

Annual Performance Progress Report
(APPR)

OREGON RACING COMMISSION
Annual Performance Progress Report (APPR) for
Fiscal Year 2012

Contact: Jack McGrail, Executive Director

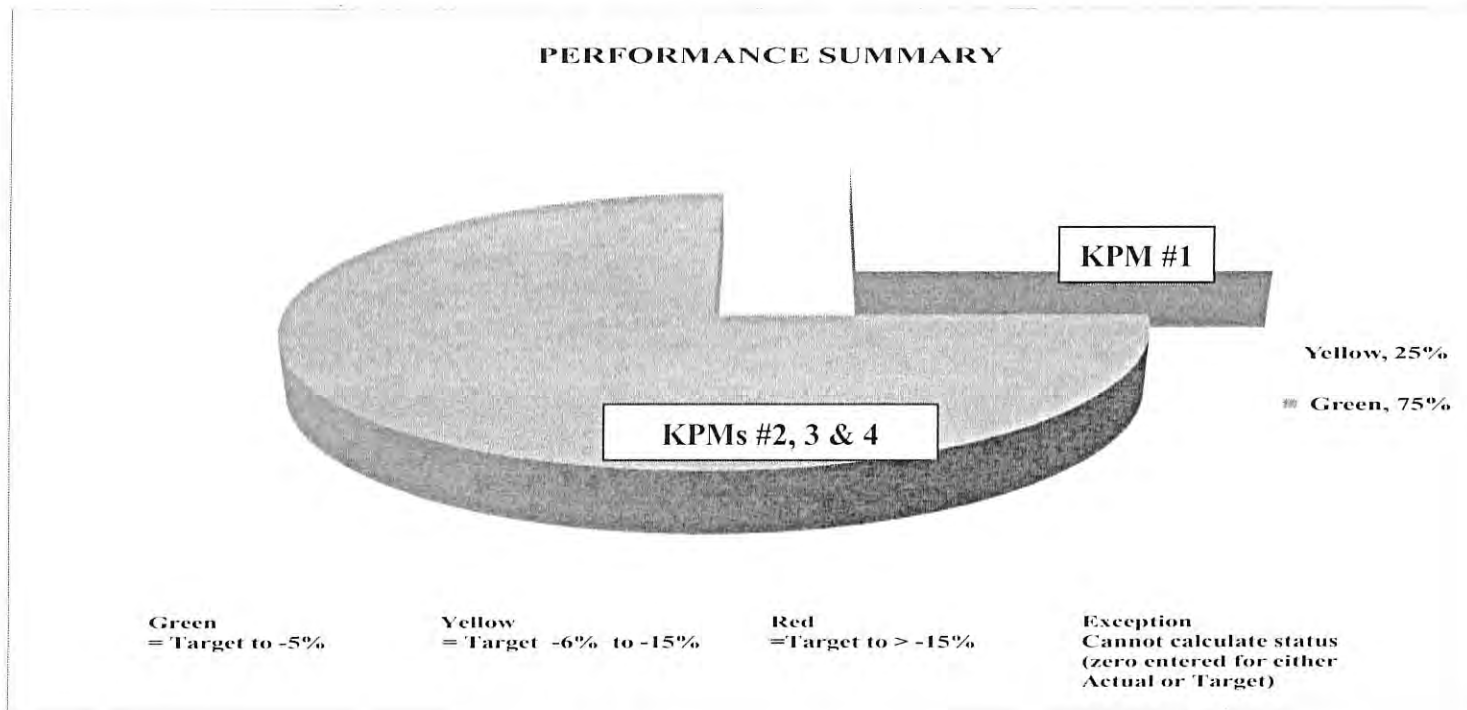
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Agency Mission: The Mission of the Oregon Racing Commission is to regulate and to facilitate all aspects of the pari-mutuel industry in the State of Oregon for the benefit of the citizenry, the licensees, the participants and the economy of the State of Oregon.

2012 KPM#	2012 Key Performance Measures (KPMs)
1	Animal Safety: Number of horses euthanized by the Oregon Racing Commission veterinarian due to catastrophic injury occurring during racing per every 1,000 starters.
2	License Turnaround Time: Average number of work days from receipt of complete individual application and questionnaire to conclusion of a criminal background check.
3	Excellent Customer Service: Percent of customers rating their satisfaction with the agency’s customer service as “good” or “excellent:” overall timeliness, accuracy, helpfulness, expertise, availability of information.
4	Best Practices: Percent of total best practices met by the Board.



R. G COMMISSION	I. EXECUTIVE SUMM
<i>Agency Mission: The Mission of the Oregon Racing Commission is to regulate and to facilitate all aspects of the pari-mutuel industry in the State of Oregon for the benefit of the citizenry, the licensees, the participants and the economy of the State of Oregon.</i>	

1. SCOPE OF REPORT

The Oregon Racing Commission (ORC) is a one-program agency charged with the responsibility to regulate all aspects of the pari-mutuel industry and, therefore, protecting licensees, racing animal athletes, the public and the state. At the same time, the ORC encourages and supports members of the industry in promoting live handle growth and enhancing live racing by attracting businesses to Oregon that are involved in technological advancements.

2. THE OREGON CONTEXT

Statute mandates that all participants in pari-mutuel activities be licensed by the ORC. This includes individuals, live race meets and multi-jurisdictional simulcasting and wagering companies (Hubs) who conduct business online through a closed-loop subscriber system. The agency has approximately 3,700 active licensees. The agency's efforts directly relate to its mission.

3. PERFORMANCE SUMMARY

Key performance measure #1 allows the ORC to track the number of horses euthanized and aids in identifying solutions to protect the safety of the equine athlete. Measures #2 and #3 are both focused on staff at the commission improving service to our customers/licensees. Measure #4 is an excellent self-assessment tool for the five commissioners to assure they are providing the proper oversight to the staff specifically and the racing industry generally.

4. CHALLENGES

Live racing nationwide and the industry that supports it, is struggling to be viable. The situation is similar in Oregon. Currently, live racing in Oregon consists of horse racing at Portland Meadows and five short summer horse race meets held throughout rural Oregon in Grants Pass, Union, Prineville, Tillamook and Burns.

Another challenge the Commission faces is the uncertainty about the future of Portland Meadows, the remaining commercial meet in Oregon. As with many race tracks throughout North America, Portland Meadows struggles to show a profit. There are many factors contributing to this challenge including the current economic situation and competition from state lotteries and casinos. Portland Meadows has traditionally raced in the winter months. For the first time beginning in 2012, Portland Meadows conducted a summer race meet. Due to the low numbers of horses available to run at Portland Meadows during summer months, Portland Meadows has returned to a winter race meet for 2014-2015.

The summer horse racing meets have been vital to the economy of five rural areas of Oregon by increasing tourism, retail sales, and agricultural business as well as encouraging the continued breeding of Oregon race horses. These race meets currently need, and most

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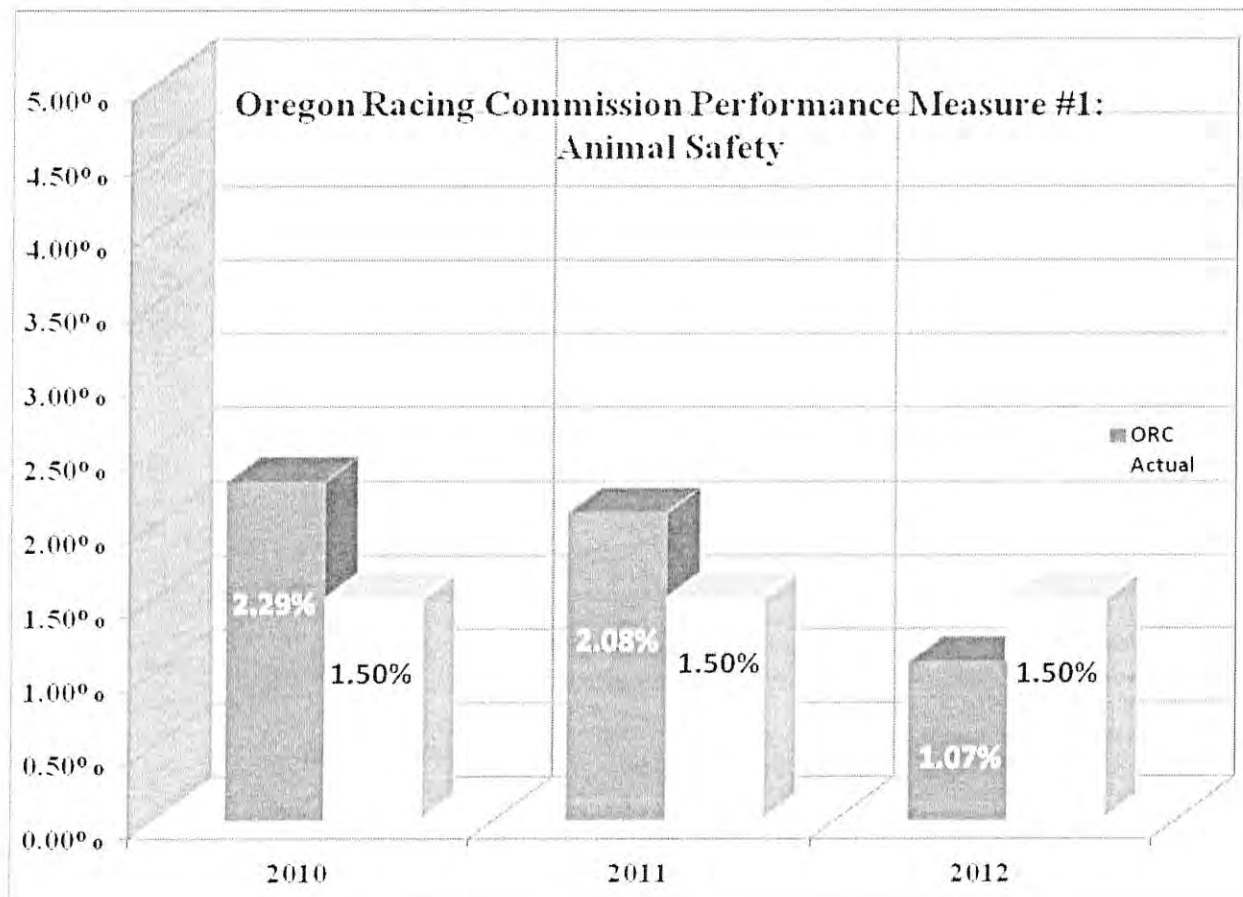
likely will continue to need, additional financial support. The source of this additional money is presently, and in the future, going to come from the money generated by the Multi-Jurisdictional Simulcasting and Interactive Wagering Totalizator Hubs. The revenue made available from the multi-jurisdictional hub businesses is key to the continuation of live racing in Oregon. Currently, there are nine hubs licensed in Oregon, which is good testament to Oregon's consistent and fair regulatory practices, many tax options and favorable business environment. However, if the environment for these companies changed and they were to leave Oregon, funding for our industry would be jeopardized. A portion of this revenue is transferred to the state general fund to be disbursed to agencies that rely on general funds for their operating budget.

