



Oregon

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State Board of Tax Practitioners

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OREGON STATE BOARD OF TAX PRACTITIONERS

Affirmative Action Plan 2015 – 2017 Biennium



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I. Description of the Board of Tax Practitioners

A. Mission and Objectives

The Oregon State Board of Tax Practitioners, created by the 1973 Legislative Assembly, protects Oregon consumers by ensuring that Oregon tax professionals are competent and ethical in their professional activities. All persons in Oregon, who prepare, advise or assist in the preparation of personal income tax returns for a fee, or represent that they do so, must be licensed.

The Executive Director directly supervises the Compliance Specialist, the Exam and Education Coordinator, and the Licensing Specialist. The Executive Director reports to the President of the Board.

B. Name of Executive Director

William McMillen
3218 Pringle Rd SE, Suite 120
Salem, OR 97302
503-378-4733

C. Name of Governor's Policy Advisor for the Tax Board

Vince Porter, 503-378-5884

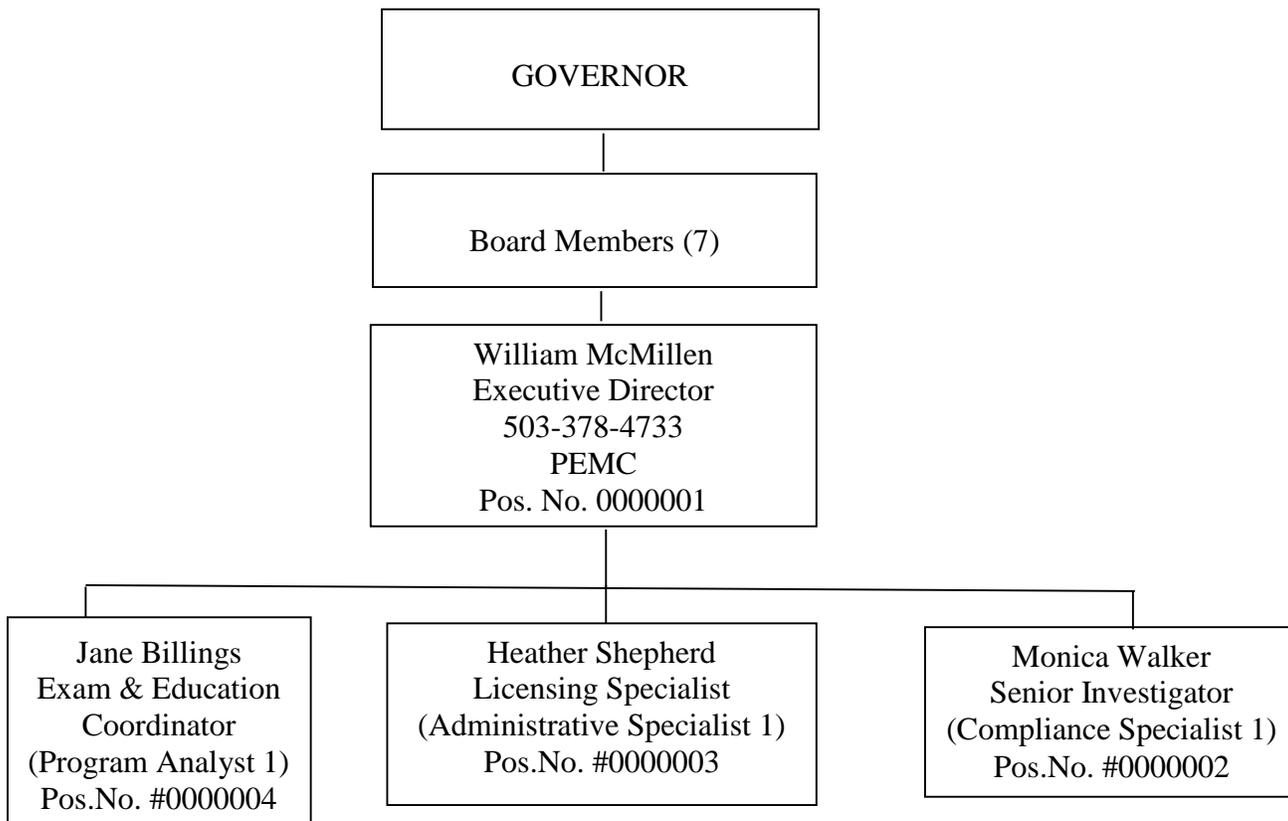
D. Affirmative Action Representative for the Tax Board

Executive Director, William McMillen 503-378-4733
Cyndi Smith, State Client Agency HR Manager 503-378-2298

E. The Diversity and Inclusion Representative

None

F. Organizational Chart



II. Affirmative Action Plan

A. Agency Affirmative Action Policy

Introduction

The purpose of this plan is to update and maintain the previously initiated affirmative action program for the Oregon State Board of Tax Practitioners. This plan is in keeping with the directive of the Governor, state and federal laws and regulations, executive orders of the President of the United States of America concerning affirmative action, discrimination/nondiscrimination guidelines appropriate under the Civil Rights Acts, equal employment opportunity (EEO) policies, and the Americans with Disabilities Act by which our good faith efforts must be directed.

Policy Statement

The Oregon Board of Tax Practitioners will not tolerate discrimination or harassment based on age, color, marital status, mental or physical disability, national origin, race, religion, sex, sexual orientation, or any reason prohibited by state or federal statute. Nor shall the Board do business with any vendor/provider for the State of Oregon who discriminates or harasses in the above-described manner. All personnel actions of the Oregon State Board of Tax Practitioners, and all licensing actions and disciplinary actions concerning licensees, shall be administered according to this policy.

