

2015-17 AFFIRMATIVE ACTION AND DIVERSITY/INCLUSION PLAN

Higher Education Coordinating Commission
Ben Cannon, Executive Director



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2015-17 Affirmative Action and Diversity/Inclusion Plan

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December 30, 2014

Mr. Frank Garcia
Governor's Office
Director of Affirmative Action/Diversity & Inclusion
255 Capitol Street, NE
Salem, OR 97301

Dear Director Garcia:

As Executive Director of the Higher Education Coordinating Commission agency, I am pleased to submit our first Affirmative Action/Diversity & Inclusion Plan for the 2015-17 biennium. This is a culminating and collaborative effort from between our new agency, the Department of Community Colleges & Workforce Development and the Office of Student Access & Completion.

The Equity Lens, as adopted by the Oregon Education Investment Board and subsequently the HECC, is a focal point of our work, both internally and externally. Throughout our organization, we hold high expectations to contribute to the access, growth and success of *all* individuals and stakeholders we are privileged to work alongside and serve.

You have my continuing commitment to promote best practices in the support of equal opportunity employment and to solicit the engagement of underutilized and historically underrepresented individuals and communities.

Should questions or clarifications arise regarding our plan, please contact myself or our Chief of Staff, Cheryl Myers at (503)947-5982.

With sincere regards,

A handwritten signature in black ink, appearing to read "Ben Cannon", written in a cursive style.

Ben Cannon, Executive Director

I. AGENCY DESCRIPTION

a. Mission

The Higher Education Coordinating Commission (HECC) has adopted as its mission the achievement of the state's statutory target of having 40 percent of adult Oregonians with a four-year degree or better and another 40 percent with a two-year degree or postsecondary certificate by the year 2025.

About the HECC

In 2011, the Oregon Legislature established "40-40-20" as the State's goal for educational attainment in Oregon, recognizing the importance of higher education as a target for enabling individual opportunity and achieving societal success in an increasingly knowledge-based global economy. The State's 40-40-20 goal commits to a future in which all Oregonians will complete their education and gain the ability to contribute to our society and economy. The HECC is responsible for overseeing pathways to postsecondary success from the point at which students complete their secondary educations through their learning, training and mastering of skills in college and career training programs.

Oregon enacted significant higher education governance reform in recent years, providing increased autonomy to public universities while establishing the HECC as a statewide postsecondary coordinating and funding commission. Originally chartered by the Legislature in 2011, the HECC coordinates postsecondary education in Oregon for hundreds of thousands of students enrolled in the state's seven public universities and the Oregon Health & Science University, 17 public community colleges, 67 private colleges and universities, and 220 licensed private career and trade schools.

The Commission is a 14-member, Governor-appointed volunteer commission, and supported by an executive director, who oversees Community Colleges & Workforce Development (CCWD), Office of Student Access & Completion (OSAC) and HECC staff in supporting the Commission's mission.

The HECC agency includes the Private Career Schools office which licenses career schools and provides educational leadership and support to over 235 private career schools in Oregon; the Office of Degree Authorization, responsible for approval of academic programs for all degree-granting private postsecondary institutions in the state; and the Veterans Education unit. The HECC's goal is to build accessible and affordable pathways to opportunity and success for Oregonians, including historically underserved populations that can be sustained by innovative and high-performing public and private institutions of postsecondary education throughout the state.

It is anticipated that the HECC, CCWD and OSAC will become one agency under the HECC as of July 1, 2015 and the myriad of needed procedures for integration is underway. The HECC's Strategic Plan is an action plan toward the State's visionary 40-40-20 goals, focused on four key functions 1) to broaden the pathways to the 40-40-20 goals, 2) to make the pathways accessible, affordable and supportive for students, 3) to steer the higher education enterprise, and 4) to cheer the promotion of college completion and career readiness.

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b. Contact Information: Agency Director

Ben Cannon, Executive Director
 755 Court Street, NE
 Salem, Oregon 97301
 (503)378-5690 ♦ www.oregon.gov/HigherEd

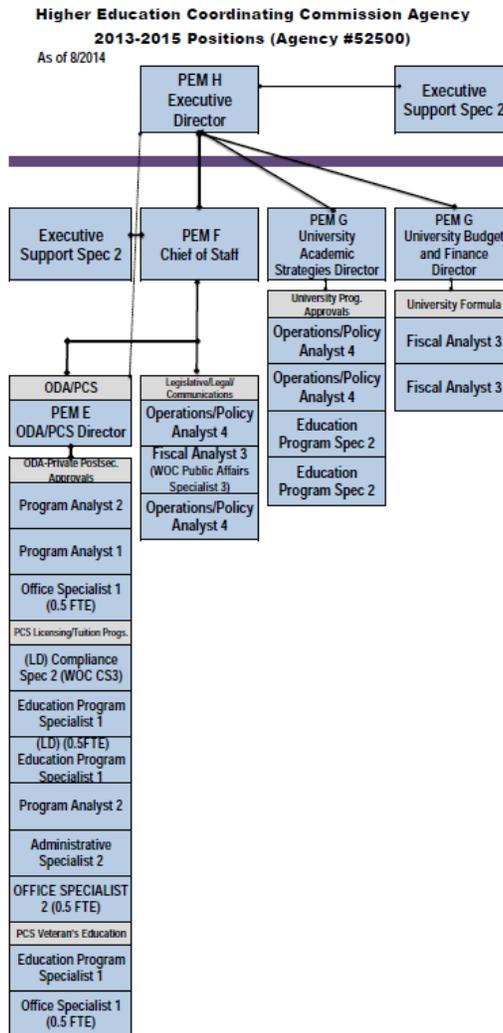
c. Contact Information: Agency's Governor's Policy Advisor

Dani Ledezma, Education Policy Advisor
 (503)378-3072 dani.ledezma@oregon.gov
 Agnes Balassa, Workforce Policy Advisor
 (503)986-2433 agnes.balassa@oregon.gov

d. Contact Information: Agency's Affirmative Action Officer

Cheryl Myers, Chief of Staff
 (503)947-5982 cheryl.L.myers@state.or.us

e. Organizational Chart



II. AFFIRMATIVE ACTION AND DIVERSITY/INCLUSION PLAN

a. Agency Affirmative Action Statement

This statement applies to all HECC staff and all matters relating to hiring, firing, promotion, benefits, compensation, and other terms and conditions of employment.

Affirmative Action Statement

The HECC supports 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.

The HECC strives to achieve equal employment opportunity and affirmative action objectives through the recruitment, employment and advancement of a diverse workforce, including women, minorities and the disabled. The Commission and agency will not tolerate any form of discrimination or harassment and endeavors to maintain a tolerant and respectful work environment free of hostility or unwelcome behavior.

The HECC is committed to providing, through a program of affirmative action, equal access to programs and services and fair and equal opportunities for employment. In administering its program, commission members and staff will not discriminate against any person who is a current or potential user of its services on the basis of race, color, ancestry, gender, national origin, age, family or marital status, sexual orientation, political or religious affiliation, veteran status, physical or mental disability.

An individual who has interviewed for employment, who believes they were denied employment based on any of the aforementioned discriminatory factors, may review the employment decision with the Commission, by contacting the HECC’s Affirmative Action Representative (contact information listed previously). If the concern is not resolved to the individual’s satisfaction, they may contact the Equal Employment Opportunity Commission, Seattle District Office – 909 First Avenue, Suite 400, Seattle, WA 98104-1061.

As part of the annual performance evaluation, the Commission’s Executive Director will be evaluated, in part, on efforts to promote the equal employment opportunity and affirmative action objectives of the agency.

