



OREGON STATE BOARD OF NURSING

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Affirmative Action Plan
2015 – 2017 Biennium



Oregon

John A. Kitzhaber, MD, Governor

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August 11, 2014

Frank Garcia
Senior Policy Advisor, Governor's Office
255 Capitol Street, NE, Suite 126
Salem, OR 97301

RE: 2015-17 Board of Nursing Affirmative Action Plan

Dear Frank:

Attached please find the Agency's 2015-17 Affirmative Action Plan. We will continue our firm commitment to value diversity and make every effort to achieve our affirmative action goals.

Our agency goals for 2015-2017 include an increased focus on multicultural training through both external and internal resources. With the addition of a manager for organizational development, we will strive to seek diversity and cultural competency within our staff and Board members to the extent possible. During the 2013-2015 biennium, the agency completed workplace civility assessments, civility education and work towards integrating the State's Respectful Workplace Policy and agency core values into our everyday work and business practices. Our strategy plan for 2015-17 includes plans to provide a second module of professional competency training, developing a performance management system that includes cultural competency, and to invest in our employees by supporting them with their individual career development plans. Additionally, we are committed to expanding the diversity of our staff through outreach, promotional opportunities when possible, and through our recruitment efforts as vacancies occur.

I am committed to leading our agency and undertaking the responsibilities in this plan and I look forward to the challenge of creating and maintaining a diverse workforce to serve the public in the state of Oregon. If you have any questions about the plan, please contact Becky Weaver-Hedges at (971) 673-0641.

Respectfully,

Ruby R, Jason, MSN, RN, NEA-BC
Executive Director

**OREGON STATE BOARD OF NURSING
AFFIRMATIVE ACTION PLAN
2015-2017 BIENNIUM**

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DESCRIPTION OF AGENCY

The mission: The Oregon State Board of Nursing safeguards the public's health and well-being by providing guidance for, and regulation of, entry into the profession, nursing education and continuing safe practice.

Statutory Authority: The Board of Nursing administers ORS Chapter 678 and OAR Chapter 851 to license, investigate charges against, and discipline Registered Nurses, Licensed Practical Nurses, Certified Nurse Anesthetists, Nurse Practitioners, Clinical Nurse Specialists, Certified Nursing Assistants and Certified Medication Aides.

Agency Staffing: The nine Board members are appointed by the Governor and include: two public members, four Registered Nurses, one Licensed Practical Nurse, one Certified Nursing Assistant, and one Nurse Practitioner. The four RN members represent various areas of nursing practice as follows; one nurse educator, one nurse administrator, and two direct-care non-supervisory nurses. They also represent a variety of geographic locations. Board members serve three-year terms. The Board meets regularly throughout the year, holding five two-day in-person meetings and six teleconferenced meetings. Special meetings are held when necessary. Board meetings are open to the public.

The OSBN employs 48 FTE's who provide services and assist the Board in carrying out its mission. The staff is internally organized into the following sections: Investigations; Licensing/Fiscal Operations/Organizational Development (LFOD); Nursing Policy; Communications; and Administration.

The Executive Director directly supervises the Investigations Manager, LFOD Manager, the Nursing Policy Consultants, the Communications Manager, the Human Resources Manager and the Executive Assistant in addition to directing the preparation and administration of the agency's budget. The Executive Director reports to the President of the Board.

The current Executive Director of the Oregon State Board of Nursing is:

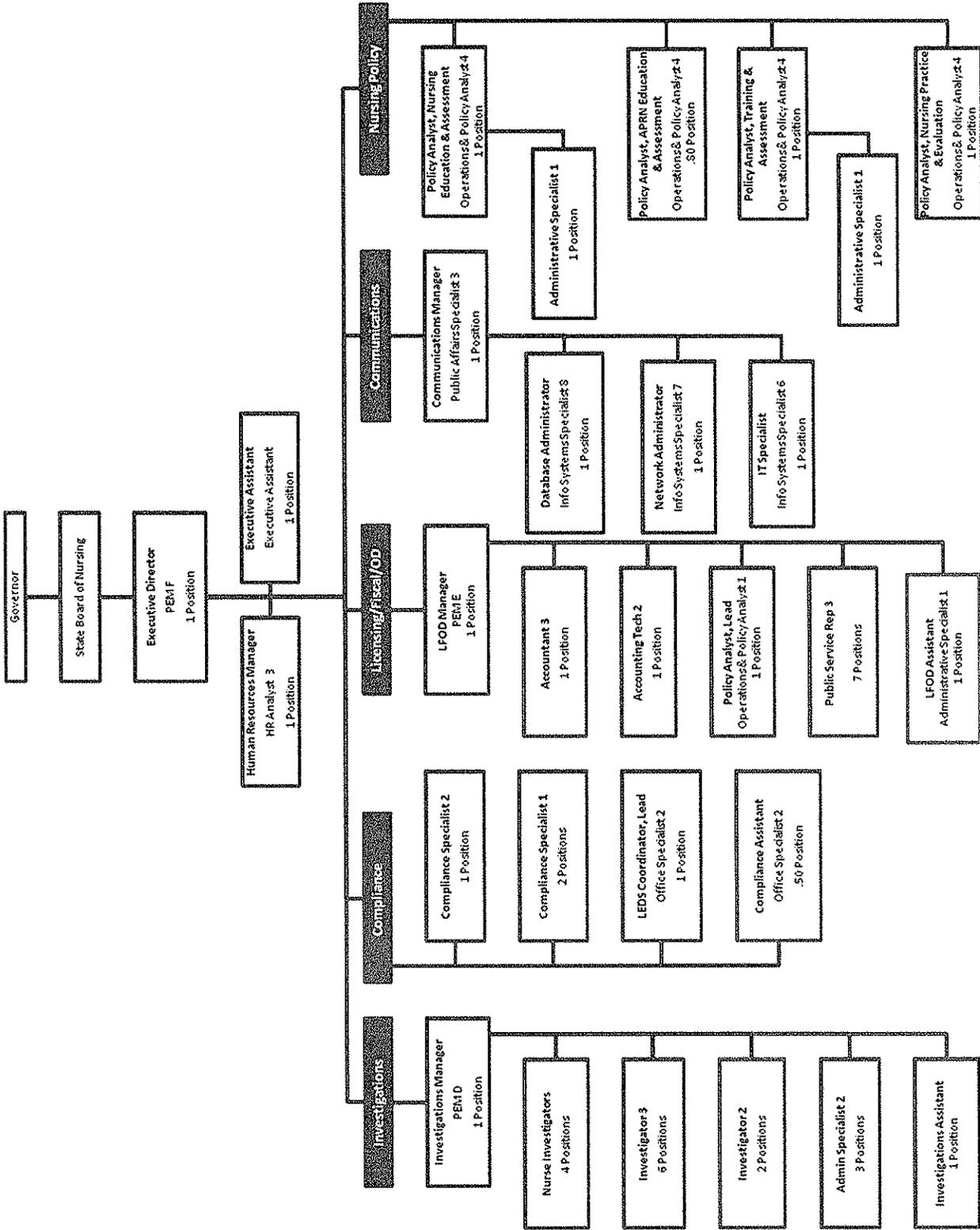
Ruby R. Jason, MSN, RN, NEA-BC
17938 SW Upper Boones Ferry Rd.
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Phone number 971-673-0639