The Board adheres to established nondiscrimination and affirmative action precepts when screening, selecting and appointing Board members.

The Board of Tax Practitioners aggressively seeks to attract qualified applicants from diverse backgrounds including minorities, women, and disabled persons. It actively facilitates their retention and advancement based on merit, ability, and potential.

All staff of the Oregon State Board of Tax Practitioners shall adhere to the Affirmative Action Policy and Plan and to the spirit and letter of equal employment opportunity laws, rules, regulations and affirmative action concepts. The application of this policy is the individual responsibility of the Executive Director and the Director shall be evaluated on his/her performance in achieving this affirmative action policy as well as in other job performance criteria. The Affirmative Action Plan is posted on the Board's website and intranet; a hard copy is placed in the reception area, and in the Executive Director's office. The Affirmative Action Policy Statement is posted on the bulletin board where all other required posters are located. Failure to meet our Affirmative Action standards will be subject to disciplinary actions.

All employees shall be advised of the procedure for lodging a discrimination/ harassment complaint, and all employees with concerns of any kind related to affirmative action shall be encouraged to bring them to the attention of the Executive Director.

Our internal procedure supports the statewide policy and both are located in Appendix A of this plan. It is further the policy of the Oregon State Board of Tax Practitioners to establish and maintain this program of affirmative action to provide for a method of eliminating any effects of past or present discrimination, intended or unintended, which may be indicated by analysis of present employment patterns, practices, or policies.

Duration of Plan

This revision of the Board's Affirmative Action Plan is effective July 1, 2011 and shall be evaluated annually or as needed when state or federal changes occur. The Board's Affirmative Action Representative is William McMillen, 503-378-4733.

B. Agency Diversity and Inclusion Statement

This policy applies to all Board of Tax Practitioners employees, volunteers, proctors, constituents, and Board Members. This policy applies to all matters related to hiring, firing, transfer, promotion, benefits, compensation, and other terms and conditions of employment, as well as delivery of the Board of Tax Practitioners services.

C. Training, Education and Development Plan (TEDP)

1. Employees:

New Oregon Board of Tax Practitioners employees are required to read and discuss the agency Affirmative Action Policy, ask questions and clearly understand the agency's Affirmative Action Policy. They receive training on complaint procedures and on the practical application of the policy in the workplace. The Oregon Board of Tax Practitioners has a policy manual that clearly identifies its Affirmative Action Policy.

All recruitment announcements and advertisements for the Oregon Board of Tax Practitioners contain the statement, "The Oregon Board of Tax Practitioners is an Equal Opportunity, Affirmative Action employer. Minorities, women and persons with disabilities are encouraged to apply."

Given the small size of the Board, all staff receives cross training in critical job duties. Staff is encouraged to take work related training classes. Since advancement opportunities within the Board are rare staff is encouraged to seek promotional opportunities outside the agency.

Formal staff meetings occur weekly; informal meetings occur as needed.

Staff receives annual Employee Performance Evaluations.

2. Volunteers:

Every Oregon Board of Tax Practitioners volunteer receives the Affirmative Action Policy and training on complaint procedures each year. Volunteers work closely with staff and learn about workplace expectations, agencies goals and mission, and forms of appropriate conduct expected while interacting with licensees and consumers.

3. Contract/Vendors

The Oregon Board of Tax Practitioners uses contract service providers to administer exams at colleges throughout Oregon. The service providers are accountable through the Department of Higher Education's Affirmative Action Plan. The Oregon Board of Tax Practitioners uses vendors for supplies and services. The Board does not currently provide Affirmative Action training to vendors who do not directly interact with the public.

D. Programs

1. Internship Program:

Given the Board of Tax Practitioners small staff, the Board does not have an Internship Program. The Board is open to exploring ways to work with other boards and develop an Internship Program.

2. Mentorship Program:

Given the Board of Tax Practitioners small staff, the Board does not have a Mentorship Program. The Board is open to exploring ways to work with other boards and develop a Mentorship Program.

3. Community Outreach Program:

Given the Board of Tax Practitioners small staff, the Board does not have a Community Outreach program. The Board is open to exploring ways to work with other boards and develop a Community Outreach program.

4. Diversity Awareness Program:

Given the Board of Tax Practitioners small staff, the Board does not have a Diversity Awareness Program. The Board is mindful of the Affirmative Action Policy and continually makes it our practice to maintain a respectful and welcoming environment. The Board is open to exploring ways to work with other boards and develop a Diversity Awareness Program.

5. Leadership Development/Training Program:

Given the Board of Tax Practitioners small staff, training for staff and volunteers occurs as needed throughout the year.

E. Update: Executive Order 08-18

1. Cultural Competency Assessment and Implementation Services:

Given its small staff of four (4) the Board did not request a cultural Competency Assessment in the 2013-2015 biennium nor is there a plan to request one in the 2015-2017 biennium.

2. Statewide Exit Interview Survey:

The exit survey was not part of our process for employees exiting the agency. We will immediately implement providing an exit survey to employees prior to their departure. The survey will allow an employee to share their honest opinions regarding their work experience with the agency. As employees change agencies or depart from state employment, the Board is interested in how employees view their tenure and what information and suggestions they can provide related to their experience. The survey will cover issues such as benefits, working conditions, opportunities for career advancement, the quality and quantity of the workload, and relationships with co-workers and supervisors.

Survey results will be provided to the Governor's Affirmative Action Office to be included in statewide survey results.