The Commission will post a current copy of the Affirmative Action and Equal Employment Opportunity Statement in its staff break room and on the Commission’s website for public access.

b. Agency Diversity/Inclusion Statement

The HECC is committed to establishing, monitoring, and maintaining a work environment where all employees are valued, treated fairly, and given opportunities to develop and grow to their full potential. Every employee plays a part in our diverse workforce and inclusive work environment by being respectful and supportive, and by acting with integrity toward one another. Each person's skills, talents, knowledge, experiences, and personalities broaden the range of perspectives in and approaches to conducting the work we do at the HECC.



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The HECC can best promote excellence by intentionally recruiting, retaining, and accommodating a diverse group of staff in an environment of respect that is supportive of their workplace success. This climate of diversity, inclusion and excellence is critical to successfully contributing leadership and resources to increase the skills, knowledge and career opportunities of Oregonians.

c. Training, Education and Developmental Plan (TEDP)

At the HECC, [State Policy 50.045.01, Employee Development and Implementation of Oregon Benchmarks for Workforce Development](#) is used to promote employee career growth.

The HECC actively strives to provide promotional opportunities that either use existing skills in a different setting or support employees in the acquisition of new skills, be it through formal classroom training, job rotations, various work projects or experiences, and educational or continuing education opportunities. All employees receive formal, annual performance evaluations.



i. *Staff*

- The Affirmative Action Plan including the agency's AA Statement is posted on the agency website's home page.
- Training opportunity access is available to all staff per the Statewide Employee Development and Implementation of Oregon Benchmarks for Workforce Development Policy (50.045.01).
- The HECC New Employee Orientation is provided within the first week of employment to new employees along with staff to guide them through their first days of employment and to answer any questions.

ii. *Volunteers*

ASPIRE provides cultural sensitivity, disability awareness, and inclusiveness training to more than 1,500 volunteers to serve as mentors to roughly 9,300 individuals annually.

iii. *Contractors/Vendors*

The HECC does not currently provide vendor diversity training.

d. Programs

i. *Internship/Fellows*

- **Formal:** While the HECC does not currently have a formal internship program, a keen interest exists and this initiative is being actively explored. In the previous biennium OSAC worked with one intern and up to 24 college work-study students each year. OSAC will continue to contact local colleges and universities to recruit interns who would like to work for academic credits. The project's assignments will be designed to relate to interns' educational and career goals. OSAC will continue to participate in college Work-Study programs.
- **Informal:** As vacancies or opportunities arise, all interns will be encouraged to apply for any position openings they may be qualified for. HECC will strive to maintain contact with interns and intern candidates for ongoing opportunities and community outreach communication.

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ii. *Community Outreach Programs*

Community outreach programs discussions are underway at the HECC. Informal community involvement activities have included:

- Numerous staff have presented at community college and university conferences as well as multi-cultural community events.
- Invitations are regularly extended to attend diversity community events, such as Say Hey, Networkin' It, etc. and as budget allows, sponsorship opportunities are strongly considered.
- In the summer of 2014, the agency engaged an Oregon Hatfield Fellow who conducted a statewide research project to survey underrepresented minority students and local community-based organizations. The subsequent report was met with strong interest from the commission and further efforts are underway to build upon the initial findings.
- OSAC partners with numerous community and professional groups throughout the state to deliver its access and financial assistance programs, including the following: middle & high schools, community-based organizations, Oregon Association of Student Financial Aid Administrators (OSAFAA), The Oregon Community Foundation, The Ford Family Foundation, Pacific Northwest Association for College Admission Counseling, Oregon GEAR UP, Incight (for students with disabilities), Oregon Independent Colleges Association, Oregon Indian Council for Postsecondary Education, Oregon Student Association, Oregon Community College Association, Oregon College Access Network, and Career Information Systems.



iii. *Diversity Awareness Program*

- Although the HECC does not have a formal program, specific ongoing activities are a regular part of the operations at CCWD and this information is shared with the HECC. The CCWD Affirmative Action Representative electronically sends out Affirmative Action announcements on events, trainings and proclamations received from the Governor's Affirmative Action Office and encourages staff participation in various events. Diversity-focused quizzes, ice breakers, and group activities obtained from various sources, have been used at All-Staff meetings as a short, training exercise. The HECC job announcements are shared with the Governor's Affirmative Action Office and numerous diversity outreach channels for additional posting and dissemination. In conjunction with a Governor's Office Sprint Initiative, the HECC Leadership team is participating in deploying the Coalition of Communities of Color Racial Equity Tool Assessment. This will establish a foundation for building a robust D&I internal program, including an integrated agency Equity Team.
- In collaboration with Oregon public education institutions, the HECC has created an Equity Workgroup, comprised of professionals charged with diversity and equity policies at their campuses. This group will meet several times annually and advise the HECC on equity best practices and innovative approaches.
- The Chief of Staff attended a west coast, diversity conference in March 2014 and shared the information with all HECC staff. The Commission has adopted the [OEIB equity lens](#)¹ as a

¹ http://education.oregon.gov/Documents/HECC/Reports%20and%20Presentations/Presidents_letter_Equity_Lens.pdf

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guiding principle. The equity lens is a valuable tool and perspective that will create a culture of equity not only for HECC programs, but also for the internal agency culture. The equity lens primary focus is race and ethnicity.

- As the OEIB executes its charge to align and build a P-20 education system, the equity lens within the HECC will prove useful to ensure every learner (internal and external) is adequately prepared by educators focused on equity for meaningful contributions to society. The equity lens will confirm the importance of recognizing institutional and systemic barriers and discriminatory practices that have limited access for many students in the Oregon education system. The equity lens emphasizes underserved students, such as out of school youth, English Language Learners, and students in some communities of color and some rural geographical locations, with a particular focus on racial equity. The result of creating a culture of equity will focus on the outcomes of academic proficiency, civic awareness, workplace literacy, and personal integrity. The system outcomes will focus on resource allocation, overall investments, hiring and professional learning.
- The HECC is a new agency, therefore, there is not an agency specific program; however, the statewide leadership programs are available to staff such as the Management Developmental Series and other trainings in the State of Oregon iLearn Training site.
- The HECC Leadership Team, along with the broader education enterprise, is engaged in early stages of deploying the Coalition of Communities of Color Racial Equity Tool and anticipates continued development.

e. Update: Executive Order 08-18

i. *Cultural Competency Assessment & Implementation Services*

The HECC is committed to the goals of enriching the diversity of the agency and increasing the level of cultural competency, both internally and throughout our customer and partner base. As a new agency, the Cultural Competency Assessment has not yet been completed, but will be considered in conjunction with the Racial Equity work aforementioned.

ii. *Statewide Exit Interview Survey*

The HECC encourages all employees to complete this DAS web-based, exit-interview tool prior to their transfer or departure: <http://www.surveymonkey.com/s.asp?u=206582533018>
Participation is optional and all responses are anonymous and cannot be traced back to an individual. The survey is conducted in a safe and non-threatening manner and covers such items as benefits; working conditions; opportunities for career advancement; quality and quantity of workload; and relationships with co-workers and supervisors. In the new plan year, DAS will analyze the information for positive and negative results, and strive to correct or minimize the negative results and report the findings to the Executive Team on a quarterly basis.

iii. *Performance Evaluation of All Management Personnel*

The HECC is in the process of establishing a Performance Management Plan, in accordance with the statewide Performance Management Process Policy (50.035.01)

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

As a new agency, a limited number of contracts have been issued by the HECC, a recent contract included subcontract opportunities with WBE/MBE firms and the agency continues to seek additional contracting opportunities with diverse businesses.