The Governor's Policy Advisor for the Oregon State Board of Nursing is:
Sean Kolmer
Phone number 503-378-1558

The Affirmative Action Representative for the Oregon State Board of Nursing is:
Becky Weaver-Hedges, Human Resources Manager
Phone number 971-673-0641

The Diversity & Inclusion Representative for the Oregon State Board of Nursing is:
None

A current organizational chart for the Oregon State Board of Nursing follows this page.



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 Nursing, 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/non-discrimination 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 State Board of Nursing will not tolerate discrimination or harassment on the basis of 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 Nursing, and all licensing actions and disciplinary actions concerning licensees, shall be administered according to this policy.

All staff of the Oregon State Board of Nursing shall adhere to the Affirmative Action Policy and Plan. Supervisory and management staff, in particular, shall assure that the intent as well as the stated requirements is implemented in all employee relationships and personnel practices. In addition, it is the duty of every employee of the Oregon State Board of Nursing to create a job environment atmosphere which is conducive to non-discrimination policies and free of any form of discrimination or harassment. The application of this policy is the individual responsibility of all administrative and supervisory staff, and each shall be evaluated on his/her performance in achieving this affirmative action policy 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 and human resources' offices. 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 or to human resources.

It is further the policy of the Oregon State Board of Nursing 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, 2015 and shall be evaluated annually or as needed when state or federal changes occur. The Board's Affirmative Action Representative is Becky Weaver-Hedges, 971-673-0641.

B. *Agency Diversity & Inclusion Statement*

The Board, Executive and Management Staff of the Oregon Board of Nursing strive to ensure that the agency has a diverse and inclusive environment and an organizational culture with values that foster civility and inclusion.

We work both inside and outside of state government with a variety of stakeholders that are key in supporting public safety within Oregon's healthcare delivery systems. In addition to our public safety mission, we strive to

provide fair, equitable and inclusive business processes when implementing policies, rules and regulations related to the practice of nursing in Oregon.

The agency takes proactive steps to provide fair and equal opportunities in our business processes that affect the following:

1. filling vacancies within the agency
2. recognition and rewarding employee performance
3. resolving employee issues, including performance
4. use of outside vendors
5. work with stakeholders
6. licensing qualified individuals to practice nursing in the State of Oregon
7. investigating complaints against licensees to ensure public safety
8. program approval/audits of Oregon nursing education programs to meet standards

We are committed to build and maintain an organization that uses the concepts of diversity and inclusion based on our core values: Integrity, Collaboration, Stewardship, Simplicity and Innovation.

C. Training, Education and Development Plan

1. Employees

- a. Educate and inform all employees at new employee orientation as to their rights and responsibilities under the Board's affirmative action plan and other Board policies to eliminate discrimination or harassment on the basis of age, color, marital status, mental or physical disability, national origin, race, religion, sex, sexual orientation, or any reason prohibited by state or federal statute.
- b. Provide new employees a copy of the Board of Nursing's Affirmative Action Plan and policies upon hire and encourage them to review their role and discuss any questions with their supervisor.
- c. All employees will attend educational offerings in the areas of Affirmative Action, Diversity and Inclusion. These sessions may be in the form of guest speakers during all-staff meetings, formal classes, sharing of information from the Governor's Affirmative Action Office, and/or one-on-one discussions. Managers will be evaluated annually for their adherence to the Affirmative Action Plan and policies.
- d. The Board will work to identify and take actions that support succession planning to transition employees in key positions whenever possible.
- e. The Board will provide resources for employee career development within state service, whenever reasonable and within available resources. The agency may provide opportunities for education of employees for developing proficiency, enhancing skills and encouraging development in areas for potential advancement. Suggestions from employees will be considered for approval according to an established process.
- f. The education plan is designed to align with the mission and values of the Board of Nursing. All employees are given an opportunity to participate in the following education:
 - a) Developing Job Skills – opportunities to developing proficiency, enhancing skills and encouraging development in areas for potential advancement.
 - b) Increase staff and board member knowledge and awareness of affirmative action through review and discussion of the Affirmative Action Plan and policies.
- g. Periodically, educate and inform all employees as to their rights and responsibilities under the agency's Affirmative Action Plan and policies.
- h. Make the complete Affirmative Action Plan available and accessible to all board members, employees and contractors.
- i. The Board of Nursing will continue to focus and educate staff on developing and maintaining a work environment that is attractive to a diverse pool of applicants, one that retains employees and one that is accepting and respectful of employee differences.

- j. The Oregon State Board of Nursing posts a copy of the Affirmative Action and Equal Employment Opportunity policy and plan on its web site and intranet for easy access by the public and by employees.
 - k. The Board of Nursing's recruitment announcements and advertisements identify the Agency as an Equal Opportunity/Affirmative Action employer and includes the statement, "THE OREGON STATE BOARD OF NURSING IS AN EQUAL OPPORTUNITY, AFFIRMATIVE ACTION EMPLOYER COMMITTED TO WORK FORCE DIVERSITY"
2. **Board Members**
 - a. Provide new Board Members with a copy of the Affirmative Action Plan or direct them to the Board's website where the Plan is available for public viewing.
 - b. Invite them to participate in the Board's cultural diversity education sessions.
 3. **Providers and Volunteers**
The Oregon State Board of Nursing does not have any Providers or Volunteers.
 4. **Contractors/Vendors**
When contracts are established or renewed, the Oregon State Board of Nursing provides vendors with a copy of the Affirmative Action Plan or directs them to the Board's website where the Plan is available for public viewing.

