The districts courts, together with the United States District Court for the District of the Canal Zone, the District Court of the Virgin Islands, and the District Court of Guam shall have jurisdiction, for cause shown, to restrain violations of section 215 *[section 15]* of this title, including in the case of violations of section 215(a)(2) of this title the restraint of any withholding of payment of minimum wages or overtime compensation found by the court to be due to employees under this chapter (except sums which employees are barred from recovering, at the time of the commencement of the action to restrain the violations, by virtue of the provisions of section 255 of this title *[section 6 of the Portal-to-Portal Act of 1947]*.

RELATION TO OTHER LAWS

SEC. 218 *[Section 18]*

(a) No provision of this chapter or of any order thereunder shall excuse noncompliance with any Federal or State law or municipal ordinance establishing a minimum wage higher than the minimum wage established under this chapter or a maximum work week lower than the maximum workweek established under this chapter, and no provision of this chapter relating to the employment of child labor shall justify noncompliance with any Federal or State law or municipal ordinance establishing a higher standard than the standard established under this chapter. No provision of this chapter shall justify any employer in reducing a wage paid by him which is in excess of the applicable minimum wage under this chapter, or justify any employer in increasing hours of employment maintained by him which are shorter than the maximum hours applicable under this chapter.

SEPARABILITY OF PROVISIONS

SEC. 219 *[Section 19]*

If any provision of this chapter or the application of such provision to any person or circumstance is held invalid, the remainder of this chapter and the application of such provision to other persons or circumstances shall not be affected thereby.

Approved June 25, 1938.

[In the following excerpts from the Portal-to-Portal Act of 1947, the authority given to the Secretary of Labor is exercised by the Equal Employment Opportunity Commission for purposes of enforcing the Equal Pay Act of 1963.]

PART IV - MISCELLANEOUS
STATUTE OF LIMITATIONS

SEC. 255 *[Section 6]*

Any action commenced on or after May 14, 1947 *[the date of the enactment of this Act]*, to enforce any cause of action for unpaid minimum wages, unpaid overtime compensation, or liquidated damages, under the Fair Labor Standards Act of 1938, as amended, [29 U.S.C. 201 et seq.], the Walsh-Healey Act [41 U.S.C. 35 et seq.], or the Bacon-Davis Act [40 U.S.C. 276a et seq.]-

(a) if the cause of action accrues on or after May 14, 1947 *[the date of the enactment of this Act]*-may be commenced within two years after the cause of action accrued, and every such action shall be forever barred unless commenced within two years after the cause of action accrued, except that a cause of action arising out of a willful violation may be commenced within three years after the cause of action accrued;

DETERMINATION OF COMMENCEMENT OF FUTURE ACTIONS

SEC. 256 *[Section 7]*

In determining when an action is commenced for the purposes of section 255 *[section 6]* of this title, an action commenced on or after May 14, 1947 *[the date of the enactment of this Act]* under the Fair Labor Standards Act of 1938, as amended, [29 U.S.C. 201 et seq.], the Walsh-Healey Act [41 U.S.C. 35 et seq.], or the Bacon-Davis Act [40 U.S.C. 276a et

seq.], shall be considered to be commenced on the date when the complaint is filed; except that in the case of a collective or class action instituted under the Fair Labor Standards Act of 1938, as amended, or the Bacon-Davis Act, it shall be considered to be commenced in the case of any individual claimant—
(a) on the date when the complaint is filed, if he is specifically named as a party plaintiff in the complaint and his written consent to become a party plaintiff is filed on such date in the court in which the action is brought; or
(b) if such written consent was not so filed or if his name did not so appear—on the subsequent date on which such written consent is filed in the court in which the action was commenced.

RELIANCE IN FUTURE ON ADMINISTRATIVE RULINGS, ETC.

SEC. 259 *[Section 10]*

(a) In any action or proceeding based on any act or omission on or after May 14, 1947 *[the date of the enactment of this Act]*, no employer shall be subject to any liability or punishment for or on account of the failure of the employer to pay minimum wages or overtime compensation under the Fair Labor Standards Act of 1938, as amended, [29 U.S.C. 201 et seq.], the Walsh-Healey Act [41 U.S.C. 35 et seq.], or the Bacon-Davis Act [40 U.S.C. 276a et seq.], if he pleads and proves that the act or omission complained of was in good faith in conformity with and in reliance on any written administrative regulation, order, ruling, approval, or interpretation, of the agency of the United States specified in subsection (b) of this section, or any administrative practice or enforcement policy of such agency with respect to the class of employers to which he belonged. Such a defense, if established, shall be a bar to the action or proceeding, notwithstanding that after such act or omission, such administrative regulation, order, ruling, approval, interpretation, practice, or enforcement policy is modified or rescinded or is determined by judicial authority to be invalid or of no legal effect.