5. RESOURCES AND EFFICIENCY

The ORC has used its resources to implement a number of initiatives in an effort to make it easier for the stakeholders to comply with our rules and procedures. The ORC has also modified many of its processes to eliminate waste and make it less time consuming for the stakeholders to meet their obligations. These initiatives will improve the results of Key Performance Measures #2, License Turnaround Time, and #3, Excellent Customer Service by providing streamlined forms and informational materials that better assist those in the industry. For example, the ORC: provided an updated version of a simple user manual for trainers, jockeys, grooms and owners; provided training sessions to better understand ORC statutes and rules to licensees; prepared a simple glossary of racing terms for members of our industry; converted paper forms to electronic and made them available on the ORC website; began accepting credit card payments for licenses, fees and fines; and continue to include stakeholders' participation with the ORC in simplifying and revising our administrative rules.

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KPM #1	Animal Safety: Number of horses euthanized by the Oregon Racing Commission veterinarian due to catastrophic injury occurring during racing per every 1,000 starters.	Measure Since: 1993
Goal	Checking licensees for illegal substances, drug testing horses, physically inspecting horses, ensuring track environment is as safe as possible. Protect welfare of all parties, both human and equine.	
Oregon Context	No applicable benchmarks or high-level outcomes. Relates to the ORC Mission.	
Data source	The ORC's stewards and veterinarian keep statistics on all pari-mutuel horse races conducted in the State of Oregon, including the number of horses that actually started in each race and any injuries or fatalities that occurred.	
Owner	Compliance: Jack McGrail (971) 673-0209	



Agency Mission: The Mission of the Oregon Racing Commission is to regulate and to facilitate all aspects of the pari-mutuel industry in the State of Oregon for the benefit of the citizenry, the licensees, the participants and the economy of the State of Oregon.

1. OUR STRATEGY

Checking licensees for illegal substances, drug testing horses, physically inspecting horses, ensuring track environment is as safe as possible. Protect welfare of all parties, both human and equine.

2. ABOUT THE TARGETS

Targets are based on national goals. The national average of catastrophic injuries is about 2.0 per 1,000 starters. The ORC has set a very high standard of only 1.5 per 1,000 starters.

3. HOW WE ARE DOING

The Oregon Racing Commission has realized a downward trend of catastrophic injuries in equine athletes this past year.

4. HOW WE COMPARE

Oregon is slightly above the national average on the number of horses euthanized per 1,000 starters. The national average is approximately two (2) horses euthanized per 1,000 starters. Between 2009 – 2010 and 2010 – 2011, Oregon's rates fell to 2.08% from 2.29%. This decrease in catastrophic injuries continued in 2012 – 2013. During this reporting period, the rate fell from 2.08% to 1.07%.

5. FACTORS AFFECTING RESULTS

There are a variety of factors that can influence catastrophic race horse injuries. These factors include: conditions of the race horse, training methodology, race track surface, medications, racing shoes and racing accidents.

6. WHAT NEEDS TO BE DONE

In February of 2009, the Oregon Racing Commission (ORC) formed the Horse Medication and Safety Committee (HMSC). The purpose of the committee was to make recommendations to the ORC that would reduce the number of catastrophic injuries. Several meetings were held involving stakeholders throughout the industry. In October of 2009, the ORC adopted the recommendations of the committee. Recommendations covered a variety of areas including better track surfaces, review of appropriate medications, limits on racing shoes, establishment of pre-race examinations, and partnership with Oregon State University to conduct a necropsy on every horse euthanized at Portland Meadows. The ORC believed this action plan would result in a reduction of catastrophic injuries. Early statistical reports are confirming that belief.

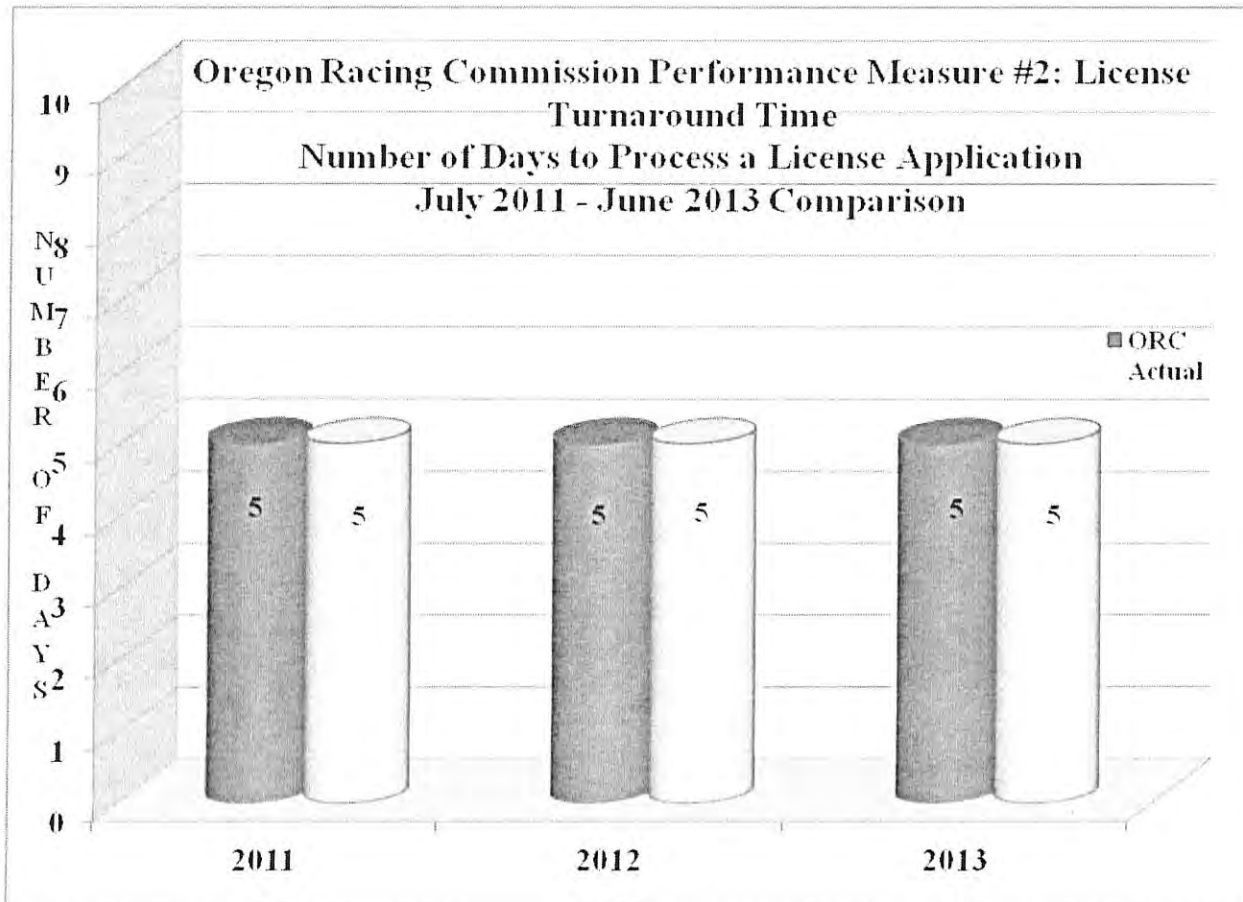
In 2012 – 2013, the HMSC continued to meet on a regular basis to review policies and rules regarding horse safety. Those efforts continue to pay off as the number of catastrophic injuries has declined.

7. ABOUT THE DATA

State fiscal year.

Agency Mission: The Mission of the Oregon Racing Commission is to regulate and to facilitate all aspects of the pari-mutuel industry in the State of Oregon for the benefit of the citizenry, the licensees, the participants and the economy of the State of Oregon.

KPM #2	License Turnaround Time: Average number of work days from receipt of complete individual application and questionnaire to conclusion of a criminal background check.	Measure Since: 2007
Goal	Provide a license to the applicants within a reasonable amount of time. Good public policy.	
Oregon Context	No applicable benchmarks or high-level outcomes. Relates to the agency mission.	
Data source	Licensing Staff and Database	
Owner	Compliance: Jack McGrail (971) 673-0209	



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1. OUR STRATEGY

Provide a license to the applicants within a reasonable amount of time. Good public policy.

2. ABOUT THE TARGETS

The target was based on the average amount of time it takes to process an application to completion which includes inputting information into the database and conducting a background check while also allowing for staff's workload. The target is five business days.

3. HOW WE ARE DOING

The ORC Licensing Office is issuing licenses at the benchmark level.

4. HOW WE COMPARE

Currently, there is no comparative analysis available from other state agencies that regulate racing.

5. FACTORS AFFECTING RESULTS

Workload for staff changes depending on the racing schedule and applicants with extensive backgrounds take, understandably, more time. Additionally, efficiencies were made in allocation of staff time that allowed additional, dedicated staff hours for assisting with license processing. Also, cross-training of staff has occurred to provide better coverage for our licensees.

6. WHAT NEEDS TO BE DONE

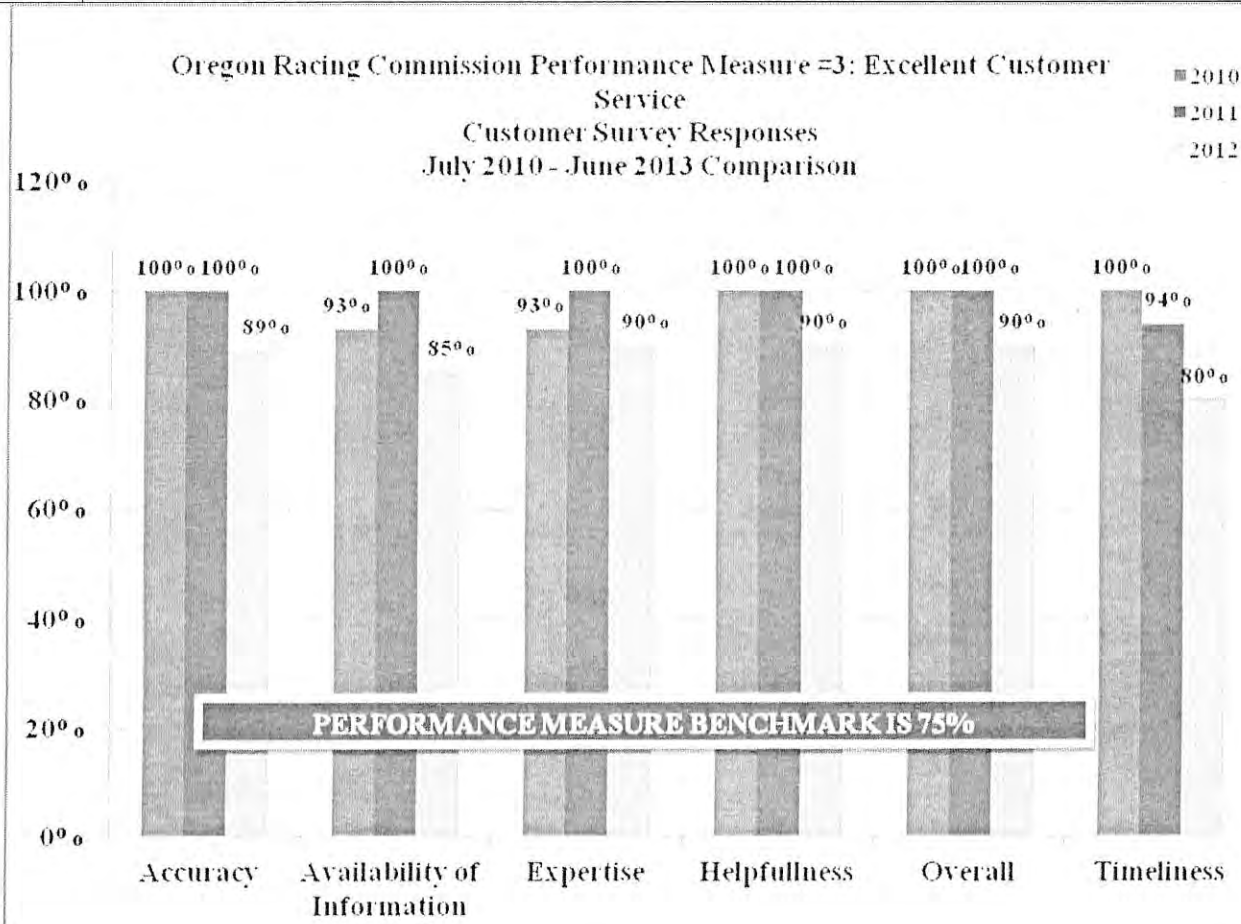
Continue to provide five-day turnaround time which is serving our licensees very well.

