



Oregon Board of Medical Imaging

Ed Conlow, Executive Director
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Portland, OR 97232
971-673-0216

Affirmative Action Plan

July 1, 2013 – June 30, 2015



Oregon

John A. Kitzhaber, M.D., Governor

Oregon Board of Medical Imaging

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Senior Policy Advisor, Governor's Office
Director, Diversity, Inclusion and Affirmative Action
155 Cottage Street NE
Salem, OR 97301

RE: OBMI 2013-15 Affirmative Action Plan

Dear Mr. Garcia:

As the Executive Director of the Oregon Board of Medical Imaging (Board), I recognize and appreciate the benefit of Affirmative Action. I pledge my commitment to promote best practices in support of equal employment opportunity and to achieve the full and fair contribution of minorities, women, people with disabilities, older persons, and all protected classes found to be underutilized in the workforce.

To meet the objectives of our Affirmative Action and Equal Employment Opportunity initiative, the Board has prepared an Affirmative Action Plan and policy statement that will serve to eliminate and prevent discrimination of all protected classes.

I pledge to uphold and support compliance with the Board's Affirmative Action Plan and Policy, to ensure equality and avoid discrimination, and to promote a workforce that is representative of the population as a whole.

Thank you for your continued direction and support.

Best regards,

Ed Conlow
Executive Director

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I. DESCRIPTION OF YOUR AGENCY

A. Mission and Objectives

The Board is comprised of one program with a mission to promote, preserve and protect the public health, safety and welfare of Oregonians who are undergoing medical imaging studies performed by agency licensees for the purpose of medical diagnosis and therapy. Agency objectives include:

1. Assure that persons who practice medical imaging are properly licensed.
2. Increase awareness of medical imaging laws and practices among the public and medical provider community.
3. Investigate and resolve complaints regarding medical imaging in a fair and timely manner.
4. Determine that limited x-ray machine operator (LXMO) schools are operated in a manner to assure that LXMOs are properly trained to perform within the scope of practice.

B. Name of Agency Director/Administrator

The Oregon Board of Medical Imaging's (Board) Executive Director is Ed Conlow. He has been the official director of the agency since January 2011. He can be reach at the Portland State Office Building (PSOB), 800 NE Oregon St., Suite 1160A, Portland, OR 97232. The main phone number for the agency is 971-673-0215. The executive director's direct line is 971-673-0216 and he can also be reach by email at ed.conlow@state.or.us.

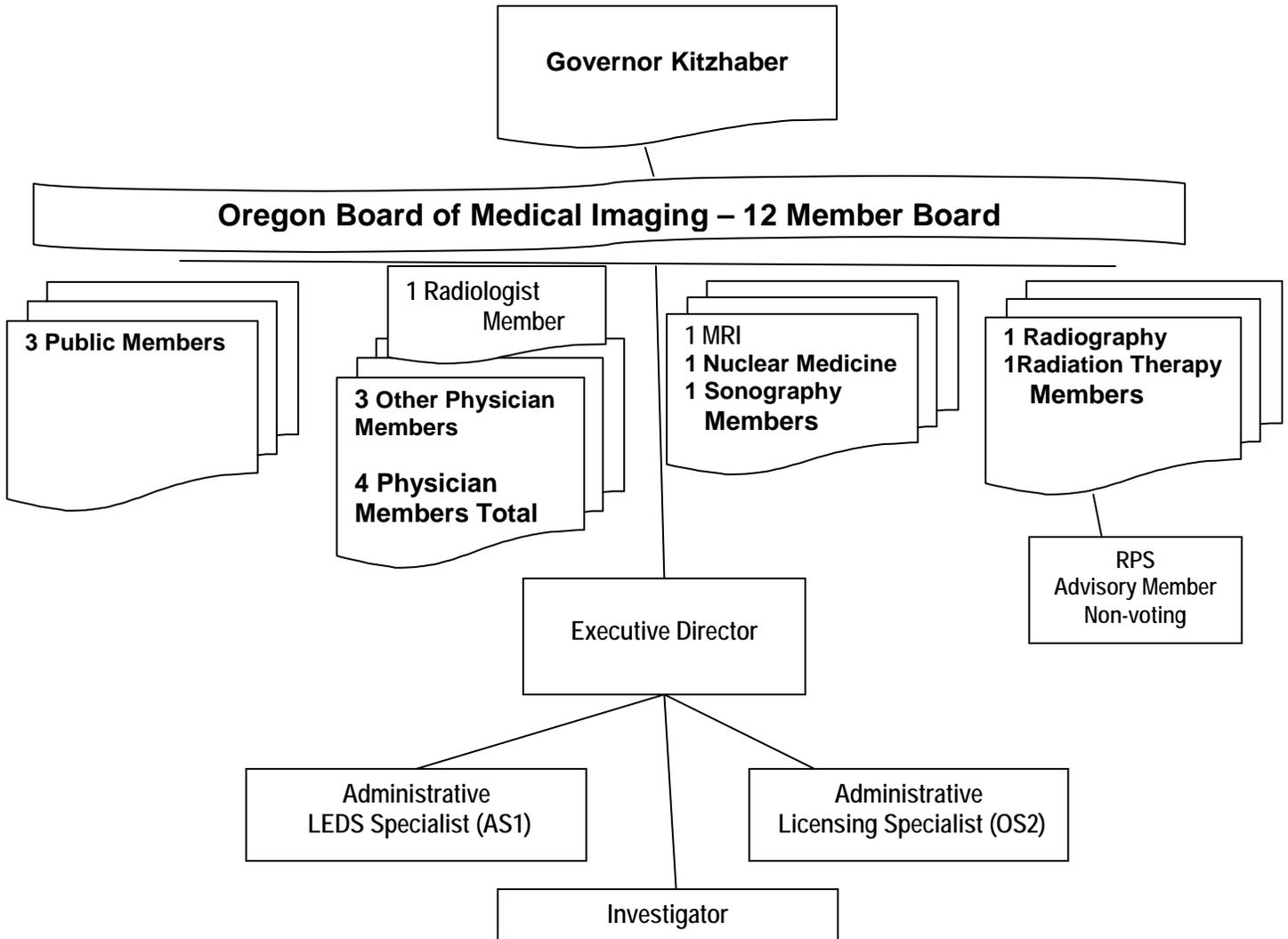
C. Name of Governor's Policy Advisor for your agency

The Board and staff are pleased to work with Mike Bonetto as its Governor's Policy Advisor. His office is at the State Capitol Building, Room 160, which is located at 900 Court Street NE, Salem, OR 97301. His phone number in Salem is 503-378-5884 and he can be reach by email at mike.bonetto@state.or.us.