Issuing Agency	Total # of Contracts	WBE/MBE Contracts	Potential WBE/MBE	Total Contract Value	WBE/MBE Contracts	Potential WBE/MBE
HECC	0	0	0	0	0	0
CCWD	37	2	13	\$3,224,093	\$105,000	\$153,333
OSAC	6	2	1	\$474,781	\$237,031	\$2,750

III. ROLES FOR PLAN IMPLEMENTATION

a. Responsibilities and Accountabilities

i. Executive Director

The Executive Director directs and supervises all activities of the agency. The Executive Director reports to the Higher Education Coordinating Commission annually and biennially to the Legislative Ways and Means Committee, on the progress and outcomes of the agency’s Affirmative Action Plan. Pursuant to the administrative rule [105-040-001](#), the Executive Director ensures that:

- A) Equal employment opportunities are afforded to all applicants and employees by making employment related decisions that are non-discriminatory; and
- B) Employment practices are consistent with the state's Affirmative Action Guidelines under ORS 659A.012–659A.015 and federal laws to:
 - (i) Promote good faith efforts to achieve established affirmative action objectives; and
 - (ii) Take proactive steps to develop diverse applicant pools for position vacancies.

ii. Managers/Supervisors

The Chief of Staff directs agency affirmative action functions, ensuring the agency plan, targets and goals are followed, implemented, and achieved. The Chief of Staff is involved in recruiting processes to ensure there is no intended or unintended bias.

- Supervisors are expected to foster and promote the importance of a diverse workforce free of discrimination and harassment to staff and follow the statewide [Discrimination and Harassment Free Policy 50.010.01](#).
- Ensure subordinates receive an orientation on the agency’s affirmative action goals and responsibilities and understand their own responsibilities for helping promote diversity and a harassment free work environment.
- The HECC agency coordinates with the CCWD Operations Director, and OSAC leadership to ensure agency and State of Oregon procedures and rules are followed to fill employment vacancies.
- Managers are evaluated annually to assess how they have fostered a diverse workforce. Criteria may include:
 - Agency workforce education regarding diversity issues (i.e. training and communication).
 - Recruitment and selection efforts (recommendations for advertising or marketing open recruitments).



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- Retention (how managers identify and ensure employees are provided appropriate tools for success).

iii. *Affirmative Action Representative*

The Department of Administrative Services, Enterprise Human Resource Service provides human resources to the HECC. The assigned Human Resource Manager reports to the Executive Director and works with the Executive team. The HR Affirmative Action Representative reports to the Executive Team and works directly with the HR Manager to:

- Ensure employees receive and engage in a thorough orientation to the HECC and to state government; this includes review of AA and EEO policy with employees during the New Employee Orientation;
- Promote and oversee effective retention practices using the Affirmative Action Plan.
- Assist with and/or investigate and address EEO/AA complaints;
- Report EEO complaints or areas needing improvement to management team members; and
- Provide EEO/AA and ADA training options to the agency.

IV. JULY 1, 2013 – JUNE 30, 2015

a. Accomplishments

As a new agency, the HECC is incorporating CCWD and OSAC programs as it launches a new and vibrant internal culture of inclusion.

- The HECC has formally adopted [OEIB's Equity Lens](#) to guide their work for improving success for underserved populations in Oregon
- The agency is in the process of forming an internal Diversity & Inclusion workgroup, comprised of staff from across the three agencies.
- A Higher Education Equity Advisory Group has been convened to provide advice to the commission and agency, comprised primarily of institutional administrators focused on equity issues at community colleges and public universities.
- The budgeting priority framework was organized around the key priorities of productivity and affordability, with a focus also on capital investment priorities in the context of promoting educational quality and equity for all Oregon students.
- The agency engaged an Oregon Hatfield Fellow who conducted a statewide research project to survey underrepresented minority students and local community-based organizations. The subsequent report was met with keen interest from the commission and further efforts are underway to build upon the initial findings.
- Vigorous diversity outreach strategies have been deployed for recruitment purposes including, but not limited to: National Higher Ed Recruitment Consortium, Oregon Association of Minority Entrepreneurs, NAACP Salem-Keizer Chapter, Oregon Native American Chamber, Hispanic Services Roundtable, Oregon Advocacy Commission, Asian Pacific American Chamber, Urban League, African American Chamber, Hispanic Metropolitan Chamber, OSHEN, HispanicPros, Governor's Office of Diversity & Inclusion.



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- OSAC maintains a statewide outreach and mentoring network – ASPIRE – that serves students from all social-economic and racial or ethnic backgrounds. The program operated in 134 high schools during 2013-14. Students directly mentored 9,393 and the total of all students reached through workshops, drop-in assistance, or special programs was 80,975. ASPIRE students had the following characteristics:
 - Racial breakdown: 33 percent of the students served are students of color.
 - Economic background: 52 percent are from low-income or moderate-income families.
 - Educational background: 49 percent have mothers who did not attend college; 55 percent have fathers who did not attend college.
- Since its inception in 1971, the Oregon Opportunity Grant has been a need-based grant program serving low-income Oregonians. Students apply for the Oregon Opportunity Grant by completing and submitting the Free Application for Federal Student Aid (FAFSA), which is also the application for federal student aid programs. OSAC receives data from all FAFSAs submitted by Oregon residents. FAFSA data contains demographic and financial data on each applicant and his/her family, if applicable, but no data on race or ethnicity.
 - Recipients of Oregon Opportunity Grants had the following characteristics in 2012-13:
 - Racial breakdown: The percentage of Opportunity Grant recipients who self-identified as students of color (excludes white and ‘unknown’) was 31 percent.
 - Economic background: 60.4 percent of Opportunity Grant recipients are from families with incomes at or below \$20,000.
- In 2012-13, OSAC administered scholarships (includes privately funded and public programs) reached 3,763 students. The percentage of award recipients who self-identified as students of color was 37.8 percent.
- CCWD’s Diversity Workgroup has met regularly with the formal goal of increasing the knowledge of our agency employees regarding affirmative action, and to increase the diversity of our staff. CCWD continued to apply active strategies in alignment with ORS 243.305 policy of affirmative action and fair and equal employment opportunities and advancement, CCWD’s collective bargaining agreement and DAS recruitment policies and guidelines.



b. Progress made or lost since previous biennium

As a new agency, not applicable.

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c. EEO Statistics as of 11/01/2014