(b) The agency referred to in subsection (a) shall be-
(1) in the case of the Fair Labor Standards Act of 1938, as amended [29 U.S.C. 201 et seq.]- the Administrator of the Wage and Hour Division of the Department of Labor;

LIQUIDATED DAMAGES

SEC. 260 *[Section 11]*

In any action commenced prior to or on or after May 14, 1947 *[the date of the enactment of this Act]* to recover unpaid minimum wages, unpaid overtime compensation, or liquidated damages, under the Fair Labor Standards Act of 1938, as amended [29 U.S.C. 201 et seq.], if the employer shows to the satisfaction of the court that the act or omission giving rise to such action was in good faith and that he had reasonable grounds for believing that his act or omission was not a violation of the Fair Labor Standards Act of 1938, as amended *[29 U.S.C. 201 et seq.]*,the court may, in its sound discretion, award no liquidated damages or award any amount thereof not to exceed the amount specified in section 216 *[section 16]* of this title.

DEFINITIONS

SEC. 262 *[Section 13]*

(a) When the terms "employer", "employee", and "wage" are used in this chapter in relation to the Fair Labor Standards Act of 1938, as amended [29 U.S.C. 201 et seq.], they shall have the same meaning as when used in such Act of 1938.

SEPARABILITY

Not Reprinted in U.S. Code *[Section 14]*

If any provision of this Act or the application of such provision to any person or circumstance is held invalid, the remainder of this Act and the application of such provision to other persons or circumstances shall not be affected thereby.

SHORT TITLE

Not Reprinted in U.S. Code *[Section 15]*

This Act may be cited as the 'Portal-to-Portal Act of 1947.'
Approved May 14, 1947.

U.S. Equal Employment Opportunity Commission

FACT SHEET

FIND THIS ARTICLE ON THE WEB AT: SEE ALSO:
Facts About Equal Pay and Compensation Discrimination FSE/15 Filing a Charge of Discrimination
http://www.eeoc.gov/eeoc/publications/index.cfm http://www.eeoc.gov/employees/charge.cfm
This document was last modified on April 1, 2010 FSE/15 Page 1

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: the Equal Pay Act of 1963, Title VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act of 1967, and Title I of the Americans with Disabilities Act of 1990.
The law against compensation discrimination includes all payments made to or on behalf employees as remuneration for employment. All forms of compensation are covered, including salary, overtime pay, bonuses, stock options, profit sharing and bonus plans, life insurance, vacation and holiday pay, cleaning or gasoline allowances, hotel accommodations, reimbursement for travel expenses, and benefits.

Equal Pay Act

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

 Skill

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

 Effort

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

 Responsibility

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

 Working Conditions

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

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

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

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

Title VII, ADEA, and ADA

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

 An employer pays an employee with a disability less than similarly situated employees without disabilities and the employer's explanation (if any) does not satisfactorily account for the differential.
 An employer sets the compensation for jobs predominately held by, for example, women or African-Americans below that suggested by the employer's job evaluation study, while the pay for jobs predominately held by men or whites is consistent with the level suggested by the job evaluation study.
 An employer maintains a neutral compensation policy or practice that has an adverse impact on employees in a protected class and cannot be justified as job-related and consistent with business necessity. For example, if an employer provides extra compensation to employees who are the "head of household," i.e., married with dependents and the primary financial contributor to the household, the practice may have an unlawful disparate impact on women.
It is also unlawful to retaliate against an individual for opposing employment practices that discriminate based on compensation or for filing a discrimination charge, testifying, or participating in any way in an investigation, proceeding, or litigation under Title VII, ADEA, ADA or the Equal Pay Act.

Genetic Information Discrimination

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 acquisition of genetic information by employers and other entities covered by Title II, 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 any disease, disorder, or condition of an individual's family members (i.e. an individual's 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.

AFFIRMATIVE ACTION PLAN, 2011-13

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 doesn't tell the employer anything about someone'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, 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 an employer 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.

Genetic information may be acquired as part of the certification process for FMLA leave (or leave under similar state or local laws), where an employee is asking for leave to care for a family member with a serious health condition.

Acquisition through commercially and publicly available documents like newspapers is permitted, as long as the employer is not searching those sources with the intent of finding genetic information.

Acquisition through a genetic monitoring program that monitors the biological effects of toxic substances in the workplace is permitted 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 an employer to disclose genetic information about applicants or employees. Employers 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.