D. Programs

The Oregon State Board of Nursing uses a number of approaches in executing a diversity program and bringing new people into the work force, creating opportunities for existing employees, and promoting an environment that is welcoming, tolerant and supportive. Some of the initiatives and activities include:

- Communicating to all staff in a variety of mediums the importance of diversity and engaging staff in processes to provide input on ways to improve our diversity performance;
- Asking staff to focus on the organization and provide suggestions on ways to improve our diversity performance;
- Continuing the established Labor/Management Committee as a forum that promotes communication and ideas for improvement of agency policies, workflow, and the agency's inclusion goals.
- Making presentations to healthcare and stakeholder organizations about the work of the Oregon State Board of Nursing which creates interest in jobs at our agency and interest in nursing;
- Drawing upon different sources to advertise our recruitments in the online state recruitment system and increased awareness of our job vacancies through outreach to minority and community organizations.
- Promoting a respectful workplace by offering education on diversity and inclusion awareness, improving communications, and maintaining an atmosphere that encourages cooperative problem solving and ideas at all levels of the agency;
- Creating a welcoming environment by fostering an acceptance of people's differences and treating everyone with respect and professionalism whether they are an internal or external customer;
- Posting and forwarding e-mailing information about cultural activities and other information that supports diversity and inclusion;
- Displaying the agency's commitment to the Affirmative Action Plan by publicizing the Plan and agency core values on our website and the agency intranet, in addition to making hard copies accessible.
- Maintain partnerships with other agencies to create and provide resources and opportunities for education that promotes diversity and inclusion.

- Development of a performance management system that incorporates core value accountabilities that supports diversity and individual employee development plans resulting from individual employee needs assessments.
- Recently started an Employee Activity Council to identify, plan and organize activities that build relationships between departments and individuals within the agency.

1. Internship Programs

Due to the size of the agency, internship opportunities are limited. However, with outreach efforts identified in the agency strategic plan, we will explore options for these programs during 2015-2017.

2. Mentorship Programs

The agency does informal mentoring with on the job training and cross training. With the addition of an organizational development manager in the spring of 2014, we anticipate formal mentorship opportunities will expand during 2015-2017.

3. Community Outreach Programs

- a. Due to the size of the agency and financial restrictions, the agency has not participated in career fairs other than through stakeholder outreach related to nursing regulation.
- b. The agency participates in a limited number of stakeholder events related to the nursing profession through outreach within in the state and nationally.
- c. As a regulatory agency, the agency does not participate in trade related events.

4. Diversity Awareness Programs

- a. The agency does not have a Diversity Council but recently formed an Employee Activity Council that is tasked with identifying, planning and organizing activities that will build relationships between departments and individuals within the agency.

b. Employee Resource Groups (ERG's)/Affinity Groups

There are no ERG/Affinity Groups at this time.

c. Diversity Presentations and/or Activities

Orientation is provided to all new employees as to their rights and responsibilities under the agency's Affirmative Action Policies and to all agency staff as policies are reviewed at least annually with staff.

Notices and newsletters about cultural activities and other information that supports diversity and inclusion are accessible to all staff through email or posted in the agency.

Employees are encouraged to share family/cultural traditions at employee activities.

5. Leadership Development/Training Programs

The agency's leadership has made a commitment to invest in our employees during 2015-2017 by providing career development and training to the extent possible.

A new professional competency series is planned for 2015-2017. The developmental needs assessment, completed in winter 2014, will assist in guiding additional training and individual development support from the agency.

E. Update: Executive Order 08-18

1. Cultural Competency Assessment and Implementation Services

With the addition of an organizational development manager, the Oregon State Board of Nursing plans to increase multicultural training for all staff and for the Board during the 2015-2017 biennium. We will continue to enlist a variety of resources to work towards cultural competency of staff and Board Members in addition to aligning our core values in our business processes and actions with both internal and external customers.

The Board will implement a Cultural Competency Assessment to assist in determining where the culture lies within the broad spectrum of culturally unaware to culturally competent. A culturally competent organization is able to use the policies, people and resources it has to systematically anticipate, recognize and respond to varying expectations of customers and employees. A culturally competent organization values individuals for their differences instead of expecting individuals to adapt to the culture of the organization. The Board, its employees and customers, will immediately benefit from their movement along the spectrum towards cultural competence.

In December 2014, OSBN's Organizational Development Manager contacted the Governor's Affirmative Action Office to explore options for a Cultural Competency Assessment to be conducted in the 2015-2017 biennium (date unknown). The agency will coordinate efforts with the AA Office for the initial assessment along with communications regarding implementation strategies of accepted recommendations from the assessment as we move forward.

The Oregon State Board of Nursing will continue to deploy activities to enhance its cultural competence over the 2015-2017 Biennium to achieve:

- People of diverse backgrounds and experience effectively working together;
- People understanding and appreciating one another's differences;
- People effectively communicating with and being respectful of those differences; and

The plan and activities will focus on:

- Improved communications amongst staff to understand and appreciate the value of the Board's mission;
- Greater awareness among staff about personal communication styles;
- Possible changes to policies and procedures that will enhance effective communication and utilize differing strengths to realize a respectful workplace on a daily basis;
- Identifying training and development that all employees will enjoy and participate in; and
- An increased respect for and understanding of diverse cultures within the workforce.

The Oregon State Board of Nursing will benefit from this plan by:

- Utilizing unique strengths and perspectives to solve problems and enrich the work environment;
- Creating a climate of cultural awareness and a welcoming environment that honors diversity;
- Making a stronger and more cohesive workforce rallied together by a common goal of success;
- Having a greater understanding of the world in which we work and the customers we serve; and
- Preventing and overcoming misunderstandings, lost opportunities and conflict.