7. ABOUT THE DATA

State fiscal year.

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KPM #3	Excellent Customer Service: Percent of customers rating their satisfaction with the agency’s customer service as “good” or “excellent:” overall timeliness, accuracy, helpfulness, expertise, availability of information.	Measure Since: 2007
Goal	To provide excellent customer service for the benefit of the citizenry, the licensees and the participants of the pari-mutuel industry in the State of Oregon.	
Oregon Context	No applicable benchmarks or high-level outcomes. Relates to the agency mission.	
Data source	Online survey on our website and two survey and suggestion boxes at two separate locations at the race track.	
Owner	Compliance: Jack McGrail (971) 673-0209	



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1. OUR STRATEGY

To provide excellent customer service for the benefit of the citizenry, the licensees and the participants of the pari-mutuel industry in the State of Oregon by continually monitoring our progress and making changes as deemed necessary.

2. ABOUT THE TARGETS

Targets are established at 75%, a set regulatory standard. An equal or higher percentage is desired.

3. HOW WE ARE DOING

Due to changes in our processes, we are now exceeding our target. Our primary success continues to be hinged upon collaboration with our stakeholders. We constantly reach-out to, and work with, the Oregon Horsemen's Benevolent and Protective Association, Inc. (OHBPA), Oregon Thoroughbred Owners and Breeders Association (OTOBA), Oregon Quarter Horse Racing Association (OQHRA) and the Advanced Deposit Wagering (ADW) companies in our efforts. Those efforts include setting policy through our administrative rules process. Cross-training of staff for better coverage and accepting credit cards continue to have a positive impact.

4. HOW WE COMPARE

We have not received any comparative data from other regulatory agencies.

5. FACTORS AFFECTING RESULTS

As a regulatory agency, possible barriers could include: negative feedback from a licensee because we were unable to issue a license due to their criminal background; and negative feedback because we imposed fines or sanctions to rule violations.

6. WHAT NEEDS TO BE DONE

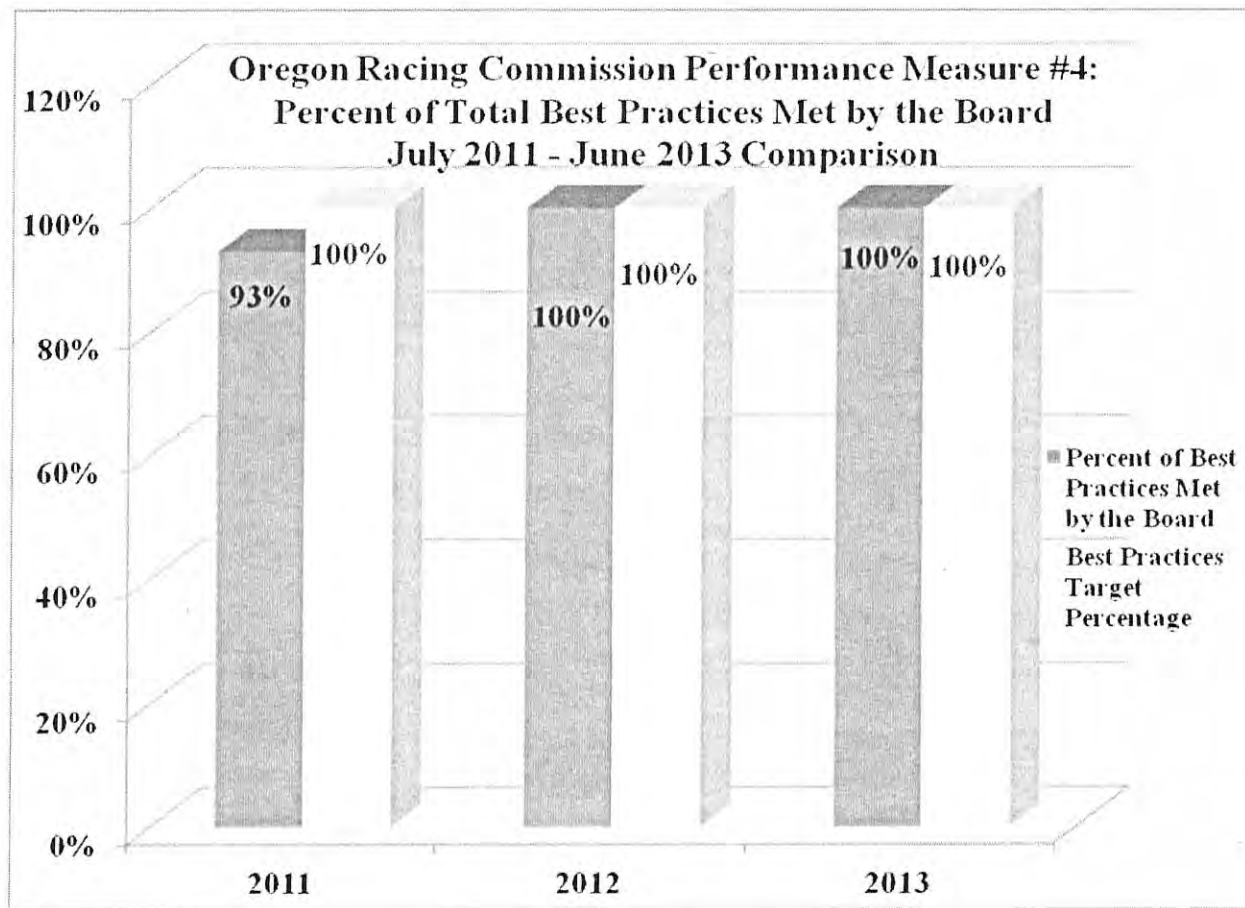
Continue to monitor feedback from our licensees and adjust to meet their needs within our statutory authority and budgetary constraints.

7. ABOUT THE DATA

State fiscal year.

Agency Mission: The Mission of the Oregon Racing Commission is to regulate and to facilitate all aspects of the pari-mutuel industry in the State of Oregon for the benefit of the citizenry, the licensees, the participants and the economy of the State of Oregon.

KPM #4	Best Practices: Percent of total best practices met by the Board.	Measure Since: 2007
Goal	Best Practices: Percent of total best practices met by the Board.	
Oregon Context	To provide a self-assessment tool for the five commissioners to assure they are providing the proper oversight to the staff specifically and the racing industry generally.	
Data source	Annually, one of the commissioners will submit a survey to be completed by all the commissioners and report the results to the Executive Director.	
Owner	Administration: Jack McGrail (971) 673-0209	



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1. OUR STRATEGY

The Commissioners have developed processes where best practices are incorporated into many of our regular processes (i.e. budget, training, rules development). Annually, our Commissioners will complete a score card to determine the progress on best practices and subsequent actions to take.

2. ABOUT THE TARGETS

The target has been established at 100% so each best practice becomes part of the business practices of the racing commission.

3. HOW WE ARE DOING

All best practices for fiscal year 2012 were met.

4. HOW WE COMPARE

We have no data on how other boards and commissions are doing.

5. FACTORS AFFECTING RESULTS

The best practices are now a part of the Commissioners' oversight of the staff and Commission's work.

6. WHAT NEEDS TO BE DONE

Commissioners will continue to discuss best practices and incorporate them into the business practices of the racing commission.

7. ABOUT THE DATA

Data will be collected by one of the commissioners on an annual basis to coincide with the state fiscal year

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The following indicate how performance measures and data are used for management and accountability purposes

1. INCLUSIVITY

Staff: The Oregon Racing Commission informally discussed with staff: 1) Ways to measure regulated activities that could be used to assess whether the mission of the ORC was being achieved, and 2) Ways these measures would be effective in monitoring agency efficiency which would increase voluntary compliance of licensees and foster trust in the ORC through clear communication and fair, neutral regulatory practices.

Elected Officials: The Annual Performance Progress Report is the primary vehicle the Oregon Racing Commission uses to both inform and receive input from the elected officials.

Stakeholders: The Oregon Racing Commission informally discussed with the stakeholders: 1) Ways to measure regulated activities that could be used to assess whether the mission of the ORC was being achieved, and 2) Ways these measures would be effective in monitoring agency efficiency, increasing voluntary compliance of licensees and fostering trust in the ORC through clear communication and fair, neutral regulatory practice.

Citizens: The commission utilizes the monthly meetings, the ORC email and mailing distribution list (by request) and the website to keep citizens informed and to provide a method for receiving their direct input. For example, during each Commission meeting, public comment time is designated for anyone to come and speak to the Commissioners.

2. MANAGING FOR RESULTS: The Oregon Racing Commission’s performance measures are used to ensure the safety of the industry participants, to monitor that the ORC is effectively providing information and materials regarding the regulations, thus increasing licensee voluntary compliance, and to evaluate whether staff has the appropriate tools and processes in place to successfully perform their jobs.

3. STAFF TRAINING: Staff has received the agency performance measures and has been advised in staff meetings how they will be used to monitor the effectiveness of the agency in accomplishing our mission.

4. COMMUNICATING RESULTS

Staff: Performance results will be distributed to staff, discussed and addressed annually at a Commission meeting. These results will also be available on the ORC webpage at <http://www.oregon.gov/racing/> A “performance measures” link is posted in the “About Us” section of the ORC website which directs the user to the information.

Elected Officials: The Annual Performance Progress Report is the primary vehicle the Oregon Racing Commission uses to communicate performance results to elected officials. These results will also be available on the ORC webpage by following the link and directions listed in the “Staff” section, above.