06/30/14 STATISTICS - HECC	Total EEs	WMN	WMN Parity	WMN Goal	Women Under Goal	People of Color	POC Parity	POC Goal	POC Under Goal	People With Disability	PWD Parity	PWD Goal	PWD Under Goal
Z7008 PRINCIPAL EXEC/MANAGER E	1	0	36.60%	0.3	0.3	1	12.20%	0.1		0	6.00%	0	
Z7010 PRINCIPAL EXEC/MANAGER F	1	1	36.60%	0.3		1	12.20%	0.1		0	6.00%	0	
Z7014 PRINCIPAL EXEC/MANAGER H	1	0	36.60%	0.3	0.3	0	12.20%	0.1	0.1	0	6.00%	0	
A02 UPPER MANAGEMENT (SR 31+)	3	1	36.60%	1		2	12.20%	0.3		0	6.00%	0.1	0.1
A OFFICIAL/ADMINISTRATOR	3	1				2				0			0.1
X0866 PUBLIC AFFAIRS SPECIALIST 3	1	1	41.70%	0.4		0	9.00%	0		0	6.00%	0	
B02 COMMUNICATION/EDITOR	1	1	41.70%	0.4		0	9.00%	0		0	6.00%	0	
C2300 EDUCATION PROG SPECIALIST 1	2	2	59.40%	1.1		0	9.60%	0.1	0.1	0	6.00%	0.1	0.1
B03 TEACHER/EDUCATION	2	2	59.40%	1.1		0	9.60%	0.1	0.1	0	6.00%	0.1	0.1
C5248 COMPLIANCE SPECIALIST 3	1	0	48.10%	0.4	0.4	0	10.70%	0.1	0.1	0	6.00%	0	
B11 INSPECTOR/COMPLIANCE/INVSTGR	1	0	48.10%	0.4	0.4	0	10.70%	0.1	0.1	0	6.00%	0	
X1245 FISCAL ANALYST 3	1	0	53.00%	0.5	0.5	0	13.00%	0.1	0.1	0	6.00%	0	
B15 ACCOUNTING/FINANCE/REVENUE	1	0	53.00%	0.5	0.5	0	13.00%	0.1	0.1	0	6.00%	0	
C0860 PROGRAM ANALYST 1	1	1	41.10%	0.4		0	9.50%	0		0	6.00%	0	
C0861 PROGRAM ANALYST 2	2	1	41.10%	0.8		0	9.50%	0.1	0.1	0	6.00%	0.1	0.1
X0873 OPERATIONS/POLICY ANALYST 4	1	1	41.10%	0.4		0	9.50%	0		0	6.00%	0	
B16 PROGRAM COORD/ANALYST	4	3	41.10%	1.6		0	9.50%	0.3	0.3	0	6.00%	0.2	0.2
B PROFESSIONALS	9	6			0.9	0			0.6	0			0.3
C0108 ADMINISTRATIVE SPECIALIST 2	1	1	70.30%	0.7		0	9.70%	0		0	6.00%	0	
C0119 EXECUTIVE SUPPORT SPEC 2	1	1	70.30%	0.7		0	9.70%	0		0	6.00%	0	
Z0119 EXECUTIVE SUPPORT SPEC 2	1	1	70.30%	0.7		1	9.70%	0		0	6.00%	0	
F00 ADMINISTRATIVE SUPPORT	3	3	70.30%	2.1		1	9.70%	0.2		0	6.00%	0.1	0.1
F ADMINISTRATIVE SUPPORT	3	3				1				0			0.1
TOTALS	15	10			0.9	3			0.6	0			0.5

06/30/14 STATISTICS - CCWD	Total EEs	Women	WMN Parity	WMN Goal	Women Under Goal	People of Color	POC Parity	POC Goal	POC Under Goal	People With Disability	PWD Parity	PWD Goal	PWD Under Goal
X7006 Principal Executive/Manager D	2	1	36.60%	0.7		0	12.20%	0.2	0.2	0	6.00%	0.1	0.1
X7008 Principal Executive/Manager E	4	3	36.60%	1.4		0	12.20%	0.4	0.4	0	6.00%	0.2	0.2
X7010 Principal Executive/Manager F	1	0	36.60%	0.3	0.3	0	12.20%	0.1	0.1	0	6.00%	0	
Z7008 Principal Executive/Manager E	0	0	36.60%	0		0	12.20%	0		0	6.00%	0	
Z7012 Principal Executive/Manager G	1	1	36.60%	0.3		1	12.20%	0.1		0	6.00%	0	
Z7014 Principal Executive/Manager H	0	0	36.60%	0		0	12.20%	0		0	6.00%	0	
A02 Upper Management (Sr 31+)	8	5	36.60%	2.9		1	12.20%	0.9		0	6.00%	0.4	0.4
A Official/Administrator	8	5				1				0			0.4
C2301 Education Program Specialist 2	7	4	59.40%	4.1	0.1	2	9.60%	0.6		0	6.00%	0.4	0.4
B03 Teacher/Education	7	4	59.40%	4.1	0.1	2	9.60%	0.6		0	6.00%	0.4	0.4
C0436 Procurement & Contract Spec 1	1	1	43.20%	0.4		0	5.30%	0		0	6.00%	0	
B07 Purchasing Agent/Analyst	1	1	43.20%	0.4		0	5.30%	0		0	6.00%	0	
C1118 Research Analyst 4	1	0	43.70%	0.4	0.4	0	10.00%	0.1	0.1	0	6.00%	0	
B09 Social Science/Planner/Researcher	1	0	43.70%	0.4	0.4	0	10.00%	0.1	0.1	0	6.00%	0	
C1485 Info Systems Specialist 5	1	0	32.40%	0.3	0.3	0	13.00%	0.1	0.1	0	6.00%	0	
C1486 Info Systems Specialist 6	0	0	32.40%	0		0	13.00%	0		0	6.00%	0	
C1487 Info Systems Specialist 7	3	2	32.40%	0.9		0	13.00%	0.3	0.3	0	6.00%	0.1	0.1
B12 Computer Analyst	4	2	32.40%	1.2		0	13.00%	0.5	0.5	0	6.00%	0.2	0.2
C1216 Accountant 2	2	2	53.00%	1		0	13.00%	0.2	0.2	0	6.00%	0.1	0.1
C1217 Accountant 3	0	0	53.00%	0		0	13.00%	0		0	6.00%	0	

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C1243	Fiscal Analyst 1	1	1	53.00%	0.5		0	13.00%	0.1	0.1	0	6.00%	0	
C1245	Fiscal Analyst 3	1	1	53.00%	0.5		0	13.00%	0.1	0.1	0	6.00%	0	
B15	Accounting/Finance/Revenue	4	4	53.00%	2.1		0	13.00%	0.5	0.5	0	6.00%	0.2	0.2
C0860	Program Analyst 1	1	1	41.10%	0.4		0	9.50%	0		0	6.00%	0	
C0862	Program Analyst 3	8	5	41.10%	3.2		1	9.50%	0.7		0	6.00%	0.4	0.4
C0863	Program Analyst 4	1	0	41.10%	0.4	0.4	0	9.50%	0		0	6.00%	0	
C0872	Operations & Policy Analyst 3	1	0	41.10%	0.4	0.4	0	9.50%	0		0	6.00%	0	
X0873	Operations & Policy Analyst 4	4	3	41.10%	1.6		0	9.50%	0.3	0.3	0	6.00%	0.2	0.2
Z0873	Operations & Policy Analyst 4	0	0	41.10%	0		0	9.50%	0		0	6.00%	0	
B16	Program Coordinator/Analyst	15	9	41.10%	6.1		1	9.50%	1.4	0.4	0	6.00%	0.9	0.9
B	Professionals	32	20			0.5	3			1.5	0			1.7
C0103	Office Specialist 1	0	0	70.30%	0		0	9.70%	0		0	6.00%	0	
C0104	Office Specialist 2	2	2	70.30%	1.4		0	9.70%	0.1	0.1	0	6.00%	0.1	0.1
C0107	Administrative Specialist 1	1	1	70.30%	0.7		0	9.70%	0		0	6.00%	0	
C0108	Administrative Specialist 2	3	3	70.30%	2.1		2	9.70%	0.2		0	6.00%	0.1	0.1
C0212	Accounting Technician 3	1	1	70.30%	0.7		0	9.70%	0		0	6.00%	0	
X0119	Executive Support Specialist 2	0	0	70.30%	0		0	9.70%	0		0	6.00%	0	
Z0119	Executive Support Specialist 2	2	2	70.30%	1.4		1	9.70%	0.1		0	6.00%	0.1	0.1
F00	Administrative Support	9	9	70.30%	6.3		3	9.70%	0.8		0	6.00%	0.5	0.5
F	Administrative Support	9	9				3				0			0.5
Totals		49	34	69.39%			7	14.29%		1.5	0	0.00%		2.6