2. ***Statewide Exit Interview Survey***

The agency's human resources offers exit interviews to all departing staff. Discussion and follow-up is done with the Executive Director on any concerns or trends within the agency's ability to address or takes the information forward to the appropriate division within State government when appropriate. From the most recent survey results, often the reason for leaving the agency related to salary and career growth opportunities. We are optimistic that the end of furloughs and the work DAS is doing regarding employee compensation will support retention of valuable employee resources. The agency's addition of an organizational manager and recommitment to promoting from within are also positive steps taken within the agency. Additionally, the agency's reorganization under new leadership in 2014 resulted in several promotional and rotational opportunities for support staff.

The agency will continue to provide each departing employee the link to the State's exit interview survey monkey, initially required by the Governor's Affirmative Action Office, and recently revised with state-wide Human Resources input. We anticipate the revised exit survey will produce information that that will assist the agency in prioritizing remedies and for celebrating successes.

3. ***Performance Evaluations of all Management Personnel***

The Oregon State Board of Nursing remains committed to compliance with the Governor's executive orders requiring the inclusion of diversity and affirmative action requirements in position descriptions and annual performance evaluations. Performance accountability in the areas of Affirmation Action, Diversity and Inclusion is an area that will be further defined as the agency develops a new performance management system for all staff during 2015-2017. Review and evaluation for all management and executive staff will be accomplished at least annually.

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

The Oregon State Board of Nursing did not issue any contracts under \$5,000. Only one contract was awarded over \$5,000 for specialized IT related services and it was not awarded to an MWESB certified firm.

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, inclusive and discrimination/harassment free workplace. Participate in cultural diversity education and serve as an example in cultural sensitivity.
- b. Meet as needed, with human resources and organizational development to review equal employment opportunities, evaluate affirmative action and diverse work environment progress, and to identify barriers or issues. Approve strategies and timetables for meeting affirmative action goals.
- c. Ensure annual management performance evaluations include an assessment of the support and effectiveness of the manager related to the Affirmative Action Plan and policies; that management fosters civility, respect and core values in daily activities and other actions that promote diversity and inclusion.
- d. Hold managers accountable for participating in and promoting affirmative action activities and for communicating this same responsibility to their subordinate supervisors and employees. The effectiveness of managers and supervisors in promoting the affirmative action activities, goals and objectives for the Board will be included in their annual performance appraisals. 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. *Managers*

- a. Foster and promote to employees the importance of a diverse, inclusive and discrimination/harassment free workplace.
- b. Participate in education on the agency affirmative action goals, understand their own responsibilities, and evaluate how well they are achieving affirmative action goals and objectives.
- c. Evaluate subordinate staff on their effectiveness in carrying out the responsibilities they have for participating in and promoting affirmative action activities.
- d. In undertaking these evaluations, managers will consider how well the employee fosters and promotes a diverse workforce, how well s/he promotes the affirmative action goals and objectives, and that his/her staff are knowledgeable about the Board’s policies and procedures that promote diversity, inclusion and core values.
- e. Convey that the Board is an equal opportunity employer to applicants for employment, and the agency’s commitment to workforce diversity. Have a copy of the agency Affirmative Action Plan available for applicants to review upon request.
- f. Work within the State’s Human Resources policies and procedures in filling vacancies.
- g. Attend equal opportunity, affirmative action and other diversity-related training in order to be informed of current issues.
- h. Make available a hard copy or electronic copy of the Affirmative Action Plan and policies for staff.
- i. Act in a timely manner if they become aware of any employee engaging in any type of harassment or behaviors that are not respectful or inclusive.
- j. Periodically report to employees on the Board’s progress in attaining affirmative action goals and on other matters related to diversity and inclusion.
- k. Be held accountable for promoting affirmative action, diversity, and inclusion and core values on annual performance evaluations.

3. *Affirmative Action Officer/ Human Resources Manager and/or Designee*

- a. Work with the executive director and managers to promote a diverse workforce environment and help attain the affirmative action goals. Encourage the retention of existing employees and create new learning opportunities for them whenever possible.
- b. Report affirmative activities to the executive director in one-on-one meetings as well as staff meetings. Obtain support for proposed changes to the affirmative action plan to reach goals and objectives. Respond to affirmative action issues and attend affirmative action meetings on behalf of the executive director.
- c. Emphasize the Board’s support of equal employment opportunity, affirmative action and the benefits of a diverse workforce.
- d. Place the statement “THE OREGON STATE BOARD OF NURSING IS AN EQUAL OPPORTUNITY, AFFIRMATIVE ACTION EMPLOYER COMMITTED TO WORK FORCE DIVERSITY” on every job announcement and in every employment advertisement.
- e. Educate and ensure managers have diverse interview panels including, when possible, one member who works outside the hiring section/division and one member from a protected class.
- f. Work with organizational development and other state resources to research educational opportunities and topics for all staff. Actively participate in those offerings and maintain partnerships with other agencies to expand opportunities to promote cultural competency.
- g. Have hard copies and/or electronic copies of the Board’s Affirmative Action Plan

available to applicants for employment and all staff upon request. Recommend changes to the Plan and update it as required. Compile statistics and keep management informed of the Board's affirmative action status at management meetings. Solicit input from managers on how human resources can assist them in promoting affirmative action and how best to create a more diverse workforce.

- h. Discuss the agency Affirmative Action Plan and policies at new employee orientation. Make the orientation as welcoming as possible. Include the following at the orientation presentation:
 - Our expectations surrounding core values and civility in the workplace; what that means to the agency as well as the employee.
 - Our commitment to supporting the personal and professional growth of our employees.
 - Our encouragement to contribute and participate in agency activities that will assist the agency in meeting its objectives, including those in cultural competency.
 - Transparency of policy decisions and accessibility to management for questions and concerns.
- i. At a minimum, educate and update all employees annually (in addition to new hires at new employee orientation) as to their rights and responsibilities under the Board's affirmative action policy and other Board policies to eliminate any harassment based on race, sex, age, religion, sexual orientation, or disability.
- j. Respond to, investigate complaints and resolve issues. Enforce policies and procedures at all levels of the organization.
- k. Offer the Statewide Exit Interview Survey to all employees leaving the agency. Analyze exit interview information for trends. If it appears that discrimination or harassment was a factor in employee separation, conduct an investigation and take appropriate action. Inform the executive director of the results.
- l. Evaluate new and revised policies for possible adverse impact on the agency's commitment to affirmative action and equal employment opportunity.
- m. Serve as a liaison between the Board and the state and federal agencies that protect civil rights.
- n. Review and facilitate reasonable accommodations when needed for employees. Assist with the facilitation of accommodations for external customers for public meetings when requested.