Stakeholders: Performance results are distributed, discussed and addressed annually at a Commission meeting. These results will also be available on the ORC webpage by following the link and directions listed in the “Staff” section, above.

Citizens: The Annual Performance Progress Report is the primary vehicle the Oregon Racing Commission uses to communicate performance results to citizens. These results will also be available on the ORC webpage by following the link and directions listed in the “Staff” section, above.

Affirmative Action Report

OREGON RACING COMMISSION

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AFFIRMATIVE ACTION PLAN

July 1, 2015 – June 30, 2017

**OREGON RACING COMMISSION
AFFIRMATIVE ACTION PLAN
2015-2017**

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**OREGON RACING COMMISSION
AFFIRMATIVE ACTION PLAN
2015-2017**

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I. DESCRIPTION OF THE OREGON RACING COMMISSION

A. Mission and Objectives

Mission

The Mission of the Oregon Racing Commission (ORC) is to regulate and to facilitate all aspects of the pari-mutuel industry in the State of Oregon for the benefit of the citizenry, the licensees, the participants and the economy of the State of Oregon.

Historical Perspective

The Oregon Racing Commission was established in 1933 as part of the Pari-Mutuel Wagering Act to regulate all aspects of the pari-mutuel industry in Oregon.

Statutory Authority

ORS Chapter 462 provides the statutory basis for the Racing Commission's broad authority in the regulation and oversight of pari-mutuel wagering. The Commission's Administrative Rules are OAR Chapter 462 and cover licensing, prohibited conduct, pari-mutuel wagering operations and specific rules regarding horse racing. The Statutes, Administrative Rules and the Mission Statement provide a framework for the Commission to execute a safe and fair racing environment.

Commission Composition and FTE

The ORC is governed by a five-member Commission who are appointed by the Governor and subject to confirmation by the Senate. Commissioners review and provide input for agency policy and administrative matters and review licensee appeals, as well as, the agency's proposed budget.

The Executive Director is hired by and reports directly to the Commission. Commission employees are hired by and report either directly or indirectly to the Executive Director. Commission staff is comprised of 13.27 FTE.

What We Do

The Racing Commission is a one program agency charged with the responsibility to regulate all aspects of the pari-mutuel industry. In pari-mutuel racing, as in any sport or gaming activity, the integrity of the activity is essential so that the players and participants have and believe they have a fair opportunity to win and that the field of play is level. A primary focus of the Commission and its staff are enhanced safety and health standards for racing animals and licensed participants, and enhanced accountability and control of money in the pari-mutuel system and accounts.

The Racing Commission has been very successful in efforts to provide fair and neutral regulatory treatment of licensees. The Racing Commission has cultivated a collaborative regulatory relationship with licensees. This relationship, in turn, fosters voluntary compliance. In addition, the Racing Commission's regulatory framework, statutes and rules are equal to the best of similar programs in other states. It is through cooperative efforts between the Racing Commission, licensees, industry stakeholders and other regulatory agencies that economies of scale can be realized in these and other areas.

Affirmative Action Objectives

- Seek out qualified staff and provide training and special opportunities for advancing to their fullest potential;
- Post position openings and exam announcements so that existing staff may be informed of such openings;
- Recruit, hire, and train persons at all job levels on the basis of merit and consistent with the principles of affirmative action;
- Evaluate tests and job requirements in terms of entry-level responsibilities to provide opportunity to those whose experience may have been limited due to discriminatory practices;
- Ensure that personnel actions such as compensation, benefits, transfers, layoffs, training and educational opportunities, tuition assistance, or any other benefits are administered to all persons equally and aligned with the principles of affirmative action;
- Require supervisory personnel to fulfill their obligations under the Affirmative Action Plan and ensure that evaluations of their performance with respect to personnel decisions and actions reflect the fulfillment of their affirmative action obligations; and
- Provide services and programs in a fair and impartial manner.

B. Agency Director

Jack McGrail
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800 NE Oregon Street, Suite 310
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jack.mcgrail@state.or.us

C. Governor's Policy Advisory to the Commission

Steven Powers, General Counsel Deputy
Governor's Office
State Capitol Building, Room 160
900 Court Street NE
Salem, OR 97301-4047
Phone: (503) 378-3014
steven.powers@state.or.us

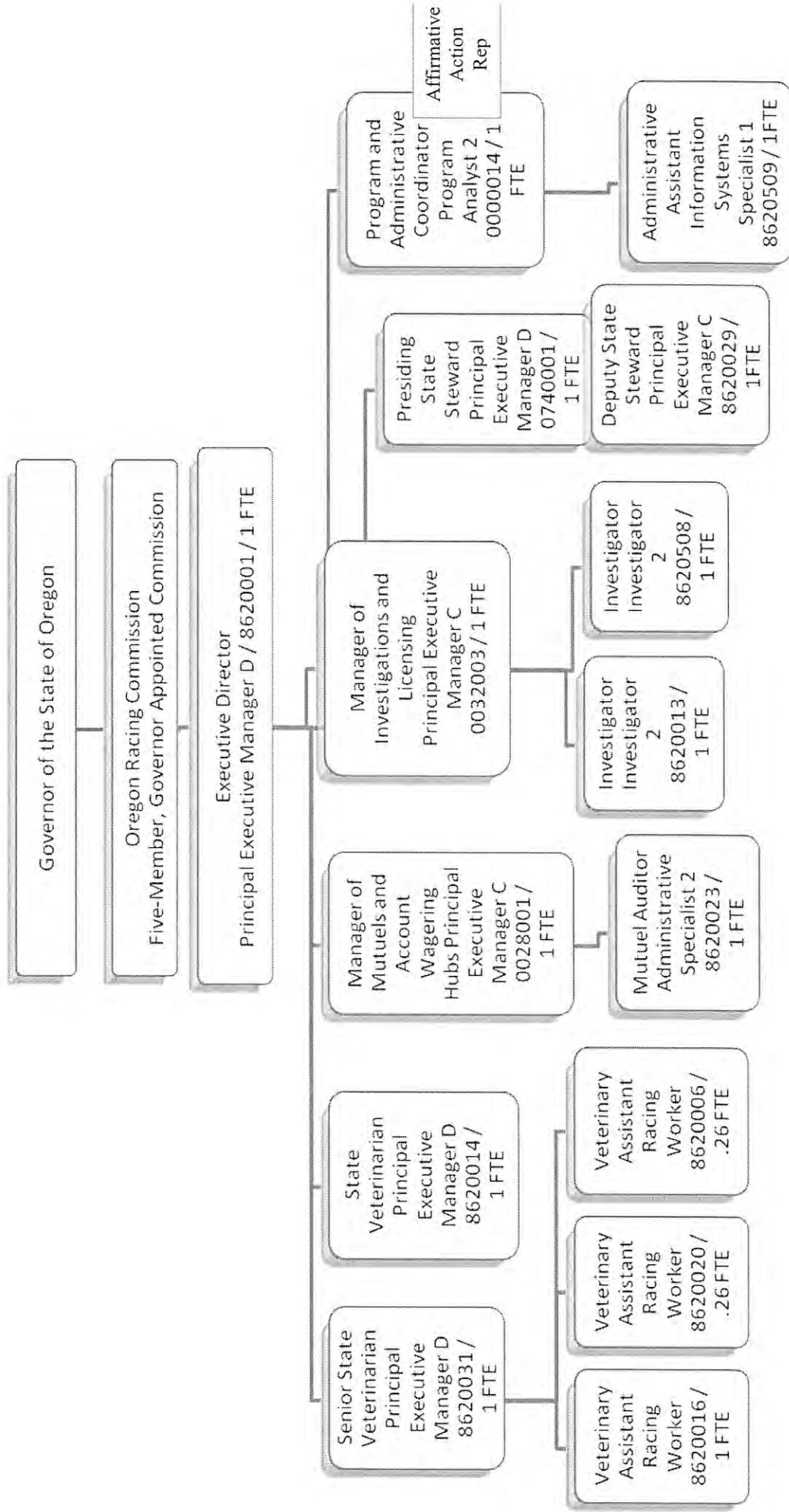
D. Agency Affirmative Action Representative

Karen Parkman
Oregon Racing Commission
800 NE Oregon Street, Suite 310
Portland, OR 97232
Phone: (971) 673-0208
karen.parkman@state.or.us

E. Agency Diversity and Inclusion Representative

The Commission does not have a dedicated position serving in this capacity. Diversity and inclusion are the responsibility of all Commission management.

F. Organizational Chart



II. AFFIRMATIVE ACTION PLAN

A. Affirmative Action Policy Statement

Oregon Racing Commission's Affirmative Action Policy for Applicants and Employees

The Oregon Racing Commission is committed to establishing and maintaining a diverse workforce, reflective of the diverse population within the State of Oregon. The ORC is committed to an affirmative action program that provides equal opportunities for all persons regardless of race, color, national origin, sex, age, sexual orientation, marital status, physical or mental disability not shown to prevent adequate performance of available work. All personnel actions of the ORC shall be administered according to this policy.

The Affirmative Action Policy and Plan shall be adhered to by all staff of the ORC. Supervisory and management staff, in particular, shall assure that the intent as well as the stated requirements are implemented in all employee relationships and personnel practices. In addition, it is the duty of every employee of the ORC to create a job environment atmosphere which is conducive to the nondiscrimination policies and free of any form of discrimination or harassment. Further, it is the policy of the ORC to provide an environment for each applicant and employee that is free from sexual harassment as well as harassment and intimidation on account of an individual's race, color, religion, gender, sexual orientation, national origin, age or disability. The application of this policy is the individual responsibility of all administrative and supervisory staff, and each shall be evaluated on his/her performance in achieving this affirmative action policy.

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

The ORC is committed toward realizing affirmative action and diversity in the workplace and implements programs and measures such as:

- The Oregon Racing Commission is an equal-opportunity employer that is committed to a pro-active role in the recruitment and selection process. The ORC uses diverse recruitment strategies to identify and attract candidates, and, as practicable, establishes interview panels that represented diverse, protected-class groups; and
- The Oregon Racing Commission is committed to providing broad and culturally enriched training, career growth and developmental opportunities to all employees on an equal basis, enabling them to further advance and promote their knowledge, skills and abilities and their value of diversity.

This policy is set forth by the ORC and will continue in effect until such time the Commission amends or rescinds said policy.

Affirmative Action Policy Statement for Individuals with Disabilities

The ORC will not discriminate, nor tolerate discrimination, against any applicant or employee because of physical or mental disability in regard to any position for which the known applicant for employment is qualified.

The ORC agrees to take affirmative action to employ, advance in employment, and otherwise treat known qualified individuals with disabilities without regard to their physical or mental disabilities in all human resources selection and decision practices, such as: advertising, benefits, compensation, discipline (including probation, suspension, and/or termination, for cause or layoff), employee facilities, performance evaluation, recruitment, social/recreational programs and training. The ORC will also continue to administer these practices without regard to race, color, religion, gender, sexual orientation, national origin, age or disability.