D. Name of Affirmative Action Representative

The Oregon Board of Medical Imaging (Board) Affirmative Action Representative is Ed Conlow, Executive Director. Sarah Anderson is the agency's Administrative Licensing Specialist and a back-up representative for the agency. Her direct phone number is 971-673-0217 or she may be reached by email at sarah.m.anderson@state.or.us. Ed Conlow's direct phone number is 971-673-0216 or by email at ed.conlow@state.or.us.

E. Organizational Chart



II. AFFIRMATIVE ACTION PLAN

A. Affirmative Action Policy Statement

The Oregon Board of Medical Imaging 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 Board 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 Board 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 Board is committed to providing citizens and employees, through a program of affirmative action, equal access to programs and services and fair and equal opportunities for employment. In administering its program, board members and employees 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 Board. If the concern is not resolved to the satisfaction of the individual, they may contact the Equal Employment Opportunity Commission, Seattle District Office – 909 First Avenue, Ste 400, Seattle, WA 98104-1061.

As part of the annual performance evaluation, the Board's Executive Director will be evaluated, in part, on efforts to promote the equal employment opportunity and affirmative action objectives of the agency. Contractors and vendors performance on affirmative action and non-discrimination will be considered when selecting business partners and suppliers.

The Board shall maintain a current copy of the Affirmative Action and Equal Employment Opportunity policy and plan on its website. It will accompany all employment applications distributed to potential new employees and will be made available for review by agency employees and contractors, interested citizens, and organizations served by the Board.

B. Agency Diversity and Inclusion Statement

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

C. Training, Education and Development Plan (TEDP)

The Board's Affirmative Action Plan is communicated to employees (staff), volunteers, contractors and the public through a variety of methods.

1. Employees

- New employees are provided the Board's Affirmative Action and Equal Employment Opportunity policy and plan and encouraged to review and discuss questions or concerns with their supervisor.
- The Board posts a copy of the Affirmative Action and Equal Employment Opportunity policy and plan on its web site for easy access by employees.
- Board recruitment announcements and advertisements identify the Board as an Equal Opportunity/Affirmative Action employer and includes the statement, "The Board welcomes all forms of diversity--racial, ethnic, age, geographic, perspective, and gender--and the benefits that come with diversity: new thinking, stronger economy, greater social justice."

2. Volunteers

- All volunteers are encouraged to review and discuss the Affirmative Action policy, workplace expectations, and complaint procedures.

3. Contractors/Vendors

- The Board uses contractors infrequently and does not provide Affirmative Action training for them nor does it provide training to its vendors. It should be noted, however, the Board's Affirmative Action Policy statement includes contractors and the expectation they will advance the spirit and letter of equal employment opportunity laws, rules and regulations and affirmative action concepts and the right of all persons to work and advance on the basis of merit, ability, and potential.

D. Programs

The Board has no specific Affirmative Action programs in place; however, the Board appreciates the hiring difficulties experienced by minorities, people with disabilities and by many older persons; and where appropriate, will set program goals to achieve the full and fair utilization of these persons in the work force.

F. Update: Executive Order 08-18

1. Cultural Competency Assessment and Implementation Services

- Given its small staff (three FTE), the Board has not requested or received a Cultural Competency Assessment during the 2011-13 biennium. The Board has contracted with DAS-HRSD services to ensure that its best practices are in line with the Governor's Executive Order 08-18, which was amended from his previous order issued on January 26, 2005 (E O. 05-01). The Board will continue to explore opportunities during this biennium to identify resources for improving the Board supports the State of Oregon's commitment to the right of all persons to work and advance based on merit, ability and potential. The Board staff includes one employee who is Egyptian; this person speaks three languages (Arabic, Spanish and French) besides English. This employee brings a welcomed cultural diversity to the Board.
- The Board, through its affiliation with other health related licensure boards, is participating in the Cultural Competence Continuing Education Committee. The Board is

supportive of cultural competence as part of continuing education curricula, and will follow the recommendations of the Committee.

2. Statewide Exit Interview Survey

- The Board supports the use of the confidential exit interview survey tool and has encouraged past employees to access it prior to their transfer or departure. The agency has been fortunate and not had much turnover in staff.

3. Performance Evaluations of All Management Personnel

- The Board has limited FTE so there are not any managers/supervisors for the agency. The annual performance evaluation for the Executive Director will include evaluation of affirmative action efforts and accomplishments.

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

The Board did not award construction, service, or personal service contracts to minority businesses during the 2011-2013 biennium. The Board posts all competitive contracts on the state's ORPIN system to ensure that the pool of responders is as varied as possible and all qualified responders are given fair and equal consideration.

III. ROLES FOR IMPLEMENTATION OF AFFIRMATIVE ACTION PLAN

A. Responsibilities and Accountabilities

The Board provides overall direction and resources to support the Affirmative Action Plan. The Board will foster and promote to employees the importance of a diverse workplace free from discrimination and harassment.