6/30/14 STATISTICS - OSAC	Total EEs	Women	WMN Parity	WMN Goal	Women Under Goal	People of Color	POC Parity	POC Goal	POC Under Goal	People With Disability	PWD Parity	PWD Goal	PWD Under Goal
X7006	Principal Executive/Manager D	2	2	36.60%	0.7	0	12.20%	0.2	0.2	0	6.00%	0.1	0.1
Z7010	Principal Executive/Manager F	1	0	36.60%	0.3	0.3	12.20%	0.1	0.1	0	6.00%	0	
A02	Upper Management (Sr 31+)	3	2	36.60%	1		12.20%	0.3	0.3	0	6.00%	0.1	0.1
A	Official/Administrator	3	2						0.3	0			0.1
C0865	Public Affairs Specialist 2	0	0	41.70%	0	0	9.00%	0		0	6.00%	0	
B02	Communication/Editor	0	0	41.70%	0	0	9.00%	0		0	6.00%	0	
C1116	Research Analyst 2	1	1	43.70%	0.4	0	10.00%	0.1	0.1	0	6.00%	0	
B09	Social Science/Planner/Researcher	1	1	43.70%	0.4	0	10.00%	0.1	0.1	0	6.00%	0	
C1338	Training & Development Spec 1	1	1	57.60%	0.5	0	11.60%	0.1	0.1	0	6.00%	0	
B10	Personnel/Employment	1	1	57.60%	0.5	0	11.60%	0.1	0.1	0	6.00%	0	
C1484	Info Systems Specialist 4	2	0	32.40%	0.6	0.6	13.00%	0.2	0.2	0	6.00%	0.1	0.1
C1485	Info Systems Specialist 5	1	0	32.40%	0.3	0.3	13.00%	0.1	0.1	0	6.00%	0	
C1486	Info Systems Specialist 6	1	0	32.40%	0.3	0.3	13.00%	0.1	0.1	0	6.00%	0	
B12	Computer Analyst	4	0	32.40%	1.2	1.2	13.00%	0.5	0.5	0	6.00%	0.2	0.2
C0860	Program Analyst 1	5	4	41.10%	2	1	9.50%	0.4		0	6.00%	0.3	0.3
C0861	Program Analyst 2	2	2	41.10%	0.8	1	9.50%	0.1		0	6.00%	0.1	0.1
C0862	Program Analyst 3	1	1	41.10%	0.4	0	9.50%	0		0	6.00%	0	
Z0862	Program Analyst 3	0	0	41.10%	0	0	9.50%	0		0	6.00%	0	
B16	Program Coordinator/Analyst	8	7	41.10%	3.2	2	9.50%	0.7		0	6.00%	0.4	0.4
B	Professionals	14	9			1.2			0.7	0			0.6
C0103	Office Specialist 1	0	0	70.30%	0	0	9.70%	0		0	6.00%	0	
C0104	Office Specialist 2	1	1	70.30%	0.7	0	9.70%	0		0	6.00%	0	
C0107	Administrative Specialist 1	1	1	70.30%	0.7	0	9.70%	0		0	6.00%	0	
C0108	Administrative Specialist 2	4	4	70.30%	2.8	0	9.70%	0.3	0.3	0	6.00%	0.2	0.2
C0211	Accounting Technician 2	1	1	70.30%	0.7	0	9.70%	0		0	6.00%	0	
Z0119	Executive Support Specialist 2	1	1	70.30%	0.7	0	9.70%	0		0	6.00%	0	
F00	Administrative Support	8	8	70.30%	5.6	0	9.70%	0.7	0.7	0	6.00%	0.4	0.4
F	Administrative Support	8	8			0			0.7	0			0.4
Totals		25	19	76.00%		1.2	8.00%		1.7	0	0.00%		1.1

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V. JULY 1, 2015 – JUNE 30, 2017

a. Goals for Affirmative Action and Diversity/Inclusion Plan

Build an agency culture that above all values merit, ability and potential and promotes recruitment and retention of a diverse workforce that is representative of our state demographics, including women, minorities and persons with disabilities.

b. Strategies for Implementation

It is anticipated that the HECC, CCWD and OSAC will become one agency under the HECC as of July 1, 2015; together, we will develop integrated diversity and inclusion strategies. The HECC will ensure strategies are in alignment with ORS 243.305 policy of affirmative action and fair and equal employment opportunities and advancement, any applicable collective bargaining agreement and statewide recruitment policies and guidelines. During the upcoming year through August 31, 2015, the agency will work to increase workplace diversity awareness and inclusion efforts, strategies and actions considered may include:

- Develop a report/and or training for the Commissioners.
- Consider volunteer membership for a HECC Equity Team, dedicated to the advancement of D&I; recommend improvements in meeting affirmative action goals and better diversity within the agency.
- Develop an agency mentorship program.
- Explore establishment of an Affirmative Action Officer.
- Formation of an internal Diversity & Inclusion



- Workgroup to develop milestones and strategies to move the agency to meet statewide parity in diversity. The Workgroup will work toward accountability of advertising and hiring. They will facilitate ongoing discussion with managers to develop strategies to prevent harassment and discrimination complaints in the workplace. In addition, they will work with the HECC Leadership Team to provide training to managers to set affirmative action expectations on an agencywide basis.
- Management leadership will review diversity efforts and share quarterly at Leadership Team meetings.
 - The Chief of Staff will continue to explore the development of an internal unified training plan to educate and foster diversity and inclusion among staff.
 - Along with the broader education enterprise, the HECC will continue to engage agencywide utilization of the Coalition of Communities of Color Racial Equity Tool.
 - Hiring managers will work with Human Resources to ensure there is no intended or unintended bias imbedded in required qualifications or in application or interview questions.
 - Position descriptions will be reviewed and updated as necessary to ensure that affirmative action and diversity and inclusion responsibilities are included in management position descriptions.
 - ORS 659.025 (1) *“To achieve the public policy of the State of Oregon for persons in the state to attain employment and advancement without discrimination because of race, religion, color, sex, marital status, national origin, disability or age, every state agency shall be required to include in the evaluation of all management personnel the manager’s or supervisor’s effectiveness in achieving affirmative action.”*
 - Review the HECC’s agency orientation of affirmative action and D&I policy, goals and develop criteria regarding employee’s roles to contribute to a diverse workforce, free of harassment.
 - Require staff attendance at specified mandatory training through the Oregon iLearn system.

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- Develop an integrated Labor Management Committee, which would perform annual reviews and make enhancement suggestions to the AA Plan.
- Present an annual overview of the AA plan to all staff.
- Include regular agenda items on diversity and inclusion at all staff meetings.
- Encourage all employees to complete the DAS web-based exit interview survey tool prior to their transfer or departure.
- Post the finalized Affirmative Action and Diversity & Inclusion Plan on the HECC website.
- Publically announce the Plan and its availability on the web, to partners, stakeholders and state agency personnel.
- Provide the Executive Director the biennial affirmative action information as part of the regular Ways and Means presentation to the legislature.
- Succession plan development that emphasizes diversity outreach and considerations.



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VI. APPENDIX A

a. Agency's Policy Documentation

The HECC places EEO statement on all recruitment announcements The HECC administers the following statewide policies:

6. ADA and Reasonable Accommodation Policy
7. Discrimination and Harassment Free Workplace
8. Employee and Training Policy
9. Veteran's Preference in Employment
10. Other Agency Documentation: Maintaining a Professional Workplace
6. Other Agency Documentation: Equal Employment Opportunity & Affirmative Action

The policies referenced above are included in Appendix A.

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1. ADA and Reasonable Accommodation Policy (No. 50.020.10)

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

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

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

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

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

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

ATTACHMENTS: ADA Accommodation Tool Kit

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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Statewide Policy
ADA and Reasonable Accommodation in Employment 50.020.10

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

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

POLICY

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

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2. Discrimination and Harassment Free Workplace (No. 50.010.01)

DAS DEPARTMENT OF ADMINISTRATIVE SERVICES
Statewide Policy

SUBJECT: Discrimination and Harassment Free Workplace	NUMBER: 50.010.01
DIVISION: Human Resource Services Division	EFFECTIVE DATE: 01/25/08

APPROVED: Signature on file with Human Resource Services Division

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

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

APPLICABILITY: All employees, state temporary employees and volunteers.