National Origin Discrimination

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

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

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

National Origin Discrimination & Work Situations

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

National Origin & Harassment

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

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

National Origin & Employment Policies/Practices

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

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

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

Citizenship Discrimination & Workplace Laws

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

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

IRCA's nondiscrimination requirements are enforced by the Department of Justice's Office of Special Counsel for Immigration-Related Unfair Employment Practices (OSC), Civil Rights Division. OSC may be reached at:
1-800-255-7688 (voice for employees/applicants), 1-800-237-2515 (TTY for employees/applicants), 1-800-255-8155 (voice for employers), or1-800-362-2735 (TTY for employers), or http://www.usdoj.gov/crt/osc.

U.S. Equal Employment Opportunity Commission

FACT SHEET

FIND THIS ARTICLE ON THE WEB AT: SEE ALSO:
Facts About National Origin Discrimination FSE/1 Filing a Charge of Discrimination
http://www.eeoc.gov/eeoc/publications/index.cfm http://www.eeoc.gov/employees/charge.cfm
This document was last modified on March 30, 2010. FSE/1 Page 1

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 or more employees.

About National Origin Discrimination

It is unlawful to discriminate against any employee or applicant because of the individual's national origin. No one can be denied equal employment opportunity because of birthplace, ancestry, culture, linguistic characteristics common to a specific ethnic group, or accent. Equal employment opportunity cannot be denied because of marriage or association with persons of a national origin group; membership or association with specific ethnic promotion groups; attendance or participation in schools, churches, temples or mosques generally associated with a national origin group; or a surname associated with a national origin group. 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. The Immigration Reform and Control Act of 1986

(IRCA) requires employers to prove all employees hired after November 6, 1986, are legally authorized to work in the United States. IRCA also prohibits discrimination based on national origin or citizenship.

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 law forbids discrimination 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 the same as any other temporarily disabled employee. For example, the employer may have to provide modified tasks, alternative assignments, disability leave or unpaid leave.

Pregnancy Discrimination & Harassment

It is unlawful to harass a woman because of pregnancy, childbirth, or a medical condition related to pregnancy or childbirth.

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.

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. For more information on FMLA, contact the nearest office of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor. The Wage and Hour Division can be reached at: 202-693-0051 (voice), 202-693-7755 (TTY), or at http://www.dol.gov/esa/public/whd_org.htm.

Pregnancy, Maternity & Parental Leave

Under Federal law, if an employee is temporarily unable to perform her job due to pregnancy or childbirth, 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.

If an employer provides personal leave for other reasons, e.g., to take courses or other training, then the employer must grant personal leave for care of a new child.

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/dol/allcfr/ESA/Title_29/Part_825/29CFR825.110.htm.)

U.S. Equal Employment Opportunity Commission

FACT SHEET

FIND THIS ARTICLE ON THE WEB AT: SEE ALSO:
Facts About Pregnancy Discrimination Filing a Charge of Discrimination
http://www.eeoc.gov/eeoc/publications/index.cfm http://www.eeoc.gov/employees/charge.cfm
This document was last modified on March 31, 2010. FSE/2 Page 1

Pregnancy Discrimination

The Pregnancy Discrimination Act amended 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 pregnancy-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 & 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 because of her 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 because of 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.

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. An employer need not provide health insurance for expenses arising from abortion, 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 on leave because of pregnancy-related conditions 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.

Race/Color Discrimination

Race discrimination involves treating someone (an applicant or employee) unfavorably because he/she is of a certain race or because of personal characteristics associated with race (such as hair texture, skin color, or certain facial features). Color discrimination involves treating someone unfavorably because of skin color complexion.
Race/color discrimination also can involve treating someone unfavorably because the person is married to (or associated with) a person of a certain race or color or because of a person's connection with a race-based organization or group, or an organization or group that is generally associated with people of a certain color.
Discrimination can occur when the victim and the person who inflicted the discrimination are the same race or color.

Race/Color Discrimination & Work Situations

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

Race/Color Discrimination & Harassment

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

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

Race/Color Discrimination & Employment Policies/Practices

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

Facts About Race/Color Discrimination

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

It is unlawful to discriminate against any employee or applicant for employment because of race or color in regard to hiring, termination, promotion, compensation, job training, or any other term, condition, or privilege of employment. Title VII also prohibits employment decisions based on stereotypes and assumptions about abilities, traits, or the performance of individuals of certain racial groups.