Additionally, all applicants and employees are protected from coercion, intimidation, interference, or discrimination in filing a complaint or assisting in and investigation under this policy.

Affirmative Action Policy for Members Uniform Services (ORS 659A.082)

The ORC will not discriminate or tolerate discrimination against any employee because of they are a member of, apply to be a member of, perform, has performed, applied to perform or have an obligation to perform service in a uniformed service.

Americans with Disabilities Act (ADA) and Reasonable Accommodation in Employment and Workplace

Upon request, the ORC will engage in an interactive process with the employee and/or applicant to make reasonable accommodations in accordance with applicable laws.

Harassment Policy and Complaint Procedures

The ORC will strictly enforce its policies to maintain a discrimination and harassment-free, professional workplace. The Commissioners and Commission management take allegations of discrimination and harassment seriously and will expeditiously investigate and resolve all complaints or concerns.

Complaints or concerns should be initially directed to the agency's affirmative action representative. The affirmative action representative will work in conjunction with the Oregon Department of Administrative Services Human Resources Management Consultant to investigate and resolve the issue. If at any time the complainant is not satisfied with the progress, they may speak directly to the agency's executive director, or the Commission chairperson. Finally, if satisfactory resolution is not reached via these channels, the individual may contact Karen Parkman at (971) 673-0208.

Applicability

These policies apply to all commission members and employees of the ORC. The policies apply to all matters relating to hiring, firing, promotion, benefits, compensation, and other terms and conditions of employment.

Distribution and Availability of Policies

Employees new to the ORC will receive all policies, including the agency's Affirmative Action Policy at the outset of their employment. Existing employees will receive a copy of the Affirmative Action Policy to review and sign at the time of their annual performance evaluation.

Additionally, employees can access a copy of the Affirmative Action Plan and review the Affirmative Action Policies at the employee information center in the main office of the Commission in the Portland State Office Building. This information is also made available on the ORC's website.

B. Agency Diversity & Inclusion Statement

The Oregon Racing Commission followed with interest, the work of the Governor’s Diversity and Inclusion “Kitchen Cabinet.” As a result, the ORC has aligned its way of thinking to intentionally diversify our workforce, operations and perspectives. The ORC leadership guide with sustainable strategies and programs with the intent of leading to improved outcomes and confidence by all communities.

The ORC promotes a culture that fosters and embeds Diversity and Inclusion throughout its operations, both internally with staff and externally with members of the public, stakeholders and/or partners by increasing diverse and multi-cultural perspectives, improving business and service delivery outcomes, increasing certified firm contracting inclusion, improving individual and organizational cultural competences, improving organizational accountability, maximizing taxpayer dollars, and improving public confidence and community relations.



Jack McGrail, Executive Director

Date 12/19/2014

C. Training, Education and Development Plan (TEDP)

The Oregon Racing Commission's Training, Education and Developmental Plan (TEDP) is not designed with a specific employee in mind, rather, it is the philosophy of the ORC to provide professional development opportunities for all staff members, in accordance with State Policy 50.045.01: Employee Development and Implementation of Oregon Benchmarks for Workforce Development. Please see below for specific examples.

1. Employees

The ORC provides the following opportunities to staff members to promote professional development:

a. Developmental Work Opportunities

Examples of opportunities provided by the ORC during this last reporting period include:

- The Mutuels Auditor has learned the licensing process and assists with this function and the Administrative Assistant is currently serving in a work out of class developmental opportunity as replacement for the Administrative and Program Coordinator position;
- All ORC Managers have been trained in writing/editing Administrative Rules and are aware of the process to vet with stakeholders, make notice with the Secretary of State's Office, hold a public hearing and prepare the final rules for review and posting;
- All ORC Managers have been trained on at least a fundamental level regarding the state budgeting process. Managers have either developed, or participated in the development, of budgets for their program areas; and
- Managers share their knowledge with staff under their supervision and serve as mentors to further develop their staff's areas of interest.

b. Educational Opportunities

The ORC is proud of its record to promote continued learning of its staff. The focus has been multi-faceted and the expectation is for staff members to return and share information with one another. Mostly, this is done formally with a presentation during all-staff meetings. When this is not possible, information is shared electronically among the staff. Examples of this include the following:

- **Cultural Diversity**
 1. The Program and Administrative Coordinator and the Administrative Assistant attend the D&I/AA/EEO Meetings and share the material with staff upon their return;
 2. The Executive Director and the Program and Administrative Coordinator belong to several state and federal listserv groups and distribution lists including the Governor's Affirmative Action Office, Oregon Department of Human Services Diversity Calendar and disability.gov. This information is sent to staff members' for their information, education and participation;
 3. All ORC Managers have participated in and passed the Oregon Department of Administrative Services course Workplace Effects of Domestic Violence, Sexual Assault and Stalking in compliance with the directives of the State Human Resources Policy 50.010.04; and
 4. Staff members and Commissioners attend multiple legal training classes offered by the Oregon Department of Justice.

c. Succession Planning

The Oregon Racing Commission has undergone a process of identifying key needs and areas for business continuity. As a result, a succession plan was developed and is in place for the Executive Director and Program Managers. Primarily, the plan focuses on mentoring of staff and ensuring that current policies and procedures are in place and outlined for a staff member's reference should the need arise.

The ORC believes in the practice of cross-training and does extend cross-training and development opportunities to staff members in being proactive to develop and enhance the transferrable knowledge, skills and abilities of staff should they need to step-in and assist in another agency role. Generally speaking, the positions of the ORC are quite technical – therefore, certain staff members have cross-trained in specific areas to ensure that work will continue on all levels should the need arise. The ORC has witnessed practical success in implementing this plan with two of its' positions: the licensing specialist (served by investigators) and the administrative assistant (served by a veterinary technician).

Employees are also formally given information and feedback through an annual performance evaluation with their supervisor and at monthly all-staff meetings (attended by all ORC employees). Training materials and written information are shared with staff members who have schedule conflicts and cannot attend the staff meetings.

2. Volunteers

- The ORC has not in the past nor does it have plans during the 2015 - 2017 biennium to solicit individuals to work as volunteers for the agency. However, should this change, volunteers would be subject to the same rules, policies and procedures as paid staff and would be included in developmental opportunities as resources allow.

3. Contractors/Vendors

- The ORC does contract with providers such as laboratories to perform chemical testing on racing animals and humans as well as photo-finish and video services for the live race meets throughout the state. The agency, however, does not provide Affirmative Action training for those providers.
- It is the ORC's expectation the providers will advance the spirit and letter of equal employment opportunity laws, rules and regulations and affirmative action concepts and the right of all persons to work and advance on the basis of merit, ability, and potential. At the time of embarking upon a new contract, or renewing existing contracts, the Commission will ask contractors to sign a statement affirming that they are an equal opportunity employer and have affirmative action policies and procedures in place. The Oregon Department of Human Services' statement will be used as a model and modified for the Commission.
- The ORC has not in the past nor has plans during the 2015 - 2017 biennium to utilize vendors in the performance of its regulatory oversight of the racing industry.

D. Programs

The ORC has no specific Affirmative Action programs in place; however, the ORC appreciates the hiring difficulties experienced by minorities, people with disabilities and by many older persons;

and where appropriate, will set program goals to achieve the full and fair utilization of these persons in the work force. Some strategies that will be implemented include:

1. Commission Internship Programs

The ORC receives information from the Governor's Diversity, Inclusion and Affirmative Action Office as well other resources, regarding persons interested in serving as interns. During the coming biennium, the ORC will take proactive measures to develop internship programs for interested parties in the administrative, veterinary and other business areas. This project was presented to, and approved by, the ORC's Best Practices Sub-committee. When the program is developed, the ORC will provide an update to the Governor's Diversity, Inclusion and Affirmative Action Office addressing the program in more detail.

2. Community Outreach Program(s)

The ORC will actively work to create partnerships with other state agencies, culturally-specific associations, tribal nation liaisons and community non-profit organizations in order to gain insight and information to further train staff and share information about the agency and what it has to offer to potential candidates for future employment and internship opportunities. A calendar of events and meetings will be developed that ORC staff will be requested to attend.

Further, with regard to future position vacancies, the ORC will send postings to the Governor's Affirmative Action Office, professional, minority associations, college career centers and the culturally-specific publications throughout the state (such as the *Asian Reporter*, *El Hispanic News*, *The Skanner*, and *Smoke Signals*).

3. Diversity Awareness Program(s)

The ORC staff members participate in various events within and outside of the state system to enhance cultural awareness. The ORC is also fortunate in that our stakeholders and colleagues come from varied socio-economic and cultural backgrounds. The ORC celebrates the diversity of its colleagues and seeks to learn where it can improve services and information via a confidential survey; available in paper form and on the ORC's website for electronic submittal. The ORC will seek to further enhance or develop the following during the next reporting period:

- a. Self-evaluation:** The ORC will explore adding a question to its' existing client survey that addresses cultural competency and a welcoming environment.
- b. Education and training activities:** The ORC will send at least one representative to the Statewide and/or the YWCA Diversity Conference next year.
- c. Recruitment, retention and promotion of the agency's workforce:** The ORC has identified goals for community outreach that will address recruitment of a more diverse workforce.
- d. Multi-cultural education:** The ORC will further expand its' library of diversity resources available to staff and Commissioners and will create a more inviting area in which the materials can be read.
- e. Adoption of policies or practices to accommodate diverse needs:** The ORC will undergo a cultural competency planning process and set specific, measurable goals for the next biennium.
- f. Welcoming environment for existing employees:** The ORC will explore exhibiting art and information representing diverse groups within its work sites. At this time, the offices are "neutral" in nature.

E. Update: Executive Order 08-18

1. Cultural Competency Assessment and Implementation Services

The ORC will request a review of its cultural competency practices during the 2015 – 2017 biennium and will implement a plan.

2. Statewide Exit Interview Survey

The ORC will direct all employees leaving the agency's service to complete the Statewide Exit Interview Survey and will comply should an employee leave service. The Program and Administrative Coordinator will contact the ORC's Human Resource Manager at DAS to learn more about the survey in general, how to direct persons to the web-link and how to access feedback received so that it can be shared with the Executive Director and Commissioners to inform any necessary adaptations in policy or practice. To date, there have been no trends or findings from departing staff. The ORC is a small agency with low turnover.

3. Performance Evaluations of all Management Personnel

All management personnel of the ORC receive an annual performance evaluation which includes setting goals for their programs and their personal, professional growth during the upcoming review period. One key aspect of the evaluation process is to assess the manager's performance in assuring compliance with the agency's expectations, policies and procedures with regard to the agency's affirmative action objectives. Review of the affirmative action plan and policies are an integral part of the evaluation process. The employee's supervisor offers feedback regarding performance toward attaining affirmative action objectives for the manager's work group. If deficiencies are identified, the supervisor will set clear expectations regarding expected changes and will set a timeline for checking-in on progress made. The ORC staff are committed to success of the affirmative action objectives and, at this time of this report, no management staff have been found deficient in supporting and furthering attainment of the affirmative action plan's goals.