4. *Organizational Development Manager*

- a. Support and implement cultural competency assessment and measurements.
- b. Coordinate with human resources to develop and facilitate education related to diversity and inclusion.
- c. Develop and communicate the agency's organizational development plan, including performance standards and education related to the plan.
- d. Assist with identification of and opportunities to support individual career development including mentorships.

5. *Executive Assistant, Communications Manager, Agency Contract Coordinator*

- a. Include contact information for accommodations in all communications for public meetings.
- b. Promote diversity and affirmative action whenever possible in agency publications and websites.
- c. Ensure newsletter content is non-discriminatory and promotes inclusion and diversity.
- d. Provide access to the agency's AA Plan when contracts are established or renewed AND include appropriate contractual language in contracts regarding affirmative action requirements for vendors.

6. *All agency staff*
 - a. Attend affirmative action, diversity, inclusion and related training to enhance own cultural competency.
 - b. Ensure own actions and behaviors during contact with co-workers and the public are non-discriminatory, follow core values and are inclusive.
 - c. Immediately report any harassment, discrimination or related policy violations to management.

IV. JULY 1, 2012 - JUNE 30, 2014

A. *Accomplishments*

1. Recruitments netted diverse applicant pools within a limited recruitment budget. Announcements were placed on the state's job page, on the Board's website and intranet. Candidates that met the minimum qualifications and desired skills/experience were offered interviews. Interviews were conducted by panels that consisted of an area manager and at least two staff members and the human resources manager as the facilitator. When feasible, panels also included a member from another agency.
2. Candidates are provided position descriptions prior to interview and interview questions may be provided in writing at the time of interview.
3. Managers communicate the importance of diversity, inclusion and civility with agency staff. The Affirmative Action officer communicated cultural events, executive orders and proclamations via email, the intranet or by posting notices in staff areas.
4. Statewide educational opportunities were offered to employees through iLearn, via teleconference and through partnerships with state agencies and stakeholders. Employees at multiple levels attended education or participated on committees at a national level with the National Council of State Board of Nursing. By traveling to other regions and learning about regulation in other states, these employees were able to bring back and share their experiences with others as well as gain professional growth themselves.
5. During this period, an extended recruitment was conducted that included outreach to minority communities. A permanent Executive Director joined the agency in February 2014.
6. There was a total reorganization of the agency in 2014. Management staff was reduced and the positions were reallocated to promote existing employees and develop positions to address workload needs throughout the agency.
7. In 2014, an organizational development manager was hired to work with staff on career goals and strategies.

B. *Progress Made or Lost Since Previous Biennium*

Cross-training and career developmental opportunities are encouraged whenever possible, especially as the agency looks for succession planning opportunities. Our goal is to retain our employees by keeping them challenged and giving them room for growth. The small size of our agency requires that more than one person knows a job, lending to promotion and lateral transfer opportunities.

Several promotional and lateral transfers occurred during FY 2012-2014 affording new opportunities to existing staff (48 FTE's):

- 7 promotions of existing staff
- 2 terminations that were promotional transfers out to other agencies
- 2 terminations that were lateral transfers out to other agencies
- 1 promotional transfer in from another agency

The Board hired 1, and lost 1 minority due to turnover during 2012-2014 period.

V. JULY 1, 2015-JUNE 30, 2017

A. Goals for Affirmative Action Plan

1. The agency will continue to provide information and opportunities for staff to participate in training related to diversity, inclusion, respectful workplace and overall cultural competency. The agency will continue to develop strategies to recruit, retain and promote a diverse staff. The Board values individual and cultural differences and strives to maintain a work environment where talents and abilities are valued.
2. Management staff will be proactive in communicating the importance of diversity and inclusion in staff meetings and daily activities. The Board benefits from diversity within the workforce by incorporating diverse perspectives into business decisions.
3. The human resources manager, supported by the executive director, will continue to educate and guide managers in creating diverse applicant pools and interviewing processes that are welcoming to all people, in addition to helping them understand the benefits of a diverse workforce and the agency's Affirmative Action Plan. All managers will support activities that maintain a work environment that is attractive to a diverse pool of applicants, that retains employees, and that is accepting and respectful of employees' differences. Respectful workplace, core value behaviors and adherence of related state and agency policies, in addition to federal laws, will be expected and enforced. Expectations will be presented using formal education, written policies and procedures, and/or one-on-one coaching.
4. All managers will support activities that maintain a work environment that is attractive to a diverse pool of applicants, that retains employees, and that is accepting and respectful of employees' differences. Respectful workplace, core value behaviors and adherence of related state and agency policies, in addition to federal laws, will be expected and enforced.
5. Managers will employ employee retention ideas to the extent possible.
6. The agency will take steps towards implementation of a succession plan as part of the agency's overall organizational development plan.

B. Strategies and time lines for achieving our goals

Strategy for retaining employees:

- Value our employees and urge them to participate in decisions that affect their work;
- Treat our employees with respect and dignity;
- Show our employees the many benefits of working for the State of Oregon;
- Invest in our employees by working with them to develop learning and personal development plans;
- Maintain the Board's reputation for professionalism by making it a business people are proud to work for;
- Involve employees in the development of written and visual (flow chart) work procedures and policies so work is transparent and makes sense to all our employees;
- Offer flexibility with schedules as long as operating needs are met;
- Recognize employees in an annual event that includes service awards and in other activities on an on-going basis;
- Communicate well and often. Let people know what is happening in the organization;
- Make diversity oriented hiring decisions and continually evaluate our hiring practices; and
- Hold all agency staff accountable for adhering to our core values, the respectful workplace policy and affirmative action policies and laws;
- Distribute information on multi-cultural events and encourage individuals to share aspects of their culture with co-workers as appropriate;
- Managers will attend training and participate in the development and implementation programs that foster cultural competency and multi-cultural organizational development;
- Maintain a welcoming environment in a number of ways - by sharing e-mail activity notices from the Governor's Affirmative Action Office, posting posters and flyers in the office common area,

encouraging employees to share their thoughts and ideas, responding to issues quickly and efficiently, and so forth;

- Communicate diversity and inclusion expectations using formal education, written policies and procedures, one on one coaching and through the agency's management performance system;
- The human resources and organizational development managers will support the affirmative action plan through the development of an agency performance management system, education and other employee activities;
- Retention strategies may include offering flexible schedules, maintaining transparency and accessibility to all staff, listening respectfully and responding quickly to resolve issues, and by providing forums for employees that foster open communication leading to a fair and equitable workplace.