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

The Board entrusts and delegates to the Executive Director the responsibility for implementation and adherence to the Affirmative Action goals to which the Board is committed.

1. Director/Administrator

- The Board's Executive Director has overall responsibility for compliance with policy and achievement of the Affirmative Action goals to which the Board is committed and will provide leadership and monitor progress toward meeting goals and objectives of the "Diversity Plan" and ensure compliance with applicable federal and state laws, rules, regulations and executive orders. The annual performance evaluation for the Executive Director will include evaluation of affirmative action efforts and accomplishments.

2. Managers/Supervisors

- Not applicable to agency due to the limited number of FTE.

3. Affirmative Action Representative –

- The Board's Executive Director serves as the Affirmative Action Officer and is responsible for:

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

IV. July 1, 2010 – June 30, 2012

Accomplishments

- The Board executive director and Board chair expressed support for proposed legislation (SB 97) in 2011 to add cultural competency as a component of continuing education. The Board executive director is monitoring the work of the Cultural Competency Continuing Education Committee, and will work with the Board chair and Board members to actively follow the committee's recommendations.
- The Governor has filled four Board vacancies during this time period. Of those, one was a woman and one a person with ethnic lineage from India. The Board executive director and Board chair have met with the Governor's executive appointments staff to concur with the Governor's diversity goals. The Board will actively seek to promote diversity among Board applicants.
- The Board is responsible for regulating the Limited Scope Radiography program. These schools are private career facilities and their students are very diverse in their cultural background and ethnicity.
- The Board supports diversity and has and will continue to support outreach events targeting people of color, disabled individuals and women. The Board desires to engage in activities directed toward and promoting other minority groups.
- The Board approves continuing education activities required for license renewal. Renewing licensees are required to complete a specified amount of ethics hours. The Board grants ethics credit to Affirmative Action and cultural competency activities in order to promote increased attendance by licensees.
- Current staff include an Egyptian woman who came to the US approximately thirteen years ago from Egypt. Dealing with license applicants and the public, this staff person is able to bridge language barriers due to her fluency in Arabic, Spanish and French.

Progress Made or Lost Since the Previous Biennium

- During the 2010-2012 biennium, the Board has continued to work toward meeting its affirmative action/diversity and ADA goals. Part of the goal was to implement a new database capable of capturing reported ethnic and demographics information on its licensees. The Board is still working with its IT contractor to implement this new system; delays have pushed back the implementation date.
- In January 2011 the Board hired a white male as executive director, following the retirement of the previous director who was a woman. With that new hire, the Board staff is composed of two white men and one woman of Egyptian lineage who speaks several languages. In addition, the Board contracts with another agency for the 0.25 FTE services of an investigator who is a woman. The investigator position is a new position for the Board, funded for the first time during the 2011-13 biennium.

V. July 1, 2013 – June 30, 2015

Goals and Strategies

In the 2013-2015 biennium, the Board will pursue the following goals and strategies:

1. Continue to maintain the Board's commitment to affirmative action through the continued development and adherence to its Affirmative Action Plan.

Strategy

- Evaluate and revise policies and procedures as needed to promote the Board's commitment to affirmative action and equal employment opportunity.
- Assertively recruit qualified persons with disabilities, minorities, women, and other protected classes for staff position/volunteer and Board vacancies.
- Share policies and strategies with other Boards to determine improvement strategies.

Timeline

- Ongoing

2. Continue dialogue among staff and board members to foster understanding and support for the Board's commitment to affirmative action.

Strategy

- Increase staff and board member knowledge and awareness of affirmative action through review and discussion of the Affirmative Action Plan.
- Train and inform future managers and employees as to their rights and responsibilities under the Board's Affirmative Action policy.
- Mentor employees and share training opportunities outside the workplace to promote the Board's commitment to equal employment opportunities.
- Make the complete Affirmative Action Plan available and accessible to all board members, employees, and contractors.

Timeline

- Ongoing

3. Support and promote diversity within the profession of diagnostic medical imaging and limited scope radiography.

Strategy

- Increase awareness within the profession of the Board's commitment to affirmative action and equal employment opportunities.
- Use medical imaging conferences and continuing education workshops to share the Board's commitment and affirmative action objectives.
- Encourage mentorship and job rotation in conjunction with the professional societies and facilities offering services to continue interest and develop job training opportunities within the field of medical imaging.
- Promote minority Administrator-in-Training candidates and encourage companies and preceptors to consider these candidates for training opportunities.
- Engage in outreach efforts to recruit persons with disabilities, minorities, women, and other protected classes.

Timeline

- Ongoing

4. Improve recruitment methods in order to increase ethnic diversity among Board members.

Strategy

- Apply recruitment methods that include outreach to sources representing persons with disabilities, minorities, women, and other protected classes.
- Insure that advertisements and employment/volunteer recruitment announcements contain the statement "Equal Opportunity/Affirmative Action Employer".
- Recommend qualified women, minority, and disabled candidates to the Governor's Office for board member vacancies.

Timeline

- Ongoing

5. Increase knowledge and skills with Board members and future management staff in applying Affirmative Action and EEO principles and in promoting a diverse workforce environment.

Strategy

- Ensure that future managers understand the Board's affirmative action goals and responsibilities and assert their role in achieving these goals.
- Support future managers' attendance at equal opportunity, affirmative action, and other diversity-related activities or training activities and within budget constraints send the alternate Affirmative Action Representative to the same opportunities that will be given to future managers; in order to build a stronger knowledge of the importance of maintain a workplace and workforce that adheres Equal Opportunity/Affirmative Action Employer.
- Relate the importance of maintaining the agency's affirmative action objectives with the Board's current employee's during their annual performance appraisal.
- Maintain and evaluate any future management's effectiveness in promoting and achieving the Board's affirmative action objectives on a continuous base and make it part of their annual performance appraisal.