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

The ORC did not award any contracts to minority businesses from 2008 to the present. The ORC posts all competitive contracts on the state's ORPIN system to ensure that the pool of responders is as varied as possible and all qualified responders are given fair and equal consideration. As the contracts entered into by the ORC are technical in nature, the ORC must select vendors specializing in a given field; for example, a facility that can conduct necropsy exams on horses. Should minority companies enter into business in the various technical fields of the industry, the ORC would give them primary consideration.

III. ROLES FOR IMPLEMENTATION OF AFFIRMATIVE ACTION PLAN

The Board of Commissioners of the Oregon Racing Commission provides overall direction and resources to support the Affirmative Action Plan. The ORC Director and all Managers will foster and promote to employees the importance of a diverse workplace free from discrimination and harassment.

The ORC is committed to the use of Affirmative Action precepts in hiring employees and in making appointments to its membership. The ORC will continue its implementation of the Affirmative Action Plan by exercising impartial and unbiased evaluations of future applications and interviews for employment.

A. Responsibilities and Accountabilities

The Commission entrusts and delegates to the Executive Director the responsibility for implementation and adherence to the Affirmative Action goals to which the Commission is committed. The staff members listed in numbers 2 and 3 below are expected to assist the Executive Director in the implementation of, and adherence to, the agency Affirmative Action goals. Position descriptions for these staff members will be updated to reflect this expectation and, at a minimum, performance in this area will be addressed at the time of the employee's annual performance appraisal.

- 1. Director** – The ORC's Executive Director has overall responsibility for compliance with policy and achievement of the Affirmative Action goals to which the Commission is committed and will provide leadership to and monitor progress toward meeting goals in compliance with applicable federal and state laws, rules, regulations and executive orders. The Executive Director clearly states expectations regarding affirmative action goals (including attendance at relevant training and workshops) to managers and supervisors and check their progress informally throughout the year and formally during the time of their annual performance evaluation. The annual performance evaluation for the Executive Director will include evaluation of affirmative action efforts and accomplishments.
- 2. Managers and Supervisors** – It is the responsibility of managers and supervisors to implement the affirmative action goals of the ORC in their daily interactions with subordinates, licensees and patrons. Managers and Supervisors receive direction from the Executive Director regarding implementation of affirmative action goals and objectives and are evaluated on their progress. Position descriptions will be updated to reflect specific considerations and expectations of staff in these classifications in assisting the agency to achieve affirmative action objectives. Managers and supervisors are made aware of diversity meetings workshops and training available. During the upcoming reporting period, the ORC will add the expectation that each manager **must** attend at least one, formal diversity training per year. The Executive Director will also speak directly, and immediately, with any supervisor or manager that is found to be deficient in assisting the agency to make progress toward attaining the affirmative action goals and objectives of the agency. A specific work plan for improvement will be developed between the Executive Director and manger or supervisor in question.
- 3. Affirmative Action Representative** – The ORC's Program & Administrative Coordinator serves as the Affirmative Action Officer. The ORC's Affirmative Action Coordinator is responsible for:

- a. Developing and communicating agency policies and procedures related to AA/EEO and preparing and disseminating affirmative action information;
- b. Coordinating activities in concert with the Affirmative Action Plan and monitoring progress toward affirmative action goals;
- c. Identifying solutions to barriers preventing achievement of the ORC's Affirmative Action goals;
- d. Assuring that agency recruitments are conducted in compliance with AA/EEO goals;
- e. Applying the precepts of affirmative action in day-to-day work and in relations with fellow employees, job applicants, and the general public;
- f. Receiving and investigating or referring to the ORC discrimination complaints; and
- g. Attending equal opportunity, affirmative action, and diversity training in order to be informed of current affirmative action laws and issues and develop knowledge and skill for working with a diverse workforce.

Further, it is the role of the Affirmative Action Representative to work toward retention practices for existing staff that are based upon the affirmative action plan. The Affirmative Action Representative has established working relationships with Affirmative Action Officers at other public agencies (such as the Department of Environmental Quality and Tri-met) and discusses best practice and implementation strategies for creating a welcoming environment that will attract and retain persons of diverse backgrounds. The Affirmative Action Representative also receives information from local, state and national organizations on various AA/EEO policies and practices.

IV. July 1, 2012 - June 30, 2014

Goals and Strategies

The ORC committed to several Affirmative Action related goals for the period July 1, 2012 – June 30, 2014. The goals, and ORC’s progress, are summarized below:

1. Maintain the ORC’s commitment to Affirmative Action through the continued development and adherence to its Affirmative Action Plan.

Strategy

- Evaluate and revise policies and procedures as needed to promote the ORC’s commitment to affirmative action and equal employment opportunity
- Assertively recruit qualified persons with disabilities, minorities, women, and other protected classes for position/volunteer vacancies

Successes

- Policies are evaluated and revised as needed based upon information received from the Governor’s Affirmative Action Office regarding law and best practice.
- Two agency promotions, one from part-time seasonal position to Mutuels Auditor and one work out of class developmental opportunity resulting in the promotion of a women. These promotions filled the two vacancies the ORC had during this reporting period.

2. Continue dialogue among staff and commission members to foster understanding and support for the ORC’s commitment to Affirmative Action.

Strategy

- Increase staff and commission member knowledge and awareness of Affirmative Action through review and discussion of the Affirmative Action Plan
- Train and inform managers and employees as to their rights and responsibilities under the ORC’s Affirmative Action policy
- Make the complete Affirmative Action Plan available and accessible to all commission members, employees, and contractors

Successes

- The Program and Administrative Coordinator and the Administrative Assistant represent the ORC at the Governor’s D&I/AA/EEO meetings and share the information and lessons learned with all ORC staff
- The Commissioners review and approve the Affirmative Action plan
- Staff members have access to the plan and understand their responsibilities regarding the policies and practices detailed therein

3. Assist the Governor’s Office in improving recruitment methods in order to increase ethnic diversity among Commission members

Strategy

- Recommend qualified women, minority, and disabled candidates to the Governor’s Office for Commissioner vacancies

Success

- The Commissioner vacancy during this reporting period was filled by a Latino male.

4. Increase knowledge and skills of the ORC's management staff in applying Affirmative Action and EEO principles and in promoting a diverse workforce environment.

Strategy

- Ensure that managers understand the ORC's D&I/AA/EEO goals and responsibilities and assert their role in achieving these goals
- Support managers' attendance at equal opportunity, affirmative action, and other diversity-related activities or training activities
- Maintain management performance appraisal reviews used to evaluate managers on their effectiveness in achieving affirmative action objectives

Successes

- The management team and staff are made aware of affirmative action training and diversity events; both state-sponsored and outside of the state system
- Managers understand their responsibilities in carrying out the ORC's affirmative action plan

Progress Made or Lost Since the Last Biennium

a. Summary of Protected Classes

- Number of employees in a protected class: The number of protected classes represented among ORC staff has not changed since the last reporting period.
- Number of people in a protected class promoted: The ORC promoted one staff member from a protected class during this reporting period.
- Job Announcements to Governor's Affirmative Action Office: All recruitments will be forwarded to the Governor's Affirmative Action Office.

Steps to improve retention or promotion of persons in a protected class: The Affirmative Action Representative will work with the Executive Director to develop retention and promotion strategies and will seek examples of best practices used by colleagues.

b. Comprehensive Retention Strategy

- The Affirmative Action Representative will work with the Executive Director to develop a retention strategy during this reporting period and will seek examples of best practices used by colleagues.

c. Commission Strengths and Challenges

- **Strengths:**
 - Low, overall agency turnover;
 - Committed and energetic staff who are interested and willing to assist the agency in achieving its goals;
 - Excellent relationships with agency stakeholders; and
 - Strong, intelligent and decisive agency leadership with a good vision of the future for the agency and workforce development.

- **Challenges:**

- No comprehensive cultural competency standards and diversity programs;
- Need to develop partnerships for community outreach; and
- Need to develop a strong and comprehensive recruitment and retention strategy.

During the course of the last biennium, the ORC has remained committed to maintaining and enhancing a diverse workforce. Ultimately, our goal is to achieve or exceed parity in all employment categories. The ORC will continue to attend Affirmative Action Workshops and utilize the tools and information gained from those training sessions in its recruitment and outreach practices as vacancies occur.

Please see the spreadsheets that follow for specific detail regarding changes over the last biennium.

**Oregon Racing Commission
EEO Information 2014**

Job Titles	EEO Category	Job Group	Total Employees	Males								Females								
				Asian/Pacific Islander	Caucasian/White	Black/African American	% Black/African American	Hispanic	% Hispanic	Native American	% Native American	Total	Asian/Pacific Islander	Caucasian/White	Black/African American	% Black/African American	Hispanic	% Hispanic	Native American	% Native American
PE/MANAGER E	A	02	1	0	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
PE/MANAGER D	A	02	2	0	1	0	0	0	0	0	0	0	0	0	0	1	0	0	0	0
PE/MANAGER C	A	01	3	0	2	0	0	0	0	0	0	0	0	0	0	1	0	0	0	0
INVESTIGATOR 2	B	11	2	0	1	0	0	0	0	0	0	0	0	0	0	1	0	0	0	0
PROGRAM ANALYST 2	B	16	1	0	0	0	0	0	0	0	0	0	0	0	0	1	0	0	0	0
OFFICE SPECIALIST 1	F	00	1	0	0	0	0	0	0	0	0	0	0	0	0	1	0	0	0	0
ADMINISTRATIVE SPECIALIST 2	F	00	1	0	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
OFFICE SPECIALIST 2	F	00	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
RACING WORKER	H	00	2	0	0	0	0	0	0	0	0	0	0	0	2	0	0	0	0	0
Agency Total			13	-	6	-	-	-	-	-	-	-	-	-	7	-	-	-	-	-

Oregon Racing Commission EEO Information 2013				Males								Females										
Job Titles	EEO Category	Job Group	Total Employees	Asian/Pacific Islander	Caucasian/White	Black/African American	% Black/African American	Hispanic	% Hispanic	Native American	% Native American	Total	Asian/Pacific Islander	Caucasian/White	Black/African American	% Black/African American	Hispanic	% Hispanic	Native American	% Native American	Total	
PE/MANAGER E	A	02	1	0	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
PE/MANAGER D	A	02	2	0	1	0	0	0	0	0	0	0	0	1	0	0	0	0	0	0	0	0
PE/MANAGER D	A	01	1	0	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
PE/MANAGER C	A	01	3	0	2	0	0	0	0	0	0	0	0	1	0	0	0	0	0	0	0	0
INVESTIGATOR 2	B	11	2	0	1	0	0	0	0	0	0	0	0	1	0	0	0	0	0	0	0	0
PROGRAM ANALYST 2	B	16	1	0	0	0	0	0	0	0	0	0	0	1	0	0	0	0	0	0	0	0
INFO SYSTEM SPECIALIST 1	C	04	1	0	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
ADMINISTRATIVE SPECIALIST 2	F	00	1	0	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
OFFICE SPECIALIST 2	F	00	0	0	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
RACING WORKER	H	00	2	0	0	0	0	0	0	0	0	0	0	2	0	0	0	0	0	0	0	0
Agency Total			14	-	9	-	-	-	-	-	-	-	-	6	-	-	-	-	-	-	-	-