ATTACHMENTS: None

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

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

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

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

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

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

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

Policy: 50.010.01 1 of 5 Effective: 01/25/08

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DAS Statewide Policy

Policy title: Discrimination and Harassment Free Workplace

50.010.01

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

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

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

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

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

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

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

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

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

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

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

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

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DAS Statewide Policy

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

50.010.01

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

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DAS Statewide Policy

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

50.010.01

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

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<u>DAS Statewide Policy</u>	
Policy title: Discrimination and Harassment Free Workplace	50.010.01
<p>of the problem behavior and require prompt, appropriate action.</p> <p>(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.</p> <p>(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.</p> <p>(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.</p> <p>(B) Employees who violate this policy by retaliating against others may be subject to disciplinary action, up to and including dismissal.</p> <p>(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.</p> <p>(i) Policy Notification. All employees including state temporary employees and volunteers shall:</p> <p>(A) be given a copy or the location of Statewide Policy 50.010.01, Discrimination and Harassment Free Workplace;</p> <p>(B) be given directions to read the policy;</p> <p>(C) be provided an opportunity to ask questions and have their questions answered; and</p> <p>(D) sign an acknowledgement indicating the employee read the policy and had the opportunity to ask questions.</p> <p>(i) Signed acknowledgements are kept on file at the agency, board or commission.</p>	
(1) Performance Measure:	Percent of employees informed of Policy 50.010.01, prohibited behavior and reporting procedures.
Performance Standard:	100%
(2) Performance Measure:	Percent of complaints where prompt, appropriate action is taken following investigation of a substantiated complaint.
Performance Standard:	100%
Policy: 50.010.01	5 of 5
	Effective: 01/25/08

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(c) Modes of training delivery may be formal education, on the job training, supervised learning activities, and other specific training approved by the employee's supervisor as job related.

- | | |
|--------------------------|---|
| (1) Performance Measure: | Percentage of agency employees who received 20 or more hours of job related training in each fiscal year. |
| Performance Standard: | 50% |
| (2) Performance Measure: | A current, completed written agency training plan for each biennium. |
| Performance Standard: | 100% |
| (3) Performance Measure: | Percentage of agency employees with current written individual development plans. |
| Performance Standard: | 100% |

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4. Veteran's Preference in Employment (No. 105-040-0015)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Stat. Auth: ORS 240.145(3) & 240.250

Stats. Implemented: ORS 408.225, 408.230 & 408.235

Hist.: HRSD 3-2007(Temp), f. & cert ef. 9-5-07 thru 3-3-08; HRSD 1-2008, f. 2-27-08, cert. ef. 3-1-08; HRSD 3-2009, f. 12-30-09, cert. ef. 1-1-10

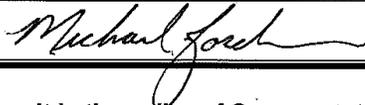
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5. Other Agency Documentation: Maintaining a Professional Workplace (No. 50.010.03)



Statewide Policy

SUBJECT: Maintaining a Professional Workplace	NUMBER:	50.010.03
DIVISION: Chief Human Resource Office	EFFECTIVE DATE:	11/01/13
APPROVED: 		

POLICY STATEMENT: It is the policy of Oregon state government that mutual respect between and among managers, employees, temporary employees and volunteers is integral to the efficient conduct of business. All individuals work together 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 temporary employees and volunteers, and others working in the agency

DEFINITIONS: **Professional Workplace Behavior:** Supporting the values and mission of Oregon state government 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.¹ (See State HR Policy 50.010.01 Discrimination and Harassment Free Workplace for guidance on issues involving protected class status.)

Examples of inappropriate workplace behavior include but are not limited to, comments, actions or behaviors of an individual or group that **embarrass, humiliate, intimidate, disparage, demean, or show disrespect** for another employee, a manager, a subordinate, a **volunteer**, a customer, a contractor or a visitor in the workplace.

¹ 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.

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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.

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

POLICY

(1) Conduct Employees of all service types, temporary employees and volunteers, at every level of the agency (includes boards and commissions) must foster an environment that encourages professionalism and discourages disrespectful behavior. All employees, temporary employees and volunteers must behave respectfully and professionally and refrain from engaging in inappropriate workplace behavior.

(2) Addressing Inappropriate Workplace Behavior

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

(b) If an employee, temporary employee or volunteer observes or experiences inappropriate workplace behavior and feels comfortable in doing so, he or she should **do one or both of the following**:

(A) Redirect inappropriate conversations or behavior to workplace business

(B) Tell an offending employee, temporary employee or volunteer his or her behavior is offensive and ask him or her to stop.

(3) Reporting Inappropriate Workplace Behavior

(a) An employee, temporary employee or volunteer should report inappropriate workplace behavior he or she experiences or observes to his or her immediate supervisor as soon as practical. If the employee, temporary employee or volunteer's immediate supervisor is the one engaging in the inappropriate behavior, he or she should report the behavior to upper management, the agency head or agency Human Resource section, as soon as practical. The report may be verbal or written.

(b) If past practice exists in the agency, an employee 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.

(4) 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 morale. Unless the agency decides otherwise, the supervisor of the individual allegedly engaging in inappropriate workplace behavior must address² the report as soon as possible.

² The agency determines the best method of addressing the report, depending upon the behavior reported or observed, including determining method of follow up if necessary.

<u>Statewide Policy</u>
Maintaining a Professional Workplace
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(5) 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) An employee in trial service found to have engaged in inappropriate workplace behavior may be removed from trial service.
- (c) A temporary employee or volunteer found to have engaged in inappropriate workplace behavior will be counseled or, depending on the severity of the behavior, may have his or her service terminated.
- (d) 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.

(6) Retaliation Retaliating against someone for reporting or addressing inappropriate workplace behavior is prohibited. An employee who believes he or she is experiencing retaliation as a result of reporting inappropriate behavior should report this to his or her immediate supervisor as soon as practical³. 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. An employee in trial service found to have engaged in retaliation may be removed from trial service. A temporary employee or volunteer found to have engaged in retaliation may have his or her service terminated.

(7) Policy Notification. All employees including temporary employees and volunteers will:

- (a) Be given a copy or told the location of State HR Policy 50.010.03 Maintaining a Professional Workplace by the agency
- (b) Be given directions to read the policy
- (c) Be provided an opportunity to ask questions and have their questions answered
- (d) Acknowledge he or she read the policy and had the opportunity to ask questions
 - (A) The agency decides the form of the acknowledgement, such as electronic, signed, or other documented acknowledgment
 - (B) The agency may create and offer training as it deems necessary.

³ If the employee believes his or her immediate supervisor is engaging in retaliation, he or she should report the behavior to the agency human resource office, upper management or the agency head as soon as practical.

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6. **Other Agency Documentation: Equal Employment Opportunity & Affirmative Action**
(OAR 105-040-001)

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 Guidelines under ORS 659A.012–659A.015 and federal laws to:

(i) Promote good faith efforts to achieve established affirmative action objectives; and

(ii) Take proactive steps to develop diverse applicant pools for position vacancies.

(b) The Department of Administrative Services shall:

(A) Maintain an automated affirmative action tracking system which uses a uniform methodology for communicating affirmative action objectives for each state agency.

(B) Produce periodic reports showing hiring opportunities and each agency's progress toward achieving established affirmative action objectives as identified in the state wide automated system.