Timeline

- Ongoing

VI. APPENDIX A

ADA AND REASONABLE ACCOMODATION POLICY	
Approved by: <i>Oregon Board of Medical Imaging</i>	Date: Jan 2007

Applicability

This policy applies to all applicants, board members, employees, and contractors of the Oregon Board of Medical Imaging (Board).

Definitions

Reasonable Accommodation

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

Person With a Disability

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

Undue Hardship

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

ADA Coordinator

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

Policy

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

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

In compliance with ADA guidelines, the Board will provide special materials, services or assistance to individuals with a disability upon sufficient notice to the board office. The Oregon Relay Service – 711 – is available to assist individuals with speech or hearing disabilities.

In addition, the Speech to Speech Relay Service supplies Oregon with a toll-free number (1-877-735-7525) to assist individuals whose speech may be difficult to understand. If an individual does not request an accommodation, the Board is not obligated to provide one.

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

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

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

Discrimination and Harassment Free Workplace	
Statewide Policy 50.010.01	Date: 01/25/2008

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

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

APPLICABILITY: All employees, state temporary employees and volunteers.

ATTACHMENTS: None

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

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

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

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

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

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

Higher Standard: Applies to managers and supervisors. Proactively taking an affirmative Posture to create and maintain a discrimination and harassment free workplace.

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

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

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

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

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

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

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

to, derogatory remarks, slurs and jokes about a person's protected class status.

POLICY:

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

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

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

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

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

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

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

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

(ii) the name of the complainant;

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

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

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

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

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

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

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

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

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

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

- (i) Signed acknowledgements are kept on file at the agency, board or commission.
- (1) Performance Measure: Percent of employees informed of Policy 50.010.01, prohibited behavior and reporting procedures. Performance Standard: 100%
- (2) Performance Measure: Percent of complaints where prompt, appropriate action is taken following investigation of a substantiated complaint. Performance Standard: 100%

AGENCY EMPLOYEE AND TRAINING POLICY	
Approved by: <i>Oregon Board of Medical Imaging</i>	Date: Jan 2007

Applicability

This policy applies to all employees of the Oregon Board of Medical Imaging (Board).

Definitions

- Elective Training* Means training an employee voluntarily takes to enhance or improve the effectiveness of employee performance in the current position.
- Mandated Training* Means training required by law, regulation, or to maintain a license or certificate required by the position.
- Required Training* Means training required by the Board, such as new employee orientation, or to update or to add skills as the job evolves, or to increase employee awareness of legal or policy issues (e.g., ADA, sexual harassment, etc.)

Policy

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

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

Approval Criteria for Training and Education requests:

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

VETERANS PREFERENCE IN EMPLOYMENT

Department of Administrative Services, Human Resource Services Division

Division 40

Filling Positions 105-040-0001

Equal Employment Opportunity and Affirmative Action

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

- (3) Diverse applicant pools are developed by using proactive steps in outreach strategies which generally include targeted newspapers, professional organizations, employee networks, community organizations, and resume banks;
- (4) The statewide automated affirmative action system establishes goals for each equal employment opportunity category and ethnic group for each state agency;
- (5) Nothing in this rule precludes any person from filing a formal complaint in accordance with a collective bargaining agreement, or with appropriate state or federal agency under the applicable law.

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

Stats. Implemented: ORS 240.306 & ORS 243.305

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

Other Agency Documentation in Support of its Affirmative Action Plan

Employees of the Board sign their Position Descriptions (PD), which included Affirmative Action expectations. These expectations are also part of staff’s yearly evaluation.

NONDISCRIMINATION POLICY	
<i>Approved by: Oregon Board of Medical Imaging</i>	Date: August 2005

It is the policy of the Oregon Board of Radiologic Technology (Board) that no person dealing with the Board shall be discriminated against by reason of race, religion, color, national origin, sex, age, physical or mental handicap, sexual orientation or marital status. This policy covers recruitment, hiring, training, promoting, and transfers of employees and applicants. All personnel actions of the Board shall be administered according to this policy.

This same policy shall also apply to clients of the Board in the delivery of services. In that consideration, service is given to address needs without regard to race, religion, color, national origin, sex, age, physical or mental handicaps, or sexual orientation.

The Nondiscrimination Policy shall be adhered to by all staff of the Board. Management staff shall assure that the intent, as well as the stated requirements, is implemented in all employee relations and personnel practices. The application of this policy is the individual responsibility of the Executive Director.

Copies of this policy shall be provided to all employees at orientation.

Discrimination Complaint Form

Date of File: _____ Date Received by Agency _____

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

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

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

3. Complainant was discriminated against because of (check all categories in "A" through "I" that apply to the act(s) of discrimination):
 - a. Age (Please indicate your age.) _____
 - b. Disability (Specify the name of your disability and/or provide a brief description of its symptoms.)

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

 - g. Political Affiliation (Please indicate your affiliation.)
 - h. Race/Color (Please check the racial or ethnic group with which you identify.)

- i. **American-Indian or Alaskan Native:** All persons having origins in any of the original peoples of North America, and who maintain cultural identification through tribal affiliation or community recognition.
- ii. **Asian:** All persons having origins in any of the original people of the Far East, Southeast Asia or the Indian subcontinent. This area includes, for example, China, Japan and Korea.
- iii. **Black or African-American:** All persons having origins in any of the black ethnic groups.
- iv. **Hispanic or Latino:** All persons having origins in any of the Mexican, Puerto Rican, Cuban, Central or South America, or other Spanish cultures, regardless of race.
- v. **Native-Hawaiian or Other Pacific Islander:** All persons having origins in any of the original peoples of the Pacific Islands. This area includes, for example, Hawaii, the Philippine Islands and Samoa.
- vi. **White (not of Hispanic origin):** All persons having origins in any of the original peoples of Europe, North Africa or the Middle East.
- vii. **Two or More Races:** All persons claiming origins in more than one of the above racial/ethnic categories.