2015-17 Timeline

Summer 2015

Support the Employee Activities Council to support, identify, plan and organize activities that will build relationships between departments and individuals. Identify and schedule employee activities for the fiscal year. (Human Resources)

Present the 2015-17 Affirmative Action Plan to all employees during an all agency staff meeting and to all Board Members at a Board meeting. Request employees to assist in identifying ways to improve diversity and inclusion and to meet the goals of the Affirmative Action Plan. (Executive Director)

Post electronic copies of the AA Plan on the agency's website and intranet. (Communications Manager)

Post and distribute hard copies of the Plan as outlined per the Plan. (Human Resources)

Fall 2015

Based on individual development needs assessments, develop and plan training for the biennium. (Organizational Development)

Continue to identify education resources and opportunities for speakers related to diversity, inclusion and cultural competency at employee staff meetings. Solicit employee input for ideas and develop an education and speaker schedule for staff meetings for the fiscal year. (Human Resources)

Revise employee performance evaluation tools that incorporate core competencies including those related to diversity, inclusion and cultural competency. Provide management and staff training. (Human Resources and Organizational Development)

January 2016	Implement new performance evaluation tool for all employees in alignment with core competencies and overall organizational development plan. (Human Resources and Organizational Development)
Summer 2016	<p>Support the Employee Activities Council to support, identify, plan and organize activities that will build relationships between departments and individuals. Identify and schedule employee activities for the fiscal year. (Human Resources)</p> <p>Communicate and update staff on affirmative action plan including individual roles and expectations at a staff meeting.</p>
Fall 2016	<p>Solicit employee input for ideas and develop a training and speaker schedule for staff meetings for the fiscal year. (Human Resources)</p> <p>Research cultural competency in other state agencies and start to identify actions needed at the Board of Nursing to focus on achieving agency wide cultural competency. (Human Resources)</p> <p>Identify resources and requirements for management level training in cultural competency. (Organizational Development)</p>
Winter 2016	Implement cultural competency management education as resources allow. Develop a timeline line and training plan staff cultural competency training. (Organizational Development)
Spring 2017	Evaluate AA Plan progress and policies. Propose changes for 2017-2019 AA plan. (Human Resources)
Ongoing -	<p>Post and distribute recruitments on the state's recruitment system and other diversity websites. Continually monitor the agency environment for inclusiveness. Ensure all employee and board members, especially new hires, are provided access to the agency affirmative action plan and are aware of the agency policies and procedures contained in the plan. (Human Resources)</p> <p>Listen to employee feedback on education and ideas on fostering an inclusive environment; adapt plans and take actions when feasible based on employee feedback. Continue to keep cultural diversity in the forefront for all employees by distributing information sent from the Governor's Affirmative Action Office and through outreach. Agency management will continue to promote our commitment to cultural diversity by modeling patient, tolerant and respectful behaviors. The labor management committee, employee activities council and other forums will be used to get input and feedback on diversity and practices within the agency. (Management)</p> <p>Continue to distribute information and newsletters related to cultural events and diversity. (Human Resources)</p> <p>Continue to develop an effective relationship with the Governor's Affirmative Action office and other State agencies as the Board of Nursing continues to work towards agency wide cultural competency. (Human Resources)</p>

Provide development and mentorship opportunities. (Organizational Development)

Deliver education related to diversity and inclusion. (Human Resources and Organizational Development)

Communicate policies and expectations related to affirmative action. (Management)

VI. Appendix A – Agency’s Policy Documentation

1. ADA and Reasonable Accommodation Policy (State Policy 50.020.10)
2. Discrimination and Harassment Free Workplace (State Policy 50.010.01)
3. Employee Training Policy
4. Veterans Preference in Employment (105-040-0015)
5. Maintaining a Professional Workplace (50.010.03)

VII. Appendix B - Federal Law

1. Age Discrimination in Employment Act of 1967 (ADEA)
2. Disability Discrimination Title I of the Americans with Disability Act of 1990
3. Equal Pay and Compensation Discrimination Equal Pay Act of 1963,
And Title VII of the Civil Rights Act of 1964
4. Genetic Information Discrimination Title II of the Genetic Information Nondiscrimination Act of
2008 (GINA)
5. National Origin Discrimination Title VII of the Civil Rights Act of 1964
6. Pregnancy Discrimination Title VII of the Civil Rights Act of 1964
7. Race/Color Discrimination Title VII of the Civil Rights Act of 1964
8. Religious Discrimination Title VII of the Civil Rights Act of 1964
9. Retaliation Title VII of the Civil Agency Affirmative Action Policy
10. Sex-Base Discrimination Title VII of the Civil Rights Act of 1964
11. Sexual Harassment Title VII of the Civil Rights Act of 1964

Appendix A - 1. ADA and Reasonable Accommodation in Employment 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.

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

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

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

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

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

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

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

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

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

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

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

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

POLICY

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

2. Discrimination and Harassment Free Workplace 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; 240.318(4); 240.321; 240.555; 240.560; 659A.029; 659A.030; Title VII; Civil Rights Act of 1964; Executive Order EO-93-05; Rehabilitation Act of 1973; Employment Act of 1967; Americans with Disabilities Act of 1990; and 29 CFR §37.

APPLICABILITY: All employees, state temporary employees and volunteers.