Oregon Racing Commission EEO Disability Information 2014			Males					Females							
Job Titles	EEO Category	Job Group	Total Employees	Caucasian/White	Asian/Pacific Islander	Black/African American	Hispanic	Native American	Total	Caucasian/White	Asian/Pacific Islander	Black/African American	Hispanic	Native American	Total
PE/MANAGER E	A	02	1	0	0	0	0	0	0	0	0	0	0	0	0
PE/MANAGER D	A	02	2	0	0	0	0	0	0	0	0	0	0	0	0
PE/MANAGER D	A	02	1												
PE/MANAGER C	A	01	2	0	0	0	0	0	0	1	0	0	0	0	0
INVESTIGATOR 2	B	11	2	0	0	0	0	0	0	0	0	0	0	0	0
PROGRAM ANALYST 2	B	16	1	0	0	0	0	0	0	1	0	0	0	0	0
OFFICE SPECIALIST 1	F	00	1	0	0	0	0	0	0	0	0	0	0	0	0
ADMINISTRATIVE SPECIALIST 2	F	00	1	0	0	0	0	0	0	0	0	0	0	0	0
OFFICE SPECIALIST 2	F	00	0	0	0	0	0	0	0	0	0	0	0	0	0
RACING WORKER	H	00	2	0	0	0	0	0	0	0	0	0	0	0	0
Agency Total			13	-	-	-	-	-	-	2	-	-	-	-	-

Oregon Racing Commission EEO Disability Information 2013			Males					Females							
Job Titles	EEO Category	Job Group	Total Employees	Caucasian/White	Asian/Pacific Islander	Black/African American	Hispanic	Native American	Total	Caucasian/White	Asian/Pacific Islander	Black/African American	Hispanic	Native American	Total
PE/MANAGER E	A	02	1	0	0	0	0	0	0	0	0	0	0	0	0
PE/MANAGER D	A	02	2	0	0	0	0	0	0	0	0	0	0	0	0
PE/MANAGER D	A	01	1	0	0	0	0	0	0	0	0	0	0	0	0
PE/MANAGER C	A	01	3	0	0	0	0	0	0	0	0	0	0	0	0
INVESTIGATOR 2	B	11	2	0	0	0	0	0	0	0	0	0	0	0	0
PROGRAM ANALYST 2	B	16	1	0	0	0	0	0	0	1	0	0	0	0	0
INFO SYSTEM SPECIALIST 1	C	04	0	0	0	0	0	0	0	0	0	0	0	0	0
ADMINISTRATIVE SPECIALIST 2	F	00	1	0	0	0	0	0	0	0	0	0	0	0	0
OFFICE SPECIALIST 2	F	00	1	0	0	0	0	0	0	0	0	0	0	0	0
RACING WORKER	H	00	2	0	0	0	0	0	0	0	0	0	0	0	0
Agency Total			14	-	-	-	-	-	-	1	-	-	-	-	-

Goals and Strategies

In the 2015 – 2017 biennium, the ORC will pursue the following goals and strategies:

- 1. Maintain the ORC’s commitment to affirmative action through the continued development and adherence to its Affirmative Action Plan.**

Strategies

- Evaluate and revise policies and procedures as needed to promote the ORC’s commitment to affirmative action and equal employment opportunity
- Assertively recruit qualified persons with disabilities, minorities, women, and other protected classes for position/volunteer vacancies
- Build relationships with schools, local ethnic associations and non-profit organizations (such as the Immigrant and Refugee Community Organization (IRCO) and Russian Oregon Support Services (EMO-ROSS))
- Where able, promote qualified, protected-class staff members when a vacancy occurs
- Agency Affirmative Action Representative will research and attend statewide job fairs/trade shows or will send information regarding the Commission (with contact information) to be displayed at the events
- Work with human resource professionals in other state agencies to solicit ideas and information regarding a welcoming environment and a welcoming work environment

- 2. Continue dialogue among staff and commission members to foster understanding and support for the ORC’s commitment to Affirmative Action.**

Strategies

- Increase staff and commission member knowledge and awareness of affirmative action through review and discussion of the Affirmative Action Plan
- Train and inform managers and employees as to their rights and responsibilities under the Commission’s Affirmative Action policy. Refer staff to resources and tools they can utilize to hone their skills and assist the ORC in being successful with its objectives
- Make the complete Affirmative Action Plan available and accessible to all commission members, employees, and contractors

- 3. Assist the Governor’s Office to increase diversity among Commission board members.**

Strategy

- Recommend qualified women, minority, and disabled candidates to the Governor’s Office for commissioner vacancies

- 4. Increase knowledge and skills of the ORC's management staff in applying Affirmative Action and EEO principles and in promoting a diverse workforce environment.**

Strategies

- Ensure that managers understand the ORC’s affirmative action goals and responsibilities and assert their role in achieving these goals
- Support managers’ attendance at equal opportunity, affirmative action, and other diversity-related activities or training activities

- Maintain management performance appraisal reviews used to evaluate managers on their effectiveness in achieving affirmative action objective
- Assist managers and supervisors to further develop mentorship programs. Document expectations of the mentor and provide a statement regarding what the mentee can expect to gain from the process to include:
 - Planned and unexpected reassignment (temporary and permanent) and support, resources and training for staff in these circumstances

APPENDIX A

ADA AND REASONABLE ACCOMODATION GUIDELINES AND PRACTICES

Applicability

While the Commission has not adopted a formal policy regarding ADA and reasonable accommodation, it has been the practice of the Commission that these guidelines and expectations apply to all applicants, commission members, employees, and contractors of the Commission.

Definitions

Reasonable Accommodation

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

Person With a Disability

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

Undue Hardship

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

ADA Coordinator

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

Guidelines and Practices

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

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

In compliance with ADA guidelines, the Commission will provide special materials, services or assistance to individuals with a disability upon sufficient notice to the Commission office.

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

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

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

DISCRIMINATION AND HARASSMENT FREE WORKPLACE

Statewide Policy 50.010.01

Date: Jan 2008

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

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

APPLICABILITY: All employees, state temporary employees and volunteers.

ATTACHMENTS: None

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

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

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

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

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

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

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

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

Protected Class Under Federal Law: Race; color; national origin; sex (includes pregnancy related conditions); religion; age (40 and older); disability; a person who uses leave covered by the Federal Family and Medical Leave Act; a person who uses Military Leave; a person who associates with a protected class; a person who opposes unlawful employment practices, files a complaint or testifies about violations or possible violations; and any other protected class as defined by federal law. Protected Class Under Oregon State Law: All Federally protected classes, plus: age (18 and older); physical or mental disability; injured worker; a person who uses leave covered by the Oregon Family Leave Act; marital status; family relationship; sexual orientation; whistleblower; expunged juvenile record; and any other protected class as defined by state law.

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

- 1) Submission to such conduct is made either explicitly or implicitly a term or condition of the individual's employment, or is used as a basis for any employment decision (granting leave requests, promotion, favorable performance appraisal, etc.); or
- 2) Such conduct is unwelcome, unwanted or offensive and has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile or offensive working environment. Examples of sexual harassment include but are not limited to: unwelcome, unwanted, or offensive touching or physical contact of a sexual nature, such as, closeness, impeding or blocking movement, assaulting or pinching; gestures; innuendoes; teasing, jokes, and other sexual talk; intimate inquiries; persistent unwanted courting; sexist put-downs or insults; epithets; slurs; or derogatory comments.

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

Workplace Harassment: Unwelcome, unwanted or offensive conduct based on or because of an employee's protected class status. Harassment may occur between a manager/supervisor and a subordinate, between employees, and among non-employees who have business contact with employees. A complainant does not have to be the person harassed, but could be a person affected by the offensive conduct. Examples of harassing behavior include, but are not limited to, derogatory remarks, slurs and jokes about a person's protected class status.

POLICY:

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

(a) Discrimination, Workplace Harassment and Sexual Harassment. The State of Oregon provides a work environment free from unlawful discrimination or workplace harassment based on or because of an employee's protected class status. Additionally, the state of Oregon provides a work environment free from sexual harassment. Employees at every level of the organization, including state temporary employees and volunteers, must conduct themselves in a business-like and

professional manner at all times and not engage in any form of discrimination, workplace harassment or sexual harassment.

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

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

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

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

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

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

(ii) the name of the complainant;

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

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

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

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

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

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

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

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

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

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

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

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

- (F) The agency, board or commission will notify the complainant and the accused when the investigation is concluded.
- (G) Immediate and appropriate action will be taken if a complaint is substantiated.
- (H) The agency, board or commission will inform the complainant if any part of a complaint is substantiated and that action has been taken. The complainant will not be given the specifics of the action.
- (I) The complainant and the accused will be notified by the agency, board or commission if a complaint is not substantiated.
- (g) Penalties. Conduct in violation of this policy will not be tolerated.
- (A) Employees engaging in conduct in violation of this policy may be subject to disciplinary action up to and including dismissal.
- (B) State temporary employees and volunteers who engage in conduct in violation of this policy may be subject to termination of their working or volunteer relationship with the agency, board or commission.
- (C) An agency, board or commission may be liable for discrimination, workplace harassment or sexual harassment if it knows of or should know of conduct in violation of this policy and fails to take prompt, appropriate action.
- (D) Managers and supervisors who know or should know of conduct in violation of this policy and who fail to report such behavior or fail to take prompt, appropriate action may be subject to disciplinary action up to and including dismissal.
- (E) An employee who engages in harassment of other employees while away from the workplace and outside of working hours may be subject to the provisions of this policy if that conduct has a negative impact on the work environment and/or working relationships.
- (F) If a complaint involves the conduct of a contracted employee or a contractor, the agency, board, or commission Human Resource section, Executive Director, chair, or designee must inform the contractor of the problem behavior and require prompt, appropriate action.
- (G) If a complaint involves the conduct of a client, customer, or visitor, the agency, board or commission should follow its own internal procedures and take prompt, appropriate action.
- (h) Retaliation. This policy prohibits retaliation against employees who file a complaint, participate in an investigation, or report observing discrimination, workplace harassment or sexual harassment.
- (A) Employees who believe they have been retaliated against because they filed a complaint, participated in an investigation, or reported observing discrimination, workplace harassment or sexual harassment, should report this behavior to the employee's supervisor, another manager, the Human Resource section, the Executive Director, or the chair, as applicable. Complaints of retaliation will be investigated promptly.
- (B) Employees who violate this policy by retaliating against others may be subject to disciplinary action, up to and including dismissal.
- (C) State temporary employees and volunteers who retaliate against others may be subject to termination of their working or volunteer relationship with the agency, board or commission.
- (i) Policy Notification. All employees including state temporary employees and volunteers shall:
 - (A) be given a copy or the location of Statewide Policy 50.010.01, Discrimination and Harassment Free Workplace;
 - (B) be given directions to read the policy;
 - (C) be provided an opportunity to ask questions and have their questions answered; and
 - (D) sign an acknowledgement indicating the employee read the policy and had the opportunity to ask questions.
- (i) Signed acknowledgements are kept on file at the agency, board or commission.