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

j. Retaliation

k. Sexual Harassment

l. Sexual Orientation

m. Veteran's Status

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

Date(s) _____

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

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

(Additional sheets may be attached.)

6. What relief are you seeking?

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

8. Has this complaint been filed with any other Federal, State, or local investigative agency?

Yes _____ No _____ If "Yes," complete "A-C" below.

a. Agency: _____ Contact Person: _____

b. Address: _____
City: _____ State: _____ Zip Code: _____

c. Phone Telephone: _____ Date Filed: _____

9. Have you filed a lawsuit concerning this complaint in Federal or State court?

Yes _____ No _____ If "Yes," complete "A and B" below.

a. Name of Court: _____

b. Case Docket Number: _____

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

Signature: _____ Date: _____

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

The Age Discrimination in Employment Act of 1967

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

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

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

- **Apprenticeship Programs**

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

- **Job Notices and Advertisements**

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

- **Pre-Employment Inquiries**

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

- **Benefits**

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

reduced benefits to older workers is no less than the cost of providing benefits to younger workers.

Employers are permitted to coordinate retiree health benefit plans with eligibility for Medicare or a comparable state-sponsored health benefit.

- **Waivers of ADEA Rights**

An employer may ask an employee to waive his/her rights or claims under the ADEA. Such waivers are common in settling ADEA discrimination claims or in connection with exit incentive or other employment termination programs. However, the ADEA, as amended by OWBPA, sets out specific minimum standards that must be met in order for a waiver to be considered knowing and voluntary and, therefore, valid. Among other requirements, a valid ADEA waiver must:

- be in writing and be understandable;
- specifically refer to ADEA rights or claims;
- not waive rights or claims that may arise in the future;
- be in exchange for valuable consideration in addition to anything of value to which the individual already is entitled;
- advise the individual in writing to consult an attorney before signing the waiver; and
- provide the individual at least 21 days to consider the agreement and at least seven days to revoke the agreement after signing it.

If an employer requests an ADEA waiver in connection with an exit incentive or other employment termination program, the minimum requirements for a valid waiver are more extensive. *See Understanding Waivers of Discrimination Claims in Employee Severance Agreements*" at http://www.eeoc.gov/policy/docs/qanda_severance-agreements.html

Title I of the Americans with Disabilities Act of 1990 (ADA)

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

An individual with a disability is a person who:

- Has a physical or mental impairment that substantially limits one or more major life activities;
- Has a record of such an impairment; or
- Is regarded as having such an impairment.

- A qualified employee or applicant with a disability is an individual who, with or without reasonable accommodation, can perform the essential functions of the job in question. Reasonable accommodation may include, but is not limited to:
- Making existing facilities used by employees readily accessible to and usable by persons with disabilities.
- Job restructuring, modifying work schedules, reassignment to a vacant position;
- Acquiring or modifying equipment or devices, adjusting or modifying examinations, training materials, or policies, and providing qualified readers or interpreters.

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

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

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

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

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

Title I of the ADA also covers:

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

of employees must be job related and consistent with the employer's business needs.

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

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

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

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

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

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

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

Disability Discrimination

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

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

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

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

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

Disability Discrimination & Work Situations

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

Disability Discrimination & Harassment

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

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

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

Disability Discrimination & Reasonable Accommodation

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

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

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

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

Disability Discrimination & Reasonable Accommodation & Undue Hardship

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

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

Definition Of Disability

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

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

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

Disability & Medical Exams During Employment Application & Interview Stage

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

For example, an employer may not ask a job applicant to answer medical questions or take a medical exam before extending a job offer. An employer also may not ask job applicants if they have a disability (or about the nature of an obvious disability). An employer may ask

job applicants whether they can perform the job and how they would perform the job, with or without a reasonable accommodation.

Disability & Medical Exams After A Job Offer For Employment

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

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

Once a person is hired and has started work, an employer generally can only ask medical questions or require a medical exam if the employer needs medical documentation to support an employee's request for an accommodation or if the employer believes that an employee is not able to perform a job successfully or safely because of a medical condition. The law also requires that employers keep all medical records and information confidential and in separate medical files.

Available Resources

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

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

The ADA Amendments Act

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

The Questions and Answers Series

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

Mediation and the ADA

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

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

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

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

The law against compensation discrimination includes all payments made to or on behalf employees as remuneration for employment. All forms of compensation are covered, including salary, overtime pay, bonuses, stock options, profit sharing and bonus plans, life insurance, vacation and holiday pay, cleaning or gasoline allowances, hotel accommodations, reimbursement for travel expenses, and benefits.

Equal Pay Act

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

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

Skill

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

Effort

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

Responsibility

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

Working Conditions

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

Establishment

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

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

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

Title VII, ADEA, and ADA

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

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

- An employer pays an employee with a disability less than similarly situated employees without disabilities and the employer's explanation (if any) does not satisfactorily account for the differential.
- An employer sets the compensation for jobs predominately held by, for example, women or African-Americans below that suggested by the employer's job evaluation study, while the pay for jobs predominately held by men or whites is consistent with the level suggested by the job evaluation study.
- An employer maintains a neutral compensation policy or practice that has an adverse impact on employees in a protected class and cannot be justified as job-related and consistent with business necessity. For example, if an employer provides extra compensation to employees who are the "head of household," i.e., married with dependents and the primary financial contributor to the household, the practice may have an unlawful disparate impact on women.

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

Title II of the Genetic Information Nondiscrimination Act of 2008 **(GINA)**

Title II of the [Genetic Information Nondiscrimination Act of 2008 \(GINA\)](#), which prohibits genetic information discrimination in employment, took effect on November 21, 2009.