ATTACHMENTS: None

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

POLICY

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

- (a) **Discrimination, Workplace Harassment and Sexual Harassment.** The State of Oregon provides a work environment free from unlawful discrimination or workplace harassment based on or because of an employee's protected class status. Additionally, the state of Oregon provides a work environment free from sexual harassment. Employees at every level of the organization, including state temporary employees and volunteers, must conduct themselves in a business-like and professional manner at all times and not engage in any form of discrimination, workplace harassment or sexual harassment.
- (b) **Higher Standard.** Managers/supervisors are held to a higher standard and are expected to take a proactive stance to ensure the integrity of the work environment. Managers/supervisors must exercise reasonable care to prevent and promptly correct any discrimination, workplace harassment or sexual harassment they know about or should know about.
- (c) **Reporting.** Anyone who is subject to or aware of what he or she believes to be discrimination, workplace harassment, or sexual harassment should report that behavior to the employee's immediate supervisor, another manager, or the agency, board, or commission Human Resource section, Executive Director, or chair, as applicable. A report of discrimination, workplace harassment or sexual harassment is considered a complaint. A supervisor or manager receiving a complaint should promptly notify the Human Resource section, Executive Director, or chair, as applicable.
- (A) A complaint may be made orally or in writing.
- (B) A complaint must be filed within one year of the occurrence.
- (C) An oral or written complaint should contain the following:
- (i) the name of the person filing the report;
 - (ii) the name of the complainant;
 - (iii) the names of all parties involved, including witnesses;
 - (iv) a specific and detailed description of the conduct or action that the employee believes is discriminatory or harassing;
 - (v) the date or time period in which the alleged conduct occurred; and
 - (vi) a description of the remedy the employee desires.
- (d) **Other Reporting Options.** Nothing in this policy prevents any person from filing a formal grievance in accordance with a CBA, or a formal complaint with the Bureau of Labor and Industries (BOLI) or the Equal Employment Opportunity Commission (EEOC) or if applicable, the United States Department of Labor (USDOL) Civil Rights Center. However, some CBAs require an employee to choose between the complaint procedure outlined in the CBA and filing a BOLI or EEOC complaint.
- (e) **Filing a Report with the USDOL Civil Rights Center.** An employee whose position is funded by the Oregon Workforce Investment Act (WIA), such as employees of the Oregon Workforce One-stop System, may file a complaint under the WIA, Methods of Administration (MOA) with the State of Oregon WIA, MOA Equal Opportunity Officer or directly through the USDOL, Civil Rights Center. The

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

- (f) **Investigation.** The agency, board, or commission Human Resource section, Executive Director, or chair, as applicable, will coordinate and conduct or delegate responsibility for coordinating and conducting an investigation.
- (A) All complaints will be taken seriously and an investigation will be initiated as quickly as possible.
 - (B) The agency, board or commission may need to take steps to ensure employees are protected from further potential discrimination or harassment.
 - (C) Complaints will be dealt with in a discreet and confidential manner, to the extent possible.
 - (D) All parties are expected to cooperate with the investigation and keep information regarding the investigation confidential.
 - (E) The agency, board or commission will notify the accused and all witnesses that retaliating against a person for making a report of discrimination, workplace harassment or sexual harassment will not be tolerated.
 - (F) The agency, board or commission will notify the complainant and the accused when the investigation is concluded.
 - (G) Immediate and appropriate action will be taken if a complaint is substantiated.
 - (H) The agency, board or commission will inform the complainant if any part of a complaint is substantiated and that action has been taken. The complainant will not be given the specifics of the action.
 - (I) The complainant and the accused will be notified by the agency, board or commission if a complaint is not substantiated.
- (g) **Penalties.** Conduct in violation of this policy will not be tolerated.
- (A) Employees engaging in conduct in violation of this policy may be subject to disciplinary action up to and including dismissal.
 - (B) State temporary employees and volunteers who engage in conduct in violation of this policy may be subject to termination of their working or volunteer relationship with the agency, board or commission.
 - (C) An agency, board or commission may be liable for discrimination, workplace harassment or sexual harassment if it knows of or should know of conduct in violation of this policy and fails to take prompt, appropriate action.
 - (D) Managers and supervisors who know or should know of conduct in violation of this policy and who fail to report such behavior or fail to take prompt, appropriate action may be subject to disciplinary action up to and including dismissal.
 - (E) An employee who engages in harassment of other employees while away from the workplace and outside of working hours may be subject to the provisions of this policy if that conduct has a negative impact on the work environment and/or working relationships.
 - (F) If a complaint involves the conduct of a contracted employee or a contractor, the agency, board, or commission Human Resource section, Executive Director, chair, or designee must inform the contractor

of the problem behavior and require prompt, appropriate action.

(G) If a complaint involves the conduct of a client, customer, or visitor, the agency, board or commission should follow its own internal procedures and take prompt, appropriate action.

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

(A) Employees who believe they have been retaliated against because they filed a complaint, participated in an investigation, or reported observing discrimination, workplace harassment or sexual harassment, should report this behavior to the employee's supervisor, another manager, the Human Resource section, the Executive Director, or the chair, as applicable. Complaints of retaliation will be investigated promptly.

(B) Employees who violate this policy by retaliating against others may be subject to disciplinary action, up to and including dismissal.

(C) State temporary employees and volunteers who retaliate against others may be subject to termination of their working or volunteer relationship with the agency, board or commission.

(i) **Policy Notification.** All employees including state temporary employees and volunteers shall:

(A) be given a copy or the location of Statewide Policy 50.010.01, Discrimination and Harassment Free Workplace;

(B) be given directions to read the policy;

(C) be provided an opportunity to ask questions and have their questions answered; and

(D) sign an acknowledgement indicating the employee read the policy and had the opportunity to ask questions.

(i) Signed acknowledgements are kept on file at the agency, board or commission.

(1) Performance Measure: Percent of employees informed of Policy 50.010.01, prohibited behavior and reporting procedures.

Performance Standard: 100%

(2) Performance Measure: Percent of complaints where prompt, appropriate action is taken following investigation of a substantiated complaint.

Performance Standard: 100%

3. Employee Training Policy

OREGON STATE BOARD OF NURSING ADMINISTRATIVE POLICIES

Title: Staff Development

Category: Human Resources

Approval: Signature On-File in Human Resources

Policy Statement:

A well-trained and prepared staff allows the Board of Nursing to assure the highest quality of services to the public; therefore, the Board promotes workforce development by providing work-related training opportunities for all staff each fiscal year.

The Agency will offer as wide a selection of training opportunities and methods as possible, subject to fiscal, operational and contractual/statutory limitations. Courses, seminars and other opportunities offered through or under the auspices of the State Executive Training Office or other state agencies will receive priority in the training selection process.