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

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

Race-Related Characteristics and Conditions

Discrimination on the basis of an immutable characteristic associated with race, such as skin color, hair texture, or certain facial features violates Title VII, even though not all members of the race share the same characteristic.
Title VII also prohibits discrimination on the basis of a condition which predominantly affects one race unless the practice is job related and consistent with business necessity. For example, since sickle cell anemia predominantly occurs in African-Americans, a policy which excludes individuals with sickle cell anemia is discriminatory unless the policy is job related and consistent with business necessity. Similarly, a "no-beard" employment policy may discriminate against African-American men who have a predisposition to pseudofolliculitis barbae (severe shaving bumps) unless the policy is job-related and consistent with business necessity.

Color Discrimination

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

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

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

Title VII's protections include:

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

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

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

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

Harassment

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

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

Segregation and Classification of Employees
Title VII is violated where minority employees are segregated by physically isolating them from other employees or from customer contact. Title VII also prohibits assigning primarily minorities to predominantly minority establishments or geographic areas. It is also illegal to exclude minorities from certain positions or to group or categorize employees or jobs so that certain jobs are generally held by minorities. Title VII also does not permit racially motivated decisions driven by business concerns – for example, concerns about the effect on employee relations, or the negative reaction of clients or customers. Nor may race or color ever be a bona fide occupational qualification under Title VII.
Coding applications/resumes to designate an applicant's race, by either an employer or employment agency, constitutes evidence of discrimination where minorities are excluded from employment or from certain positions. Such discriminatory coding includes the use of facially benign code terms that implicate race, for example, by area codes where many racial minorities may or are presumed to live.

Pre-Employment Inquiries and Requirements
Requesting pre-employment information which discloses or tends to disclose an applicant's race suggests that race will be unlawfully used as a basis for hiring. Solicitation of such pre-employment information is presumed to be used as a basis for making selection decisions. Therefore, if members of minority groups are excluded from employment, the request for such pre-employment information would likely constitute evidence of discrimination.
However, employers may legitimately need information about their employees' or applicants' race for affirmative action purposes and/or to track applicant flow. One way to obtain racial information and simultaneously guard against discriminatory selection is for employers to use "tear-off sheets" for the identification of an applicant's race. After the applicant completes the application and the tear-off portion, the employer separates the tear-off sheet from the application and does not use it in the selection process.

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

Religious Discrimination

Religious discrimination involves treating a person (an applicant or employee) unfavorably because of his or her religious beliefs. The law protects not only people who belong to traditional, organized religions, such as Buddhism, Christianity, Hinduism, Islam, and Judaism, but also others who have sincerely held religious, ethical or moral beliefs. Religious discrimination can also involve treating someone differently because that person is married to (or associated with) an individual of a particular religion or because of his or her connection with a religious organization or group.

Religious Discrimination & Work Situations

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

Religious Discrimination & Harassment

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

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

Religious Discrimination & 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.

U.S. Equal Employment Opportunity Commission

FACT SHEET

FIND THIS ARTICLE ON THE WEB AT: SEE ALSO:
Facts About Religious Discrimination FSE/3 Filing a Charge of Discrimination
http://www.eeoc.gov/eeoc/publications/index.cfm http://www.eeoc.gov/employees/charge.cfm
This document was last modified on April 1, 2010. FSE/3 Page 1

Religious Discrimination

AFFIRMATIVE ACTION PLAN, 2011-13

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. The Act also requires employers to reasonably accommodate the religious practices of an employee or prospective employee, unless to do so would create an undue hardship upon the employer (see also 29 CFR l605). A reasonable religious accommodation is any adjustment to the work environment that will allow the employee to practice his religion. Flexible scheduling, voluntary substitutions or swaps, job reassignments and lateral transfers are examples of accommodating an employee's religious beliefs.

Employers generally should not schedule examinations or other selection activities in conflict with a current or prospective employee's religious needs, inquire about an applicant's future availability at certain times, maintain a restrictive dress code, or refuse to allow observance of a Sabbath or religious holiday, unless the employer can show that not doing so would cause an undue hardship.

An employer can claim undue hardship when asked to accommodate an applicant's or employee's religious practices if allowing such 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. Undue hardship also may be shown if the request for an accommodation violates the terms of a collective bargaining agreement or job rights established through a seniority system.
An employee whose religious practices prohibit payment of union dues to a labor organization cannot be required to pay the dues, but may pay an equal sum to a charitable organization.

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.

Retaliation

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

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

Retaliation & Work Situations

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

Facts About Retaliation

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

In addition to the protections against retaliation that are included in all of the laws enforced by EEOC, the Americans with Disabilities Act (ADA) also protects individuals from coercion, intimidation, threat, harassment, or interference in their exercise of their own rights or their encouragement of someone else's exercise of rights granted by the ADA.
There are three main terms that are used to describe retaliation. Retaliation occurs when an employer, employment agency, or labor organization takes an **adverse action** against a **covered individual** because he or she engaged in a **protected activity**. These three terms are described below.