Under Title II of GINA, it is illegal to discriminate against employees or applicants because of genetic information. Title II of GINA prohibits the use of genetic information in making employment decisions, restricts employers and other entities covered by Title II (employment agencies, labor organizations and joint labor-management training and apprenticeship programs - referred to as "covered entities") from requesting, requiring or purchasing genetic information, and strictly limits the disclosure of genetic information.

The EEOC enforces Title II of GINA (dealing with genetic discrimination in employment). The Departments of Labor, Health and Human Services and the Treasury have responsibility for issuing regulations for Title I of GINA, which addresses the use of genetic information in health insurance.

Definition of “Genetic Information”

Genetic information includes information about an individual’s genetic tests and the genetic tests of an individual’s family members, as well as information about the manifestation of a disease or disorder in an individual’s family members (i.e. family medical history). Family medical history is included in the definition of genetic information because it is often used to determine whether someone has an increased risk of getting a disease, disorder, or condition in the future. Genetic information also includes an individual's request for, or receipt of, genetic services, or the participation in clinical research that includes genetic services by the individual or a family member of the individual, and the genetic information of a fetus carried by an individual or by a pregnant woman who is a family member of the individual and the genetic information of any embryo legally held by the individual or family member using an assisted reproductive technology.

Discrimination Because of Genetic Information

The law forbids discrimination on the basis of genetic information when it comes to any aspect of employment, including hiring, firing, pay, job assignments, promotions, layoffs, training, fringe benefits, or any other term or condition of employment. *An employer may never use genetic information to make an employment decision because genetic information is not relevant to an individual's current ability to work.*

Harassment Because of Genetic Information

Under GINA, it is also illegal to harass a person because of his or her genetic information. Harassment can include, for example, making offensive or derogatory remarks about an applicant or employee’s genetic information, or about the genetic information of a relative of the applicant or employee. Although the law doesn't prohibit simple teasing, offhand comments, or isolated incidents that are not very serious, harassment is illegal when it is so severe or pervasive that it creates a hostile or offensive work environment or when it results in an adverse employment decision (such as the victim being fired or demoted). The harasser can be the victim's supervisor, a supervisor in another area of the workplace, a co-worker, or someone who is not an employee, such as a client or customer.

Retaliation

Under GINA, it is illegal to fire, demote, harass, or otherwise “retaliate” against an applicant or employee for filing a charge of discrimination, participating in a discrimination proceeding (such as a discrimination investigation or lawsuit), or otherwise opposing discrimination.

Rules Against Acquiring Genetic Information

- It will usually be unlawful for a covered entity to get genetic information. There are six narrow exceptions to this prohibition:
- Inadvertent acquisitions of genetic information do not violate GINA, such as in situations where a manager or supervisor overhears someone talking about a family member’s illness.
- Genetic information (such as family medical history) may be obtained as part of health or genetic services, including wellness programs, offered by the employer on a voluntary basis, if certain specific requirements are met.

- Family medical history may be acquired as part of the certification process for FMLA leave (or leave under similar state or local laws or pursuant to an employer policy), where an employee is asking for leave to care for a family member with a serious health condition.
- Genetic information may be acquired through commercially and publicly available documents like newspapers, as long as the employer is not searching those sources with the intent of finding genetic information or accessing sources from which they are likely to acquire genetic information (such as websites and on-line discussion groups that focus on issues such as genetic testing of individuals and genetic discrimination).
- Genetic information may be acquired through a genetic monitoring program that monitors the biological effects of toxic substances in the workplace where the monitoring is required by law or, under carefully defined conditions, where the program is voluntary.
- Acquisition of genetic information of employees by employers who engage in DNA testing for law enforcement purposes as a forensic lab or for purposes of human remains identification is permitted, but the genetic information may only be used for analysis of DNA markers for quality control to detect sample contamination.

Confidentiality of Genetic Information

It is also unlawful for a covered entity to disclose genetic information about applicants, employees or members. Covered entities must keep genetic information confidential and in a separate medical file. (Genetic information may be kept in the same file as other medical information in compliance with the Americans with Disabilities Act.) There are limited exceptions to this non-disclosure rule, such as exceptions that provide for the disclosure of relevant genetic information to government officials investigating compliance with Title II of GINA and for disclosures made pursuant to a court order.

National Origin Discrimination

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

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

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

National Origin Discrimination & Work Situations

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

National Origin & Harassment

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

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

National Origin & Employment Policies/Practices

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

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

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

Citizenship Discrimination & Workplace Laws

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

I-9), based on the employee's national origin or citizenship status. It is the employee's choice which of the acceptable Form I-9 documents to show to verify employment eligibility.

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

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

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

Pregnancy Discrimination

Pregnancy Discrimination

Pregnancy discrimination involves treating a woman (an applicant or employee) unfavorably because of pregnancy, childbirth, or a medical condition related to pregnancy or childbirth.

Pregnancy Discrimination & Work Situations

The Pregnancy Discrimination Act (PDA) forbids discrimination based on pregnancy when it comes to any aspect of employment, including hiring, firing, pay, job assignments, promotions, layoff, training, fringe benefits, such as leave and health insurance, and any other term or condition of employment.

Pregnancy Discrimination & Temporary Disability

If a woman is temporarily unable to perform her job due to a medical condition related to pregnancy or childbirth, the employer or other covered entity must treat her in the same way as it treats any other temporarily disabled employee. For example, the employer may have to provide light duty, alternative assignments, disability leave, or unpaid leave to pregnant employees if it does so for other temporarily disabled employees.

Additionally, impairments resulting from pregnancy (for example, gestational diabetes or preeclampsia, a condition characterized by pregnancy-induced hypertension and protein in the urine) may be disabilities under the Americans with Disabilities Act (ADA). An employer may have to provide a reasonable accommodation (such as leave or modifications that enable an employee to perform her job) for a disability related to pregnancy, absent undue hardship (significant difficulty or expense). The ADA Amendments Act of 2008 makes it much easier to show that a medical condition is a covered disability.