3. Performance Evaluations of all Management Personnel:

Management personnel receive annual performance evaluations. The Executive Director is responsible for achieving affirmative action objectives. The Board evaluates the Executive Director, in part, on effective implementation of the Affirmative Action Policy, Equal Employment Opportunity Policy, ADA Policy and Affirmative Action Plan. The Executive Director's evaluation is also based on his/her work in fostering and promoting a diverse workforce, creating a discrimination/harassment-free workplace and ensuring a supportive work environment for all employees.

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

The Board of Tax Practitioners awarded one contract during the 2011-2013 biennium to a woman owned business. 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 receive fair and equal consideration. The Board does not have any contracts that exceed \$5,000 with minority businesses.

III. Roles for Implementation of Affirmative Action Plan

A. Responsibilities and Accountabilities

1. Executive Director

- a. Foster and promote to employees the importance of a diverse, discrimination and harassment free workplace. Participate in cultural diversity trainings, orientations, and be an example of cultural sensitivity.

- b. Meet as needed, with the Board's Human Resource Manager to review equal employment opportunities, evaluate affirmative action and diverse work environment progress, and identify problems. Approve strategies and timetables for meeting goals.
- c. Annual performance reviews will include ratings on the Director's support and effectiveness of the agency's Affirmative Action Plan.
- d. The effectiveness of the Executive Director in promoting the affirmative action activities, goals and objectives for the Board will be included in her/his annual performance appraisal.

ORS 659.025(1) states:

“To achieve the public policy of the State of Oregon for persons in the state to attain employment and advancement without discrimination because of race, religion, color, sex, marital status, national origin, handicap or age, every state agency shall be required to include in the evaluation of all management personnel the manager's or supervisor's effectiveness in achieving affirmative action objectives as a key consideration of the manager's or supervisor's performance.”

2. **Agency Managers** – Due to the small size of the agency, 4 employees, there are no other managers or supervisors. All employees report directly to the Executive Director.

3. **Affirmative Action Representative**

- Present affirmative action information via orientation, training and management consultation
- Coordinate activities to implement the Affirmative Action Plan
- Monitor progress toward affirmative action goals
- Develop and communicate agency-wide policies and procedures related to AA/EEO
- Design performance measures and reporting systems tracking effectiveness of AA Plan, with quarterly report to the Board
- Identify opportunities for mentoring, training and developmental assignments assisting qualified minorities, women and disabled persons to increase their job skills and advance their careers
- Provide training for staff on AA/EEO issues, workplace harassment and cultural competence
- Assure agency recruitments comply with AA and EEO goals assist with efforts to meet affirmative action recruitment and promotion goals
- Receive and investigate discrimination complaints in accordance with Oregon Board of Tax Practitioners complaint procedures, make recommendations to Human Resources and the Board for appropriate action
- Assure that agency recruitments are free from artificial employment barriers and advancement of minority, women, disabled, and older applicants.

IV. July 1, 2012- June 30, 2014

A. Accomplishments

During the 2013-2015 biennium, the Oregon Board of Tax Practitioners remained current with its Affirmative Action goals and strategies.

B. Progress

The agency continues to train its personnel for any advancement opportunities within the agency.

The agency continues to work with the Governor's Office for opportunities to meet its Affirmative Action goals in Board appointments. In filling these vacancies, the agency considers its affirmative action plan while looking for the best candidate. Current appointments include one man of Hispanic origin, one Caucasian man and four women, one woman has Native American heritage.

Affirmative Action Plan
2015-2017 Biennium

The agency has several programs to increase the number of licensed tax professionals that are people of color and of diverse origins.

V. July 1, 2015 – June 30, 2017

A. Goals for the Tax Board's Affirmative Action Plan

The Oregon Board of Tax Practitioners:

- seeks to identify and urge qualified minority and disabled candidates to pursue employment as a tax preparer
- will work toward building a diverse and culturally competent agency
- seeks to become an employer of choice for qualified minority and disabled candidates

In the 2015-2017 biennium, the Oregon Board of Tax Practitioners will pursue the following goals and strategies:

- Ensure all staff members have reviewed and understand content and purpose of AA plan.
- The ED will report progress toward goals to the board as a discussion item in general session at least once per year.
- Work with any new hires to assess the physical work environment, standard equipment and practices for equal access. Identify potential barriers they might perceive, and develop strategies and objectives for addressing barriers.
- Actively engage in outreach efforts to recruit qualified persons from diverse backgrounds and from underrepresented classes.

B. Strategies and time lines for implementation

- Promote celebration of events important to diverse cultures throughout the year both at a staff operational level, as well as recognized in board meetings in general session.
- Schedule at least one training for board and staff members focused on identifying and valuing the many facets of diversity (e.g., cultural, ethnic, learning style, etc.).
- Schedule at least one meeting with board members and stakeholders that explores access and diversity within the industries and services regulated by the board, as well as in the overall population served by those industries.

The Tax Board's long-term goal is to operate an agency reflecting the diversity of Oregon; is competent to carry out its mission; and provide leadership and service supporting inclusion and culturally competent service delivery for all employees and citizens of the State of Oregon.

VI. APPENDIX A

A. Agency's Policy Documentation

1. ADA and Reasonable Accommodation Policy:

Statewide Policy



SUBJECT: ADA and Reasonable Accommodation in Employment **NUMBER:** **50.020.10**

DIVISION: Human Resource Services Division **EFFECTIVE DATE:** **6/7/10**

APPROVED: Signature on file with Human Resource Services Division

POLICY STATEMENT:

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

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

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

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

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

ATTACHMENTS: **ADA Accommodation Tool Kit**

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

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

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

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

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

Statewide
Policy

ADA and Reasonable Accommodation in Employment

50.020.10

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

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

Major Life Activities – This term means the basic activities the average person in the general population can perform with little or no difficulty. These including breathing; walking;

hearing; thinking; concentrating; seeing; communicating; speaking; reading; learning; eating; self-care; performing manual tasks such as reaching, bending, standing and lifting; sleeping; or working (working in general, not the ability to perform a specific job). The term also includes but not limited to “major bodily functions,” such as functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions.