(c) Persons, who believe they have been subjected to discrimination by an agency in violation of this rule, may file a complaint with the agency's affirmative action representative within 365 calendar days of the alleged act or upon knowledge of the occurrence.

(2) Employment related decisions include, but are not limited to: hiring, promotion, demotion, transfer, termination, layoff, training, compensation, benefits, and performance evaluations;

(3) Diverse applicant pools are developed by using proactive outreach strategies.

(4) This rule does not preclude any person from filing a formal complaint in accordance with a collective bargaining agreement, or with appropriate state or federal agency under the applicable law.

Stat. Auth.: ORS 184.340, 240.145 & 240.250

Stats. Implemented: ORS 240.306, 243.305 & 559A.012 - 559A.015

Hist.: PD 2-1994, f. & cert. ef. 8-1-94; HRSD 11-2003, f. 7-15-03, cert. ef. 7-21-03; HRSD 2-2008, f. & cert. ef. 11-4-08

VII. APPENDIX B

a. Federal Policy Documentation

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

Age Discrimination

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

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

The ADEA applies to employers with 20 or more employees, including state and local governments. It also applies to employment agencies and labor organizations, as well as to the federal government. ADEA protections include:

Apprenticeship Programs

It is generally unlawful for apprenticeship programs, including joint labor-management apprenticeship programs, to discriminate on the basis of an individual's age. Age limitations in apprenticeship programs are valid only if they fall within certain specific exceptions under the ADEA or if the EEOC grants a specific exemption.

Job Notices and Advertisements

The ADEA generally makes it unlawful to include age preferences, limitations, or specifications in job notices or advertisements. A job notice or advertisement may specify an age limit only in the rare circumstances where age is shown to be a "bona fide occupational qualification" (BFOQ) reasonably necessary to the normal operation of the business.

Pre-Employment Inquiries

The ADEA does not specifically prohibit an employer from asking an applicant's age or date of birth. However, because such inquiries may deter older workers from applying for employment or may otherwise indicate possible intent to discriminate based on age, requests for age information will be closely scrutinized to make sure that the inquiry was made for a lawful purpose, rather than for a purpose prohibited by the ADEA.

Benefits

The Older Workers Benefit Protection Act of 1990 (OWBPA) amended the ADEA to specifically prohibit employers from denying benefits to older employees. Congress recognized that the cost of providing certain benefits to older workers is greater than the cost of providing those same benefits to younger workers, and that those greater costs would create a disincentive to hire older workers. Therefore, in limited circumstances, an employer may be permitted to reduce benefits based on age, as long as the cost of providing the reduced benefits to older workers is the same as the cost of providing benefits to younger workers.

Waivers of ADEA Rights

An employer may ask an employee to waive his/her rights or claims under the ADEA either in the settlement of an ADEA administrative or court claim or in connection with an exit incentive program or other employment termination program. However, the ADEA, as amended by OWBPA, sets out specific minimum

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standards that must be met in order for a waiver to be considered knowing and voluntary and, therefore, valid. Among other requirements, a valid

ADEA waiver must:

1. be in writing and be understandable;
2. specifically refer to ADEA rights or claims;
3. not waive rights or claims that may arise in the future;
4. be in exchange for valuable consideration;
5. advise the individual in writing to consult an attorney before signing the waiver; and
6. provide the individual at least 21 days to consider the agreement and at least seven days to revoke the agreement after signing it.

If an employer requests an ADEA waiver in connection with an exit incentive program or other employment termination program, the minimum requirements for a valid waiver are more extensive.

2. Disability Discrimination Title I of the ADA Act of 1990

Disability Discrimination

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

An individual with a disability is a person who:

Has a physical or mental impairment that substantially limits one or more major life activities;

- Has a record of such an impairment; or
- Is regarded as having such an impairment.

A qualified employee or applicant with a disability is an individual who, with or without reasonable accommodation, can perform the essential functions of the job in question. Reasonable accommodation may include, but is not limited to:

Making existing facilities used by employees readily accessible to and usable by persons with disabilities.

Job restructuring, modifying work schedules, reassignment to a vacant position;

Acquiring or modifying equipment or devices, adjusting or modifying examinations, training materials, or policies, and providing qualified readers or interpreters.

An employer is required to make a reasonable accommodation to the known disability of a qualified applicant or employee if it would not impose an "undue hardship" on the operation of the employer's business. Undue hardship is defined as an action requiring significant difficulty or expense when considered in light of factors such as an employer's size, financial resources, and the nature and structure of its operation.

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

Title I of the ADA also covers:

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Medical Examinations and Inquiries

Employers may not ask job applicants or employees about the existence, nature, or severity of a disability. Applicants may be asked about their ability to perform specific job functions with or without an accommodation. 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.

All medical records or any information obtained must be kept confidential. This includes information that may or may not indicate a diagnosis, treatment course or may not have been 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.

The law also protects people from discriminating 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 or child has a disability.

It is 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.

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

Equal Pay and Compensation Discrimination

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

The Equal Pay Act requires that men and women be given equal pay for equal work in the same establishment. The jobs need not be identical, but they must be substantially equal. It is job content, not job titles, that determines whether jobs are substantially equal.

Under the EPA, employers may not pay unequal wages to men and women who perform jobs that require substantially equal skill, effort and responsibility, and that are performed under similar working conditions within the same establishment. Each of these factors is summarized below:

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

EFFORT - The amount of physical or mental exertion needed to perform the job. For example, suppose that men and women work side by side on a line assembling machine parts. The person at the end of the line must also lift the assembled product as he or she completes the work and place it on a board. That job requires

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more effort than the other assembly line jobs if the extra effort of lifting the assembled product of the line is substantial and is a regular part of the job. As a result, it would not be a violation to pay that person more, regardless of whether the job is held by a man or a woman.

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

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

ESTABLISHMENT - The prohibition against compensation discrimination under the EPA applies only to jobs within an establishment. An establishment is a distinct physical place of business rather than an entire business or enterprise consisting of several places of business.

However, in some circumstances, physically separate places of business should be treated as one establishment. For example, if a central administrative unit hires employees, sets their compensation, and assigns them to work locations, the separate work sites can be considered part of one establishment.

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

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

Title VII, ADEA, and ADA

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

Compensation discrimination under Title VII, the ADEA, or the ADA can occur in a variety of forms. For example:

An employer pays an employee with a disability less than similarly situated employees without disabilities and the employer's explanation (if any) does not satisfactorily account for the differential.

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

An employer sets the compensation for jobs predominately held by, for example, women or African-Americans below that suggested by the employer's job evaluation study, while the pay for jobs predominately held by men or whites is consistent with the level suggested by the job evaluation study.

An employer maintains a neutral compensation policy or practice that has an adverse impact on employees in a protected class and cannot be justified as job-related and consistent with business necessity. For example, if an employer provides extra compensation to employees who are the "head of household," i.e., married with

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dependents and the primary financial contributor to the household, the practice may have an unlawful disparate impact on women.

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

4. Genetic Information Nondiscrimination Act of 2008

Genetic Information Discrimination

Title II of the Genetic Information Nondiscrimination Act of 2008 (GINA) prohibits the use of genetic information to discriminate against employees or applicants. The law forbids discrimination under any aspect of employment including hiring, firing, pay, job assignments, promotions, layoffs, training, benefits and/or any other terms/conditions of employment. In addition, the Department of Labor, Health and Human Services strictly restricts the acquisition of genetic information and the disclosure of genetic information.

Definition

Genetic Information includes an individual's genetic test and /or the tests of an individual's family members. It also includes any information about disease, disorder or condition including a family member's known condition. Family medical history is included in the definition of genetic information because it is often misused to determine increased risk of disease, disorder or condition in the future.