For more information about the ADA, see <http://www.eeoc.gov/laws/types/disability.cfm>.

For information about the ADA Amendments Act, see http://www.eeoc.gov/laws/types/disability_regulations.cfm.

Pregnancy Discrimination & Harassment

It is unlawful to harass a woman because of pregnancy, childbirth, or a medical condition related to pregnancy or childbirth. Harassment is illegal when it is so frequent or severe that it creates a hostile or offensive work environment or when it results in an adverse employment decision (such as the victim being fired or demoted). The harasser can be the victim's supervisor, a supervisor in another area, a co-worker, or someone who is not an employee of the employer, such as a client or customer.

Pregnancy, Maternity & Parental Leave

Under the PDA, an employer that allows temporarily disabled employees to take disability leave or leave without pay, must allow an employee who is temporarily disabled due to pregnancy to do the same.

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

benefits, the employer may require employees affected by pregnancy-related conditions to submit such statements.

Further, under the Family and Medical Leave Act (FMLA) of 1993, a new parent (including foster and adoptive parents) may be eligible for 12 weeks of leave (unpaid or paid if the employee has earned or accrued it) that may be used for care of the new child. To be eligible, the employee must have worked for the employer for 12 months prior to taking the leave and the employer must have a specified number of employees. See <http://www.dol.gov/whd/regs/compliance/whdfs28.htm>.

Pregnancy & Workplace Laws

Pregnant employees may have additional rights under the Family and Medical Leave Act (FMLA), which is enforced by the U.S. Department of Labor. Nursing mothers may also have the right to express milk in the workplace under a provision of the Fair Labor Standards Act enforced by the U.S. Department of Labor's Wage and Hour Division.

See <http://www.dol.gov/whd/regs/compliance/whdfs73.htm>.

For more information about the Family Medical Leave Act or break time for nursing mothers, go to <http://www.dol.gov/whd>, or call 202-693-0051 or 1-866-487-9243 (voice), 202-693-7755 (TTY).

Race/Color Discrimination

Race discrimination involves treating someone (an applicant or employee) unfavorably because he/she is of a certain race or because of personal characteristics associated with race (such as hair texture, skin color, or certain facial features). Color discrimination involves treating someone unfavorably because of skin color complexion.

Race/color discrimination also can involve treating someone unfavorably because the person is married to (or associated with) a person of a certain race or color or because of a person's connection with a race-based organization or group, or an organization or group that is generally associated with people of a certain color.

Discrimination can occur when the victim and the person who inflicted the discrimination are the same race or color.

Race/Color Discrimination & Work Situations

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

Race/Color Discrimination & Harassment

It is unlawful to harass a person because of that person's race or color.

Harassment can include, for example, racial slurs, offensive or derogatory remarks about a person's race or color, or the display of racially-offensive symbols. Although the law doesn't prohibit simple teasing, offhand comments, or isolated incidents that are not very serious, harassment is illegal when it is so frequent or severe that it creates a hostile or offensive work

environment or when it results in an adverse employment decision (such as the victim being fired or demoted).

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

Race/Color Discrimination & Employment Policies/Practices

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

Facts About Race/Color Discrimination

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

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

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

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

Race-Related Characteristics and Conditions

Discrimination on the basis of an immutable characteristic associated with race, such as skin color, hair texture, or certain facial features violates Title VII, even though not all members of the race share the same characteristic.

Title VII also prohibits discrimination on the basis of a condition which predominantly affects one race unless the practice is job related and consistent with business necessity. For example, since sickle cell anemia predominantly occurs in African-Americans, a policy which excludes individuals with sickle cell anemia is discriminatory unless the policy is job related and consistent with business necessity. Similarly, a “no-beard” employment policy may discriminate against African-American men who have a predisposition to pseudofolliculitis barbae (severe shaving bumps) unless the policy is job-related and consistent with business necessity.

Color Discrimination

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

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

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

Title VII's protections include:

- **Recruiting, Hiring, and Advancement**

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

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

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

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

Title VII prohibits discrimination in compensation and other terms, conditions, and privileges of employment. Thus, race or color discrimination may not be the basis for differences in pay

or benefits, work assignments, performance evaluations, training, discipline or discharge, or any other area of employment.

- **Harassment**

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

- **Retaliation**

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

- **Segregation and Classification of Employees**

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

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

- **Pre-Employment Inquiries and Requirements**

Requesting pre-employment information which discloses or tends to disclose an applicant's race suggests that race will be unlawfully used as a basis for hiring. Solicitation of such pre-employment information is presumed to be used as a basis for making selection decisions. Therefore, if members of minority groups are excluded from employment, the request for such pre-employment information would likely constitute evidence of discrimination.

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

Other pre-employment information requests which disclose or tend to disclose an applicant's race are personal background checks, such as criminal history checks. Title VII does not categorically prohibit employers' use of criminal records as a basis for making employment

decisions. Using criminal records as an employment screen may be lawful, legitimate, and even mandated in certain circumstances. However, employers that use criminal records to screen for employment must comply with Title VII's nondiscrimination requirements.

Religious Discrimination

Religious discrimination involves treating a person (an applicant or employee) unfavorably because of his or her religious beliefs. The law protects not only people who belong to traditional, organized religions, such as Buddhism, Christianity, Hinduism, Islam, and Judaism, but also others who have sincerely held religious, ethical or moral beliefs.

Religious discrimination can also involve treating someone differently because that person is married to (or associated with) an individual of a particular religion or because of his or her connection with a religious organization or group.

Religious Discrimination & Work Situations

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

Religious Discrimination & Harassment

It is illegal to harass a person because of his or her religion.

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

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

Religious Discrimination and Segregation

Title VII also prohibits workplace or job segregation based on religion (including religious garb and grooming practices), such as assigning an employee to a non-customer contact position because of actual or feared customer preference.