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

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

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

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

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

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

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

A.2

Policy: 50.020.10

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Effective: 6/7/10

<u>Statewide</u> <u>Policy</u> ADA and Reasonable Accommodation in Employment	50.020.10
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Undue Hardship – This term means significant difficulty or expense. Whether a particular accommodation imposes undue hardship is determined on a case-by-case basis, with consideration of such factors as the following:

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

POLICY

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

Policy: 50.020.10
6/7/10

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Effective:

2. Discrimination and Harassment Free Workplace Policy:



Statewide Policy

SUBJECT: Discrimination and Harassment Free Workplace **NUMBER:** 50.010.01

DIVISION: Human Resource Services Division **EFFECTIVE DATE:** 01/25/08

APPROVED: Signature on file with Human Resource Services Division

POLICY STATEMENT:

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

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

APPLICABILITY: All employees, state temporary employees and volunteers.

ATTACHMENTS: None

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

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

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

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

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

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

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

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<u>DAS Statewide Policy</u>		
Policy title: Discrimination and Harassment Free Workplace 50.010.01		

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

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

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

Protected Class Under Oregon State Law: All Federally protected classes, plus: age (18 and older); physical or mental disability; injured worker; a person who uses leave covered by the Oregon Family Leave Act; marital status; family relationship; sexual

orientation; whistleblower; expunged juvenile record; and any other protected class as defined by state law.

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

- 1) Submission to such conduct is made either explicitly or implicitly a term or condition of the individual's employment, or is used as a basis for any employment decision (granting leave requests, promotion, favorable performance appraisal, etc.); or
- 2) Such conduct is unwelcome, unwanted or offensive and has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile or offensive working environment.

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

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

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

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

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

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Policy: 50.010.01
01/25/08

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Effective:

DAS Statewide Policy

**Policy title: Discrimination and Harassment Free Workplace
50.010.01**

POLICY

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

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

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

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

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

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

occurrence. (C) An oral or written complaint should

contain the following:

(i) the name of the person filing the

report; (ii) the name of the

complainant;

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

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

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

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

|

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

(e) **Filing a Report with the USDOL Civil Rights Center.** An employee whose position is funded by the Oregon Workforce Investment Act (WIA), such as employees of the Oregon Workforce One-stop System, may file a complaint under the WIA, Methods of Administration (MOA) with the State of Oregon WIA, MOA Equal Opportunity Officer or directly through the USDOL, Civil Rights Center. The

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Policy: 50.010.01
01/25/08

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Effective:

DAS Statewide Policy

**Policy title: Discrimination and Harassment Free Workplace
50.010.01**

complaint must be written, signed and filed within 180 days of when the alleged discrimination or harassment occurred.

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

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

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

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

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

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

(F) The agency, board or commission will notify the complainant and the accused when the investigation is concluded.

(G) Immediate and appropriate action will be taken if a complaint is substantiated.

(H) The agency, board or commission will inform the complainant if any part of a complaint is substantiated and that action has been taken. The complainant will not be given the specifics of the action.

(I) The complainant and the accused will be notified by the agency, board or commission if a complaint is not substantiated.

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

(A) Employees engaging in conduct in violation of this policy may be subject to disciplinary action up to and including dismissal.

(B) State temporary employees and volunteers who engage in conduct in violation of this policy may be subject to termination of their working or volunteer relationship with the agency, board or commission.

(C) An agency, board or commission may be liable for discrimination, workplace harassment or sexual harassment if it knows of or should know of conduct in violation of this policy and fails to take prompt, appropriate action.

(D) Managers and supervisors who know or should know of conduct in violation of this policy and who fail to report such behavior or fail to take prompt, appropriate action may be subject to disciplinary action up to and including dismissal.

(E) An employee who engages in harassment of other employees while away from the workplace and outside of working hours may be subject to the provisions of this policy if that conduct has a negative impact on the work environment and/or working relationships.

(F) If a complaint involves the conduct of a contracted employee or a contractor, the agency, board, or commission Human Resource section, Executive Director, chair, or designee must inform the contractor

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Policy: 50.010.01
01/25/08

4 of 5

Effective:

DAS Statewide Policy

Policy title: Discrimination and Harassment Free Workplace

50.010.01

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%

A.8

3. Employee Training Policy:



<u>Internal Operations Manual</u>			
SUBJECT:	Employee Development	NUMBER:	107-04-010
DIVISION:	Operations Division	EFFECTIVE DATE:	08-06-03
APPROVED: Signature on file with the Office of Business Administration			

**POLICY/
PURPOSE:**

It is the policy of the Department of Administrative Services (DAS) to provide resources for our employees to perform the duties of their current position, and to encourage their career development in state service, as far as is reasonably practicable to do. DAS provides opportunities for training to employees to develop proficiency, enhance skills, and encourage development in areas of potential advancement. In accordance with the Oregon Benchmarks, the DAS goal is to provide employees with at least twenty (20) hours of training related to work skills and knowledge each fiscal year. This goal is to be achieved through leadership, commitment, and the development and maintenance of agency and individual training plans.