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

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

other actions affecting employment such as threats, unjustified negative evaluations, unjustified negative references, or increased surveillance, and

any other action such as an assault or unfounded civil or criminal charges that are likely to deter reasonable people from pursuing their rights.

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

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

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

Covered Individuals

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

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

Protected Activity

Protected activity includes:

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

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

Examples of activities that are NOT protected opposition include:
Actions that interfere with job performance so as to render the employee ineffective; or
Unlawful activities such as acts or threats of violence.
Participation in an employment discrimination proceeding.
Participation means taking part in an employment discrimination proceeding. Participation is protected activity even if the proceeding involved claims that ultimately were found to be invalid. Examples of participation include:

Filing a charge of employment discrimination;
Cooperating with an internal investigation of alleged discriminatory practices; or
Serving as a witness in an EEO investigation or litigation.
A protected activity can also include requesting a reasonable accommodation based on religion or disability.

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

Sex-Based Discrimination

Sex discrimination involves treating someone (an applicant or employee) unfavorably because of that person's sex.
Sex discrimination also can involve treating someone less favorably because of his or her connection with an organization or group that is generally associated with people of a certain sex.

Sex Discrimination & Work Situations

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

Sex Discrimination Harassment

It is unlawful to harass a person because of that person's sex. Harassment can include "sexual harassment" or unwelcome sexual advances, requests for sexual favors, and other verbal or physical harassment of a sexual nature. Harassment does not have to be of a sexual nature, however, and can include offensive remarks about a person's sex. For example, it is illegal to harass a woman by making offensive comments about women in general.
Both victim and the harasser can be either a woman or a man, and the victim and harasser can be the same sex.
Although the law doesn't prohibit simple teasing, offhand comments, or isolated incidents that are not very serious, harassment is illegal when it is so frequent or severe that it creates a hostile or offensive work environment or when it results in an adverse employment decision (such as the victim being fired or demoted).

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

Sex Discrimination & Employment Policies/Practices

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

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.

U.S. Equal Employment Opportunity Commission

FACT SHEET

FIND THIS ARTICLE ON THE WEB AT: SEE ALSO:
Facts About Sexual Harassment FSE/4 Filing a Charge of Discrimination
http://www.eeoc.gov/facts/fs-sex.html http://www.eeoc.gov/employees/charge.cfm
This document was last modified on December 14, 2009. FSE/4 Page 1

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.

AFFIRMATIVE ACTION PLAN, 2011-13

Department of Environmental Quality
HB 4131 Report

The Department of Environmental Quality began to work on span-of-control upon the state's implementation of HB 4131. DEQ's starting ratio was nine staff positions to one supervisory position, requiring the agency to improve the ratio to 10 staff positions to one supervisory position by October 1, 2013. DEQ reached the 10:1 staff to supervisor ratio through a reclassification package on approved by DAS on May 24, 2012.

The reclassification package made specific actions to move DEQ to its span-of-control target before October 1, 2012:

- Abolished six Management Service Supervisory positions
- Changed representation of one Management Service Supervisory position to Represented
- Established one Represented position

Positions	**Staff**	**Supervisors**	**Total**	**Ratio**
Start Point (According to DAS)	663	73	736	9:1
*2011 Reclass PKG effect	**-2**	**2**		
	661	**75**	736	8:1
Span of Control Phase 1	2	-7		
Phase 1 result	663	68	731	10:1

*Reclass proposal prior to HB 4131

DEQ has already developed a plan for an additional reclassification to help the agency meet its final span-of-control milestone of a ratio of 11 staff positions to one supervisory position.

Department of Environmental Quality
HB 4131 Report

The future reclassification package will include the following actions to move DEQ to its final span-of-control target before October 1, 2013:

- Establish three Management Service Non-Supervisory positions
- Establish six part-time Represented positions
- Abolish three job share Represented positions
- Establish five seasonal Represented positions
- Change representation of six Management Service Supervisory positions to Management Service Non-Supervisory positions

Positions	Staff	Supervisors	Total	Ratio
Current	663	68	731	10:1
Span of Control Phase 2	17	-6		
Phase 2 result	680	62	742	11:1

DEQ has requested 17 new represented positions related to various policy option packages. If approved as requested the following affect on span of control would occur.

Positions	Staff	Supervisors	Total	Ratio
Post Phase 2	680	62	742	11:1
POP implementation	17	0		
Phase 2 result	697	62	759	11:1