Religious Discrimination & Reasonable Accommodation

The law requires an [employer or other covered entity](#) to reasonably accommodate an employee's religious beliefs or practices, unless doing so would cause more than a minimal burden on the operations of the employer's business. This means an employer may be required to make reasonable adjustments to the work environment that will allow an employee to practice his or her religion.

Examples of some common religious accommodations include flexible scheduling, voluntary shift substitutions or swaps, job reassignments, and modifications to workplace policies or practices.

Religious Accommodation/Dress & Grooming Policies

Unless it would be an undue hardship on the employer's operation of its business, an employer must reasonably accommodate an employee's religious beliefs or practices. This applies not only to schedule changes or leave for religious observances, but also to such things as dress or grooming practices that an employee has for religious reasons. These might include, for example, wearing particular head coverings or other religious dress (such as a Jewish yarmulke or a Muslim headscarf), or wearing certain hairstyles or facial hair (such as Rastafarian dreadlocks or Sikh uncut hair and beard). It also includes an employee's observance of a religious prohibition against wearing certain garments (such as pants or miniskirts).

When an employee or applicant needs a dress or grooming accommodation for religious reasons, he should notify the employer that he needs such an accommodation for religious reasons. If the employer reasonably needs more information, the employer and the employee should engage in an interactive process to discuss the request. If it would not pose an undue hardship, the employer must grant the accommodation.

Religious Discrimination & Reasonable Accommodation & Undue Hardship

An employer does not have to accommodate an employee's religious beliefs or practices if doing so would cause undue hardship to the employer. An accommodation may cause undue hardship if it is costly, compromises workplace safety, decreases workplace efficiency, infringes on the rights of other employees, or requires other employees to do more than their share of potentially hazardous or burdensome work.

Religious Discrimination And Employment Policies/Practices

An employee cannot be forced to participate (or not participate) in a religious activity as a condition of employment.

Retaliation

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

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

Retaliation & Work Situations

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

Facts About Retaliation

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

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

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

Adverse Action

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

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

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

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

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

Covered Individuals

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

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

Protected Activity

Protected activity includes:

Opposition to a practice believed to be unlawful discrimination

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

Examples of protected opposition include:

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

Examples of activities that are NOT protected opposition include:

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

Participation in an employment discrimination proceeding.

Participation means taking part in an employment discrimination proceeding.

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

Examples of participation include:

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

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

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

Sex-Based Discrimination

Sex discrimination involves treating someone (an applicant or employee) unfavorably because of that person's sex.

Sex discrimination also can involve treating someone less favorably because of his or her connection with an organization or group that is generally associated with people of a certain sex.

Sex Discrimination & Work Situations

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

Sex Discrimination Harassment

It is unlawful to harass a person because of that person's sex. Harassment can include "sexual harassment" or unwelcome sexual advances, requests for sexual favors, and other verbal or physical harassment of a sexual nature. Harassment does not have to be of a sexual nature, however, and can include offensive remarks about a person's sex. For example, it is illegal to harass a woman by making offensive comments about women in general.

Both victim and the harasser can be either a woman or a man, and the victim and harasser can be the same sex.

Although the law doesn't prohibit simple teasing, offhand comments, or isolated incidents that are not very serious, harassment is illegal when it is so frequent or severe that it creates a hostile or offensive work environment or when it results in an adverse employment decision (such as the victim being fired or demoted).

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

Sex Discrimination & Employment Policies/Practices

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

Sexual Harassment

It is unlawful to harass a person (an applicant or employee) because of that person's sex. Harassment can include "sexual harassment" or unwelcome sexual advances, requests for sexual favors, and other verbal or physical harassment of a sexual nature.

Harassment does not have to be of a sexual nature, however, and can include offensive remarks about a person's sex. For example, it is illegal to harass a woman by making offensive comments about women in general.

Both victim and the harasser can be either a woman or a man, and the victim and harasser can be the same sex.

Although the law doesn't prohibit simple teasing, offhand comments, or isolated incidents that are not very serious, harassment is illegal when it is so frequent or severe that it creates a hostile or offensive work environment or when it results in an adverse employment decision (such as the victim being fired or demoted).

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

Facts About Sexual Harassment

Sexual harassment is a form of sex discrimination that violates [Title VII of the Civil Rights Act of 1964](#). Title VII applies to employers with 15 or more employees, including state and local governments. It also applies to employment agencies and to labor organizations, as well as to the federal government.

Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when this conduct explicitly or implicitly affects an individual's employment, unreasonably interferes with an individual's work performance, or creates an intimidating, hostile, or offensive work environment.

Sexual harassment can occur in a variety of circumstances, including but not limited to the following:

- The victim as well as the harasser may be a woman or a man. The victim does not have to be of the opposite sex.
- The harasser can be the victim's supervisor, an agent of the employer, a supervisor in another area, a co-worker, or a non-employee.
- The victim does not have to be the person harassed but could be anyone affected by the offensive conduct.
- Unlawful sexual harassment may occur without economic injury to or discharge of the victim.
- The harasser's conduct must be unwelcome.

It is helpful for the victim to inform the harasser directly that the conduct is unwelcome and must stop. The victim should use any employer complaint mechanism or grievance system available. When investigating allegations of sexual harassment, EEOC looks at the whole record: the circumstances, such as the nature of the sexual advances, and the context in which the alleged incidents occurred. A determination on the allegations is made from the facts on a case-by-case basis.

Prevention is the best tool to eliminate sexual harassment in the workplace. Employers are encouraged to take steps necessary to prevent sexual harassment from occurring. They should clearly communicate to employees that sexual harassment will not be tolerated. They can do so by providing sexual harassment training to their employees and by establishing an effective complaint or grievance process and taking immediate and appropriate action when an employee complains.

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