AUTHORITY: ORS 240.145(3), (4); DAS-HRSD State Policy 50.045.01; OAM 50.10.00.PO

APPLICABILITY: All Department of Administrative Services employees

ATTACHMENTS: Exhibit 1. Employee Development Plan
Exhibit 2. Request for Training
Exhibit 3. Employee Development Plan Report
Exhibit 4. Structured Learning Plan

GUIDELINES:

I. DAS Training Goal

A minimum of 20 hours of education and training annually, all to be related to work skills and knowledge, for one hundred percent (100%) of permanent employees.

II. DAS Training Plan

The DAS Training Plan, which consists of the following elements and responsibilities, requires flexibility to meet changing needs and a dedicated collaborative effort by all parties

DAS Training Plan

The DAS Training Plan, which consists of the following elements and responsibilities, requires flexibility to meet changing needs and a dedicated collaborative effort by all parties

The Director and Executive Staff will approve and support the DAS training plan.

Division Administrators will determine their division's training needs and develop a division training plan that includes a training budget and a system for tracking the training completed by employees and the division.

GUIDELINES (Continued)

Supervisors and Managers will assess the training needs of their employees on an on-going basis. They are to develop and implement individual employee development plans that enable employees to successfully perform their jobs and contribute to achievement of the unit mission and goals.

DAS Training Manager, as a resource to management, will have lead responsibility for developing and implementing the DAS Training Plan so it supports the department, divisions, and employees, in achieving their missions and goals. The DAS Training Manager's responsibilities include:

- Scheduling and providing open-enrollment, department wide In-Service training programs that meet common needs
- Providing ongoing communication about both internal and external training programs, services, resources, and opportunities
- Coordinating and implementing department-wide training initiatives that address organizational goals or needs
- Providing training and facilitation services to divisions, sections, or units as requested
- Supporting divisions and managers in increasing the number and quality of individual employee development plans
- Supporting divisions and managers in increasing the percentage of employees who receive at least 20 hours of job-related training and education each year
- Tracking In-Service training completed by all department employees

III. Qualified Training

Criteria to be used in determining which learning experiences qualify as "education related to work skills" includes formal instruction or a structured learning plan (Exhibit 4) that relates to:

1. An employee's competence to perform their specific job (job required training), or
2. An employee's work environment (job related training), or
3. An employee's state government career

IV. Job required and Job Related Training

1. **Job Required Training** provides knowledge or skills specific to an employee's current job. It is needed for successful performance of that job. Examples include technical knowledge, use of equipment, software applications, organizational skills, and interpersonal skills.

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2. Job Related Training provides knowledge or skills an employee needs to meet agency or state performance expectations. An example is understanding agency or state mission, values, policies, and procedures. These may include such things as customer service standards, safe work practices, valuing diversity, and preventing harassment.

V. Scheduling and Eligibility for Training

All staff, including temporary employees, shall be eligible for Job Required and Job Related training. Job Required and Job Related training shall be conducted without loss of pay to the employee and the employee shall be paid for the time as time worked. Anyone may suggest training opportunities to be considered for approval by management. Any employee may request training and be considered by management for approval. Training may be conducted during and outside the employee's work schedule. Overtime provisions are to apply when an employee's attendance is required by division management and the sessions involve time outside the employee's work schedule.

VI. Employee Development Plan Objectives

1. On an annual basis, the employee and immediate supervisor are to develop and update an individual employee development plan. The objective of the plan is to align employee and organizational goals. It should also guide resource planning and decisions related to the employee's training.
2. Individual employee development plans will not be used for employee performance improvement plans.

Division administrators will maintain a procedure for documenting employee training/staff development.

VII. Cooperation Between Agencies

When opportunities arise, DAS may invite other agencies to fill staff development openings and share training facilities and various employee development resources.

VIII. Educational Assistance

Decisions regarding educational assistance shall be consistent with this policy and DAS-HRSD State Policy 50.045.01. Tuition aid shall be primarily on a reimbursement basis. Employees requesting reimbursement shall provide proof of satisfactory completion of the class with a passing grade letter grade or "Pass". Division administrators shall make the determination to reimburse an employee for a portion or all costs of a course such as the registration fee, materials, incidental fees and travel. Division administrators may also authorize exceptions for advance payment of tuition fees for an employee whose inability to pay the fees precludes their registration and attendance in a course that is directly related to their job responsibilities and is

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otherwise approved by the employee's supervisor. Such exceptions will be considered on a case-by-case basis. Attendance at such courses can be either during or after regular working hours.

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Educational Assistance (Continued)

When division administrators assign and employee to a specific course, the Agency will reimburse all costs such as the registration fee, materials, incidental fees and travel.

PROCEDURES:

<u>Step</u>	<u>Responsible Party</u>	<u>Action</u>
1.	Supervisor and Employee	Annually, develops and updates individual Employee Development Plan (<i>Exhibit 1 or division form</i>).
2.	Employee	Completes and submits Training Request Form (<i>Exhibit 2 or division form</i>) to supervisor.
3.	Supervisor	Approves or denies training request.

If Training Request Denied:

4.	Supervisor	Returns copy of Training Request to employee with written explanation of why the request was denied.
5.	Employee	Accepts denied request.

or

Appeals the denied request in writing by outlining the reason for the request, why the employee feels the decision should be reconsidered, and any new information or material bearing upon the request.

Attaches a copy of the Training Request Form to the Appeal.

Submits the appeal letter and training request to division administrator for final decision.

Note: Appeal shall be made within one week of notification of denied request. The decision on a particular request may be appealed only once.