Harassment

Under GINA, it is illegal to harass a person based on their genetic information or genetic information of their relative. Harassing actions include offensive or derogatory remarks, which rise to a level to create a hostile work environment. 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.

Retaliation

It is unlawful to retaliate against an employee who has filed a discrimination charge based on genetic information; testified on genetic information; or participated in an investigation, proceeding or litigation based on genetic information. It is also unlawful to retaliate against an individual for opposing employment practices that discriminate based on genetic information.

Exceptions

There are very limited exceptions to an employer obtaining genetic information that do not violate the GINA as follows:

Inadvertent knowledge of genetic information by overhearing an employee's conversation about a family member's conditions/illnesses.

Obtaining genetic information or family medical history through health services, including wellness programs, that are offered on a voluntary basis.

Information obtained as part of the certification process for FMLA/OFLA leave for the employee's own serious health condition or the serious health condition of the employee's family member.

Gaining knowledge through commercially or publicly available documents like newspapers is permitted, as long as the employer is not searching those resources with the intent of finding genetic information.

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Acquisition of genetic information through monitoring programs to test the effects of biological toxic substances in the workplace, where monitoring is required by law or the program is voluntary.

Acquisition of information of employees who engage in DNA testing for law enforcement purposes as a forensic laborer or purposes of human remains identification is permitted, but the information may only be used for analysis of DNA markers for quality control to detect contamination.

Confidentiality

It is unlawful for employers to disclose genetic information about applicants or employees. Employers must keep genetic information confidential and in a file separate from any personnel file. Genetic Information can be kept in the same file as other medical information in compliance with the Americans with Disabilities Act.

5. National Origin Discrimination Title VII of the Civil Rights Act of 1964 and The Immigration Reform and Control Act of 1986

The Immigration Reform and Control Act of 1986 (IRCA)

National Origin Discrimination

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

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

The Immigration Reform and Control Act of 1986 (IRCA) makes it illegal for an employer to discriminate with respect to hiring, firing, recruitment or referral for a fee, based upon an individual's citizenship or immigration status. 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.

About National Origin Discrimination

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

Examples of violations covered under Title VII include:

Employment Decisions

Title VII prohibits any employment decision, including recruitment, hiring, and firing, pay, training, promotions, benefits 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 or results in adverse employment decisions. Employers are required to take appropriate steps to

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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.

It is also unlawful to retaliate against an individual for imposing employment practices that discriminate based on the IRCA's nondiscrimination requirements or for filing a discrimination charge, testifying, or participating in any way in an investigation, proceedings or litigation under the IRCA.

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 legally required work authorization or documentation.

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

Pregnancy Discrimination

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

Title VII's pregnancy-related protections include:

Harassment

Prohibits of offensive conduct such as derogatory remarks that create a hostile work environment based on the condition or results in adverse employment decisions.

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.

Hiring

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

Pregnancy and Maternity Leave

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

If an employee is temporarily unable to perform her job due to pregnancy, the employer must treat her the same as any other temporarily disabled employee. For example, if the employer allows temporarily disabled

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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 the same options or choices.

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

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

In addition, pregnant employees may have additional rights under the Family and Medical Leave Act (FMLA) and/or Oregon Family Medical Leave Act (OFLA).

Health Insurance

Any health insurance provided by an employer must cover expenses for pregnancy-related conditions on the same basis as costs for other medical conditions. Health insurance for expenses arising from abortion is not required, except where the life of the mother is endangered. Pregnancy-related expenses should be reimbursed exactly as those incurred for other medical conditions, whether payment is on a fixed basis or a percentage of reasonable-and-customary-charge basis.

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

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

Fringe Benefits

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

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

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

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

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

Race/Color Discrimination

Title VII of the Civil Rights Act of 1964 protects individuals against employment discrimination on the bases of race and color, as well as national origin, sex, and religion. Title VII applies to employers with 15 or more employees, including state and local governments. It also applies to employment agencies and to labor organizations, as well as to the federal government.

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

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

Title VII's protections include:

Recruiting, Hiring, and Advancement

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

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

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

Harassment/Hostile Work Environment

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

Compensation and Other Employment Terms, Conditions, and Privileges

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

Segregation and Classification of Employees

Title VII is violated where employees who belong to a protected group are segregated by physically isolating them from other employees or from customer contact. In addition, employers may not assign employees

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according to race or color. For example, Title VII prohibits assigning primarily African-Americans to predominantly African-American establishments or geographic areas. It is also illegal to exclude members of one group from particular positions or to group or categorize employees or jobs so that certain jobs are generally held by members of a certain protected group. Coding applications/resumes to designate an applicant's race, by either an employer or employment agency, constitutes evidence of discrimination where people of a certain race or color are excluded from employment or from certain positions.

Retaliation

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

8. Religious Discrimination Title VII of the Civil Rights Act of 1964

Religious Discrimination

Title VII of the Civil Rights Act of 1964 prohibits employers from discriminating against individuals because of their religion in hiring, firing, and other terms and conditions of employment. Title VII covers employers with 15 or more employees, including state and local governments. It also applies to employment agencies and to labor organizations, as well as to the federal government.

Under Title VII:

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

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

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

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

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

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

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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.

9. Retaliation Title VII of the Civil Agency Affirmative Action Policy

Retaliation

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

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

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

Adverse Action

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

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

Adverse actions do not include petty slights and annoyances, such as stray negative comments in an otherwise positive or neutral evaluation, “snubbing” a colleague, or negative comments that are justified by an employee’s poor work performance or history. Even if the prior protected activity alleged wrongdoing by a different employer, retaliatory adverse actions are unlawful. For example, it is unlawful for a worker’s current employer to retaliate against him for pursuing an EEO charge against a former employer.

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

Covered Individuals

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

Individuals who have brought attention to violations of law other than employment discrimination are NOT covered individuals for purposes of anti-discrimination retaliation laws. For example, “whistleblowers” who

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raise ethical, financial, or other concerns unrelated to employment discrimination are not protected by the EEOC enforced laws.

Protected Activity

Protected activity includes:

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

Examples of protected opposition include:

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

Examples of activities that are NOT protected opposition include:

- Actions that interfere with job performance so as to render the employee ineffective; or unlawful activities such as acts or threats of violence.
- Participation in an employment discrimination proceeding.
- Participation means taking part in an employment discrimination proceeding.
- Participation is protected activity even if the proceeding involved claims that ultimately were found to be invalid.

Examples of participation include:

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

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

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

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

Sex-Based Discrimination

Title VII of the Civil Rights Act of 1964 protects individuals against employment discrimination on the basis of sex as well as race, color, national origin, and religion. Title VII applies to employers with 15 or more employees, including state and local governments. It also applies to employment agencies and to labor organizations, as well as to the federal government.

It is unlawful to discriminate against any employee or applicant for employment because of his/her sex in regard to hiring, termination, promotion, compensation, job training, or any other term, condition, or privilege of employment. Title VII also prohibits employment decisions based on stereotypes and assumptions about abilities, traits, or the performance of individuals on the basis of sex. Title VII prohibits both intentional discrimination and neutral job policies that disproportionately exclude individuals on the basis of sex and that are not job related.

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

Sexual Harassment

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

Pregnancy Based Discrimination

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

The Equal Pay Act of 1963 requires that men and women be given equal pay for equal work in the same establishment. The jobs need not be identical, but they must be substantially equal. Title VII also prohibits compensation discrimination on the basis of sex. Unlike the Equal Pay Act, however, Title VII does not require that the claimant's job be substantially equal to that of a higher paid person of the opposite sex or require the claimant to work in the same establishment.

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

11. Sexual Harassment Title VII of the Civil Rights Act of 1964

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.

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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.