- (1) Performance Measure: Percent of employees informed of Policy 50.010.01, prohibited behavior and reporting procedures. Performance Standard: 100%
- (2) Performance Measure: Percent of complaints where prompt, appropriate action is taken following investigation of a substantiated complaint. Performance Standard: 100%

Discrimination Complaint Form

Date of File: _____ Date Received by Agency: _____

**To initiate a charge of discrimination or harassment,
this form must be filed within one year or 365 working days of the alleged violation.**

1. Complainant's Name: _____
Address: _____
City: _____ State: _____ Zip Code: _____
Home Telephone: _____ Business Telephone: _____

2. Agency and/or individual that you believe committed the act(s) of discrimination:
Agency: _____ Department: _____
Individual: _____ Title: _____

3. Complainant was discriminated against because of (check all categories in "A" through "I" that apply to the act(s) of discrimination):

- a. Age (Please indicate your age.) _____
- b. Disability (Specify the name of your disability and/or provide a brief description of its symptoms.)

- c. Familial Status
- d. Genetic
- e. Marital Status
- f. National Origin (Please indicate your national origin.)

- g. Political Affiliation (Please indicate your affiliation.)

- h. Race/Color (Please check the racial or ethnic group with which you identify.)
- i. **American-Indian or Alaskan Native:** All persons having origins in any of the original peoples of North America, and who maintain cultural identification through tribal affiliation or community recognition.
 - ii. **Asian:** All persons having origins in any of the original people of the Far East, Southeast Asia or the Indian subcontinent. This area includes, for example, China, Japan and Korea.
 - iii. **Black or African-American:** All persons having origins in any of the black ethnic groups.
 - iv. **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.
 - v. **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.
 - vi. **White (not of Hispanic origin):** All persons having origins in any of the original peoples of Europe, North Africa or the Middle East.
 - vii. **Two or More Races:** All persons claiming origins in more than one of the above racial/ethnic categories.

i. Religion (Please indicate your religion or religious beliefs.)

j. Retaliation

k. Sexual Harassment

l. Sexual Orientation

m. Veteran's Status

4. When did the act(s) of discrimination occur? _____

Date(s)

5. Briefly describe the act(s) of discrimination:

(Please include names, telephone numbers, and job titles of all persons involved in the discriminatory acts you describe.)

(Additional sheets may be attached)

6. What relief are you seeking? _____

7. Have you filed a grievance concerning this matter? Yes _____ No _____
If "yes," please provide a copy of the grievance form and all associated documents. Briefly explain the status of the grievance.

8. Has this complaint been filed with any other Federal, State, or local investigative agency?
Yes _____ No _____ If "Yes," complete "A-C" below.
a. Agency: _____ Contact Person: _____
b. Address: _____
City: _____ State: _____ Zip Code: _____
c. Phone Telephone: _____ Date Filed: _____

9. Have you filed a lawsuit concerning this complaint in Federal or State court?
Yes _____ No _____ If "Yes," complete "A and B" below.
a. Name of Court: _____
b. Case Docket Number: _____

I affirm that the information I'm submitting is true to the best of my knowledge and belief.

Signature: _____ Date: _____

Filing with this office does not preclude you from filing with the Governor's Affirmative Action Office, Federal Equal Employment Opportunity (EEOC) or Bureau of Labor and Industries (BOLI) or other federal or state agencies.

**MAINTAINING A PROFESSIONAL WORKPLACE
POLICY 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.

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.

EMPLOYEE TRAINING AND EDUCATION GUIDELINES AND PRACTICES

Applicability

While the Commission has not adopted a formal policy regarding employee training and education, these guidelines apply to all employees of the Commission.

Definitions

Elective Training Means training an employee voluntarily takes to enhance or improve the effectiveness of employee performance in the current position.

Mandated Training Means training required by law, regulation, or to maintain a license or certificate required by the position.

Required Training Means training required by the Commission, such as new employee orientation, or to update or to add skills as the job evolves, or to increase employee awareness of legal or policy issues (e.g., ADA, sexual harassment, etc.)

Guidelines and Practices

It is the practice of the Commission to provide resources for employees to encourage their career development in state service, as is reasonably practicable to do. The Commission remains committed to maintaining a team-based organization with a positive work environment through equitable employee training and development opportunities. To accomplish this mission, the Commission may provide opportunities for training to employees for developing proficiency, enhancing skills and encouraging development in areas for potential advancement.

All staff shall be eligible for mandated and required training. Only permanent staff shall be eligible for elective training. The selection of an employee to attend training shall follow equal opportunity guidelines. Any employee may request training and be considered for approval with determinations made on a case-by-case basis. Approval for training and partial or full support of training is a management decision by the Executive Director.

Approval Criteria for Training and Education requests:

- Availability of budgeted funds;
- Alignment with agency and position priorities and goals;
- Ability to meet operating requirements while employee attends training;
- Training is needed to improve effectiveness in the employee's present job;
- Training is needed because of changes and/or additions to the employees job duties;
- Training is part of established career development goals that will benefit the agency.

VETERANS PREFERENCE IN EMPLOYMENT

Department of Administrative Services, Human Resource Services Division

Division 40

Filling Positions 105-040-0001

Equal Employment Opportunity and Affirmative Action

- (1) The State of Oregon is committed to achieving a workforce that represents the diversity of the Oregon community and being a leader in providing its citizens with fair and equal employment opportunities. Accordingly:
 - (a) State agency heads shall insure:
 - (A) Equal employment opportunities are afforded to all applicants and employees by making employment related decisions that are non-discriminatory;
 - (B) Employment practices are consistent with the state's Affirmative Action Plan and state and federal laws to:
 - (i) Promote good faith efforts to achieve established affirmative action goals, which include persons with disabilities; and
 - (ii) Take proactive steps to develop diverse applicant pools for position vacancies and assess the diversity of each applicant pool prior to closing a job announcement.
 - (b) The Department of Administrative Services shall:
 - (A) Maintain an automated affirmative action tracking system which uses a uniform methodology for communicating affirmative action goals for each state agency. The system shall also communicate goals for hiring persons with disabilities as required by state and federal law;
 - (B) Produce periodic reports showing hiring opportunities and each agency's progress toward achieving established affirmative action goals as identified in the state wide automated system.
 - (c) Persons, who believe they have been subjected to discrimination by an agency in violation of this rule, may file a complaint with the agency's designated office within 30 calendar days of the alleged act or upon knowledge of the occurrence.
- (2) Employment related decisions include, but are not limited to: hiring, promotion, demotion, transfer, termination, layoff, training, compensation, benefits, and performance evaluations;
- (3) Diverse applicant pools are developed by using proactive steps in outreach strategies which generally include targeted newspapers, professional organizations, employee networks, community organizations, and resume banks;

- (4) The statewide automated affirmative action system establishes goals for each equal employment opportunity category and ethnic group for each state agency;
- (5) Nothing in this rule precludes any person from filing a formal complaint in accordance with a collective bargaining agreement, or with appropriate state or federal agency under the applicable law.

Stat. Auth.: ORS 184.340, ORS 240.145 & ORS 240.250

Stats. Implemented: ORS 240.306 & ORS 243.305

Hist.: PD 2-1994, f. & cert. ef. 8-1-94; HRSD 11-2003, f. 7-15-03, cert. ef. 7-21-03

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 policies 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.

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. 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 may 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 may 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.

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.

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.

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 Age Discrimination Fact Sheet

SEE ALSO: Facts About Age Discrimination FSE/9 Filing a Charge of Discrimination
<http://www.eeoc.gov/eeoc/publications/age.cfm> and <http://www.eeoc.gov/employees/charge.cfm>.

This document was last modified on December 28, 2009.

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Disability Discrimination

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

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

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

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

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

Disability Discrimination & Work Situations

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

Disability Discrimination & Harassment

It is illegal to harass an applicant or employee because he has a disability, had a disability in the past, or is believed to have a physical or mental impairment that is not transitory (lasting or expected to last six months or less) and minor (even if he does not have such an impairment).

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

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

Disability Discrimination & Reasonable Accommodation

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

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

Reasonable accommodation might include, for example, making the workplace accessible for wheelchair users or providing a reader or interpreter for someone who is blind or hearing impaired. While the federal anti-discrimination laws don't require an employer to accommodate an employee who must care for a disabled family member, the Family and Medical Leave Act (FMLA) may require an employer to take such steps. The Department of Labor enforces the FMLA. For more information, call: 1-866-487-9243.

Disability Discrimination & Reasonable Accommodation & Undue Hardship

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

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

Definition of Disability

Not everyone with a medical condition is protected by the law. In order to be protected, a person must be qualified for the job and have a disability as defined by the law. A person can show that he or she has a disability in one of three ways:

- A person may be disabled if he or she has a physical or mental condition that substantially limits a major life activity (such as walking, talking, seeing, hearing, or learning);
- A person may be disabled if he or she has a history of a disability (such as cancer that is in remission); or
- 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 there from 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 there under. 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 20

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.

U.S. Equal Employment Opportunity Commission
Equal Pay and Compensation Discrimination Fact Sheet

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.

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.

This document was last modified on April 1, 2010.

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.

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), or 1-800-362-2735 (TTY for employers), or <http://www.usdoj.gov/crt/osc>.

**U.S. Equal Employment Opportunity Commission
National Origin Discrimination Fact Sheet**

SEE ALSO: Facts About National Origin Discrimination FSE/1 Filing a Charge of Discrimination
<http://www.eeoc.gov/eeoc/publications/index.cfm> and <http://www.eeoc.gov/employees/charge.cfm>

This document was last modified on March 30, 2010.

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/allofr/ESA/Title_29/Part_825/29CFR825.110.htm.)

U.S. Equal Employment Opportunity Commission
Pregnancy Discrimination Fact Sheet

SEE ALSO: Facts About Pregnancy Discrimination Filing a Charge of Discrimination
<http://www.eeoc.gov/eeoc/publications/index.cfm> and <http://www.eeoc.gov/employees/charge.cfm>
This document was last modified on March 31, 2010

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.

This document was last modified on March 31, 2010.

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
Religious Discrimination Fact Sheet

SEE ALSO: Facts About Religious Discrimination FSE/3 Filing a Charge of Discrimination
<http://www.eeoc.gov/eeoc/publications/index.cfm> and <http://www.eeoc.gov/employees/charge.cfm>

This document was last modified on April 1, 2010.

Religious Discrimination

Title VII of the Civil Rights Act of 1964 prohibits employers from discriminating against individuals because of their religion in hiring, firing, and other terms and conditions of employment. 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 1605). 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.

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
Sexual Harassment Fact Sheet

SEE ALSO: Facts About Sexual Harassment FSE/4 Filing a Charge of Discrimination
<http://www.eeoc.gov/facts/fs-sex.html> and <http://www.eeoc.gov/employees/charge.cfm>

This document was last modified on December 14, 2009.

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.