If Training Request Approved:

6.	Supervisor	When signatures are complete, returns form to Division Training Coordinator.
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7. Division
Training
Coordinator

Schedules training.

Makes copies of approved Training Request for

- a.** Accounts Payable
- b.** Employee (with notice of approval, scheduling, and payment)
- c.** Employee Training file

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Employee Development

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If Training Request Approved (*Continued*)

Step Responsible Party Responsible

Party

Division Training Coordinator		If training is to be prepaid, completes Coding Block, attaches to Training Request and submits to the Office of Business Administration (OBA) Accounts Payable for processing of payment.
8.	Employee	Attends Training.
9.	Employee	Submits proof of attendance, satisfactory completion of class, and other required materials to Division Training Coordinator. Submits proof of payment if employee is to be reimbursed. Submits a course evaluation if requested.
10.	Division Training Coordinator	Processes payment by attaching proof of satisfactory completion of class to the Coding Block and employee's Training Request. Submits documents to OBA Accounts Payable for payment. Enters required data into employee training record.

Exceptions:

- a. Some classes are prepaid by the employee who, after submitting proof of successful completion, is then reimbursed.
- b. College Credit classes are processed for payment through OBA Payroll.

Many IRS Laws and Regulations govern payment for College Credit classes and certain other classes taken through a college. To avoid possible IRS violations, all College Credit classes will be processed for payment through OBA Payroll. OBA Payroll will review payment requests to decide if they are tax related and to be paid by Payroll or can be sent to Accounts Payable.

11.	Supervisor	At the time of performance evaluation, reviews the experience and capabilities of each employee and develops an Individual Development Plan (<i>Exhibit 1 or division form</i>) for the next year, and attaches it to the
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evaluation. Includes a copy of the completed Employee Development Plan Report (Exhibit 3 or division form) for the past year. Attaches a copy of the employee's Training Record that lists all training taken during the past year. (Obtains training record from the Division Training Coordinator.)

- 12.** Employee Participates in assisting their training needs developing goals, and suggesting appropriate training.

**DEPARTMENT OF ADMINISTRATIVE
SERVICES EMPLOYEE
DEVELOPMENT PLAN**

DIVISION: _____ YEAR _____

Employee:
Section:
Position:

KNOWLEDGE, SKILLS, OR ABILITIES DESIRED	TRAINING OPPORTUNITIES/ EDUCATION/EXPERIENCES	PROJECTED SCHEDULE	PROJECTED COST

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Supervisor Signature

Date

Employee Signature

Date

**DEPARTMENT OF ADMINISTRATIVE SERVICES
REQUEST FOR TRAINING**

1. Employee Name: _____
 2. Division/Section: _____
 3. Course Name: _____

NOTE: A description of the course content as listed in the catalog or an announcement must be attached.

4. Course Cost: \$ _____ Books/Supplies: \$ _____ Lodging/Travel (Est.): \$ _____
 Total Cost: \$ _____ Course Hours: _____ or Credit Hours: _____

5. Duration of Training: _____ Date: _____ Time: _____
 6. Location of Training: _____
 7. Course Offered by: _____

Explain below how this course relates to your job assignments:

Job Required - Provides knowledge or skills needed to successfully perform the employee's current job.

Job Related - Provides knowledge or skills needed to meet agency or state performance expectations.

I certify that I have not applied for, received, nor will receive payment from any source for the reimbursement expenses requested:

Employee's Signature Date

____ Approved Or ____ Disapproved

Supervisor's Signature Date

____ Approved Or ____ Disapproved

Manager's Signature Date

PCA NUMBER:	I approve the requested training and certify that sufficient funding is available for reimbursement:
AGY. OBJ. NO.:	
_____ Division Administrator's Signature Date	

ADMINISTRATION OFFICE USE ONLY

- ____ The sponsor will be billing us. Pay invoice upon receipt for PO # _____
 ____ Upon evidence of satisfactory completion, reimburse employee for a total of \$ _____
 ____ Make check payment or agency transfer in advance to the training sponsor (Request Attached).

**DEPARTMENT OF ADMINISTRATIVE SERVICES
EMPLOYEE DEVELOPMENT PLAN REPORT**

DIVISION: _____ **YEAR** _____

Employee: _____

Section: _____

Position: _____

TITLE/DESCRIPTION OF TRAINING COMPLETED	TRAINING PROVIDER/RESOURCE	DATE COMPLETED	TRAINING HOURS	COST

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Supervisor Signature

Date

Employee Signature

Date

**DEPARTMENT OF ADMINISTRATIVE
SERVICES STRUCTURED
LEARNING PLAN**

SECTION 1 - LEARNING PLAN

1. Employee:	Division/Section:	Date:
2. Description of learning experience:		
3. Type of training: <input type="checkbox"/> Job Required <input type="checkbox"/> Job Related		
4. Learning goal(s):		
5. Learning activities:		
	Est. Time	Actual Time
<input type="checkbox"/>		

SECTION 2 - EVALUATION OF LEARNING PLAN

1. Was the learning experience relevant to your current job or career development?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
2. Were the learning goal(s) achieved?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
3. Did the learning activities support achievement of the learning goal(s)?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
4. Identify any needed follow-up actions. Any "no" response in questions 1-3 above should include a follow-up.		
5. Total time (actual):		

Employee Signature

Supervisor Signature

Date

DEPARTMENT OF ADMINISTRATIVE
SERVICES STRUCTURED LEARNING
PLAN

**INSTRUCTIONS FOR USING AND COMPLETING THE STRUCTURED
LEARNING PLAN**

Most job learning occurs outside the “classroom” (i.e., formal classroom instruction). But to record these learning experiences as training, they need to be planned, structured, and documented. That is the purpose of this form. It is a tool to help supervisors and employees find, plan, and document creative ways and means of meeting skill development needs.

SECTION 1 - LEARNING PLAN

The supervisor and employee should work together to design, plan, and structure the learning experience. In their planning, they should consider evaluation questions 1-3 in Section 2 to ensure the experience has the best chance of achieving the desired learning. The purpose of Section 1 is to provide a format for putting the plan in writing.

1. **Employee, division/section, date(s).** Enter information.
2. **Description of learning experience.** Identify the training topic, the type of experience(s), the planned time frame or schedule, the provider/trainer, and the purpose (i.e., how the employee will use and apply what they’ve learned to their current job or career development). Types of experiences include, but are not limited to: on-the-job experiences such as arranged practice, instruction, or coaching from a supervisor or co-worker; special projects, developmental assignments, or task force participation; staff meetings, technical assistance meetings, or conferences; self-study programs involving written materials, audiotapes, videotapes, CD- ROMs, or internet learning; career development activities such as mentoring, cross-training, job shadowing, and job rotation; or any combination of two or more of these experiences.
3. **Type of training:** Check one box. The two types of training are:
 - **Job Required Training:** which includes, but is not limited to, knowledge or skills that help improve performance in one’s current job such as equipment use, relevant policies, organizational processes, and communication techniques.
 - **Job Related Training:** which includes topics about valuing diversity in the workforce, safety, organizational perspectives, sexual harassment, and other topics that build understanding of state government or organization expectations, priorities, or activities.
4. **Learning goal(s):** Describe the knowledge, skill, or ability the employee will achieve as a result of successfully completing the learning experience. A common phrase to begin a learning goal statement is: *“As a result of completing this learning experience, the employee will be able to.”*

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Then complete the statement by stating specifically what the employee will be able to do.

5. Learning activities. List the planned activities or steps the employee will complete or perform to achieve the learning goal, and the estimated time for each. As each step is completed, enter the actual time taken.

SECTION 2 - EVALUATION OF LEARNING PLAN

When the learning experience is completed, the supervisor and employee should discuss and evaluate its effectiveness and document the results by completing Section 2.

1. **Experience relevant?** Check the appropriate response.
2. **Learning goal(s) achieved?** Check appropriate response.
3. **Learning activities support achievement of learning goal(s)?** Check appropriate response.
4. **Follow-up actions.** List and describe any follow-up actions needed to ensure successful completion of the learning experience.
5. **Total time (actual).** Add the actual time amounts from Section 1, number 5 (learning activities) and indicate the total time here for reporting purposes.
6. **Signatures and date.** Supervisor and employee sign and date the form upon completion and evaluation of the learning experience.

**DEPARTMENT OF ADMINISTRATIVE
SERVICES STRUCTURED LEARNING
PLAN**

SAMPLE STRUCTURED LEARNING PLAN

SECTION 1 - LEARNING PLAN

1. Employee: <i>I. M. Unseur</i>	Division/Section: <i>Personnel</i>	Date: <i>01-06-03</i>																		
2. Description of learning experience: <i>Training topic: Effective meeting skills.</i> <i>Type of experiences: reading, meeting observation & evaluation, coaching, & practice.</i>																				
<hr/> <i>Time frame: January – February 2003.</i> <i>Provider/trainer: Supervisor</i> <i>Purpose: Develop meeting skills to chair the Division’s customer service committee beginning March 2003.</i>																				
3. Type of training: <input checked="" type="checkbox"/> Job Required Job Related																				
4. Learning goal(s): <i>As a result of completing this learning experience, the employee will be able to conduct effective meetings by planning before the meeting, facilitating during the meeting, and following up after the meeting.</i>																				
5. Learning activities: <table style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 70%;"></th> <th style="width: 15%; text-align: center;">Est. Time</th> <th style="width: 15%; text-align: center;">Actual Time</th> </tr> </thead> <tbody> <tr> <td><input type="checkbox"/> <i>Read/study the book, “Effective Meeting Skills,” by Marion E. Hayes.</i></td> <td style="text-align: center;"><i>2 hrs.</i></td> <td style="text-align: center;"><i>2 hrs.</i></td> </tr> <tr> <td><input type="checkbox"/> <i>Observe/evaluate Jan. 8 & 22 unit staff meetings. Use page 85 checklist.</i></td> <td style="text-align: center;"><i>3 hrs.</i></td> <td style="text-align: center;"><i>2 hrs.</i></td> </tr> <tr> <td><input type="checkbox"/> <i>Discuss mtg. observations w/supervisor and receive coaching for practice.</i></td> <td style="text-align: center;"><i>1.5 hrs.</i></td> <td style="text-align: center;"><i>1 hr.</i></td> </tr> <tr> <td><input type="checkbox"/> <i>Conduct Feb. 5 & 19 unit staff meetings for practice.</i></td> <td style="text-align: center;"><i>3 hrs.</i></td> <td style="text-align: center;"><i>2.5 hrs.</i></td> </tr> <tr> <td><input type="checkbox"/> <i>Discuss/evaluate practice meetings with supervisor and receive coaching.</i></td> <td style="text-align: center;"><i>1.5 hrs.</i></td> <td style="text-align: center;"><i>1.5 hrs.</i></td> </tr> </tbody> </table>				Est. Time	Actual Time	<input type="checkbox"/> <i>Read/study the book, “Effective Meeting Skills,” by Marion E. Hayes.</i>	<i>2 hrs.</i>	<i>2 hrs.</i>	<input type="checkbox"/> <i>Observe/evaluate Jan. 8 & 22 unit staff meetings. Use page 85 checklist.</i>	<i>3 hrs.</i>	<i>2 hrs.</i>	<input type="checkbox"/> <i>Discuss mtg. observations w/supervisor and receive coaching for practice.</i>	<i>1.5 hrs.</i>	<i>1 hr.</i>	<input type="checkbox"/> <i>Conduct Feb. 5 & 19 unit staff meetings for practice.</i>	<i>3 hrs.</i>	<i>2.5 hrs.</i>	<input type="checkbox"/> <i>Discuss/evaluate practice meetings with supervisor and receive coaching.</i>	<i>1.5 hrs.</i>	<i>1.5 hrs.</i>
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<input type="checkbox"/> <i>Discuss/evaluate practice meetings with supervisor and receive coaching.</i>	<i>1.5 hrs.</i>	<i>1.5 hrs.</i>																		

SECTION 2 - EVALUATION OF LEARNING PLAN

1. Was the learning experience relevant to your current job or career development?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
2. Were the learning goal(s) achieved?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
3. Did the learning activities support achievement of the learning goal(s)?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
4. Identify any needed follow-up actions. Any “no” response in questions 1-3 above should include a follow-up. <i>Another coaching session with the supervisor during Feb. or Mar. is needed to learn the differences between conducting a unit staff meeting and facilitating a division wide committee meeting. Also, it would be beneficial to observe another division wide committee meeting and receive coaching from the leader of that committee.</i>		
5. Total time (actual): <i>9 hours</i>		

4. Veterans Preference in Employment:

105-040-0015

Veteran's Preference in Employment

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

[ED. NOTE: Forms referenced are available from the

agency.] Stat. Auth: ORS 240.145(3) & 240.250

Stats. Implemented: ORS 408.225, 408.230 & 408.235

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

Prohibited Employment Policies/Practices

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

The law forbids discrimination in every aspect of employment.

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

Job Advertisements

It is illegal for an employer to publish a job advertisement that shows a preference for or discourages someone from applying for a job because of his or her race, color, religion, sex (including pregnancy), national origin, age (40 or older), disability or genetic information.

For example, a help-wanted ad that seeks "females" or "recent college graduates" may discourage men and people over 40 from applying and may violate the law.

Recruitment

It is also illegal for an employer to recruit new employees in a way that discriminates against them because of their race, color, religion, sex (including pregnancy), national origin, age (40 or older), disability or genetic information.

For example, an employer's reliance on word-of-mouth recruitment by its mostly Hispanic work force may violate the law if the result is that almost all new hires are Hispanic.

Application & Hiring

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

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

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

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

Job Referrals

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

Job Assignments & Promotions

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

B.1

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

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

Pay And Benefits

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

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

Discipline & Discharge

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

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When deciding which employees will be laid off, an employer may not choose the oldest workers because of their age.

Employers also may not discriminate when deciding which workers to recall after a layoff.

Employment References

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

Reasonable Accommodation & Disability

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

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

Reasonable accommodation might include, for example, providing a ramp for a wheelchair user or providing a reader or interpreter for a blind or deaf employee or applicant.

Reasonable Accommodation & Religion

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

Training & Apprenticeship Programs

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

B.2

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

Harassment

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

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

Harassment can take the form of slurs, graffiti, offensive or derogatory comments, or other verbal or physical conduct. Sexual harassment (including unwelcome sexual advances, requests

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for sexual favors, and other conduct of a sexual nature) is also unlawful. Although the law does not prohibit simple teasing, offhand comments, or isolated incidents that are not very serious, harassment is illegal if it is so frequent or severe that it creates a hostile or offensive work environment or if it results in an adverse employment decision (such as the victim being fired or demoted).

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

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

Read more about [harassment](#).

Terms & Conditions Of Employment

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

Pre-Employment Inquiries (General)

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

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

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

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

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

Pre-Employment Inquiries and:

Race

Height & Weight

Credit Rating Or Economic Status

Religious Affiliation Or Beliefs

B.3

Citizenship

Marital Status, Number Of Children

Gender

Arrest & Conviction

Security/Background Checks For Certain Religious Or Ethnic Groups

Disability

Medical Questions & Examinations

Dress Code

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

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

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

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

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

Constructive Discharge/Forced To Resign

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

B.4

VII. APPENDIX B

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

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**

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The Older Workers Benefit Protection Act of 1990 (OWBPA) amended the ADEA to specifically prohibit employers from denying benefits to older employees. Congress recognized that the cost of providing certain benefits to older workers is greater than the cost of providing those same benefits to younger workers, and that those greater costs might create a disincentive to hire older workers. Therefore, in limited circumstances, an employer may be permitted to reduce benefits based on age, as long as the cost of providing the reduced benefits to older workers is no less than the cost of providing benefits to younger workers.

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

- **Waivers of ADEA Rights**

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

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

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

2. Disability Discrimination Title I of the Americans with Disability Act of 1990

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.

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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).

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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

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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

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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

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- 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)

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

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

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- 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

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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.

4. Genetic Information Discrimination Title II of the Genetic Information Nondiscrimination Act of 2008 (GINA)

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.

5. National Origin Discrimination Title VII of the Civil Rights Act of 1964

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.

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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:

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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>.

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

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

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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).

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

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.

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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.

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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.

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

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

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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.

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

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

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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.

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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.

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Participation means taking part in an employment discrimination proceeding. Participation is protected activity even if the proceeding involved claims that ultimately were found to be invalid.

Examples of participation include:

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

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

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

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

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.

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

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.

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- 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.