Training will be conducted in-house whenever feasible, but may be supplemented with outside seminars, workshops and classes.

Approval of training requests will be based upon the following:

- ◆ Training in work-related skills specific to the employee/current position
- ◆ Development of work-related skills to broaden employee's contribution to Agency
- ◆ Cost of training and availability of funds
- ◆ Equity to employees based on each employee's training funds for the fiscal year

Policy Clarification

1. Job-Required Training: Training needed to ensure adequate performance in an employee's current position. This category will be given the highest priority for funding purposes.

All materials, expenses and registration costs will be paid by OSBN. The agency may pre-pay expenses. Employees will be allowed to use work time to attend training or will be given compensatory pay or time off according to the current collective bargaining agreement and/or state personnel rules.

Eligibility: All staff is eligible for job-required training.

Job-Related Training/Development: Training which increases or enhances job proficiency above the accepted level established for specific job assignments. It also prepares employees for assuming increased responsibilities. This category will be given the second highest priority for funding purposes.

Materials, expenses and registration costs may be paid by OSBN for approved job-related training, including seminars, workshops and college level courses. College courses are limited to accredited institutions.

Employees may be allowed to use work time to attend training conducted during regular business hours, subject to workload constraints. The agency may adjust the employee's schedule to compensate for time spent in training. Any training time or study time outside of regular work hours will not be reimbursed.

The agency may provide developmental assignments and job rotation assignments for employees who volunteer. Such assignments are subject to the applicable collective bargaining agreement and DAS policy.

Eligibility: All staff is eligible for job-required training.

3. Career Development: Training which provides employees with an opportunity for self-improvement/development and is not necessarily related to the employee's current job or agency but could be applied in another agency within the State (certificate and degree programs). OSBN may pay a portion of the tuition for employee career development offerings that are consistent with agency workload requirements and fiscal restraints, however, the agency will not pay for materials or expenses. College courses are limited to regional accredited institutions.

Employees should seek approval for payment and attendance of college courses prior to registration. If approved, the employee will receive a maximum of up to 50% reimbursement of one class per quarter or semester after providing evidence of satisfactory completion of the course (pass/grade C or better) and proof of tuition payment.

Eligibility: All employees, except when in conflict with the collective bargaining contract.

Procedure for implementation:

When possible, training requests shall be submitted three weeks prior to the date of training.

1. Upon identification of a training opportunity, the employee completes a Training/Staff Development Request Form (Attachment A) and consults with their manager to assure that their request is consistent with agency policy. Identification of training category (job-required vs. job-related vs. career development) should also be discussed. If policy and fiscal criteria met, manager takes request to weekly management meeting for review and approval. Employee should keep a copy of the request and training information (brochure, etc.). If disapproved, a copy of the request shall be placed in the supervisory folder for the employee.
2. If an out-of state request, refer to agency out-of-state Travel Policy and follow its guidelines. The out-of-state authorization is to be electronically transmitted.
3. If approved, the following will occur:
 - a. The manager will notify the employee by returning the approved Staff Development requested form to the employee.
 - b. The Training/Staff Development Request Form and Out-Of-State Travel Authorization Form will be forwarded to the Business Manager. The employee is responsible for making arrangements for employee registration in the program/course and will initiate payment procedures.

Methods of Payment:
When possible, employees are to use the agency credit card to pay for registration. If a credit card is not accepted by the training vendor, the employee will submit a request for payment with the registration form to the Business Manager. In either case, prior written approval must be obtained before funds are committed. If prior approval is not obtained prior to class enrollment, the employee may be obligated to pay for the training.
 - c. The employee shall make final travel and lodging arrangements.
 - d. The employee shall ensure that the information is placed on the office calendar.
4. When training is completed, it is the employee's responsibility to give a copy of program completion or CEU certificate to the Personnel Officer for entry into the agency staff development database record.

References: DASH HR Policy 50.045.01
OPEU Collective Bargaining Agreement, Article 121-5W
Travel Policies for State and Agency

Policy History: 1/92, 10/94, 7/97, 12/97, 6/01

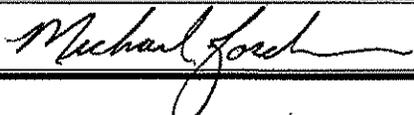
Review: Annually

For more information contact: Management

4. Maintaining a Professional Workplace Policy



Statewide Policy

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

POLICY STATEMENT: It is the policy of Oregon state government that mutual respect between and among managers, employees, temporary employees and volunteers is integral to the efficient conduct of business. All individuals work together to create and maintain a work environment that is respectful, professional and free from inappropriate workplace behavior.

AUTHORITY: ORS 240.145 and ORS 240.250

APPLICABILITY: All employees, including temporary employees and volunteers, and others working in the agency

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

Inappropriate Workplace Behavior: Unwelcome or unwanted conduct or behavior that causes a negative impact or disruption to the workplace or the business of the state, or results in the erosion of employee morale and is not associated with an employee's protected class status.¹ (See State HR Policy 50.010.01 Discrimination and Harassment Free Workplace for guidance on issues involving protected class status.)

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

¹ Protected Class Under Federal Law: Race; color; national origin; sex (includes pregnancy-related conditions); religion; age (40 and older); disability; a person who uses leave covered by the Federal Family and Medical Leave Act; a person who uses Military Leave; a person who associates with a protected class; a person who opposes unlawful employment practices, files a complaint or testifies about violations or possible violations; and any other protected class as defined by federal law.

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

Inappropriate workplace behavior does not include actions of performance management such as supervisor instructions, expectations or feedback, administering of disciplinary actions, or investigatory meetings.

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

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

POLICY

- (1) **Conduct** Employees of all service types, temporary employees and volunteers, at every level of the agency (includes boards and commissions) must foster an environment that encourages professionalism and discourages disrespectful behavior. All employees, temporary employees and volunteers must behave respectfully and professionally and refrain from engaging in inappropriate workplace behavior.
- (2) **Addressing Inappropriate Workplace Behavior**
 - (a) Supervisors must address inappropriate behavior they observe or experience and should do so as close to the time of the occurrence as possible and appropriate.
 - (b) If an employee, temporary employee or volunteer observes or experiences inappropriate workplace behavior and feels comfortable in doing so, he or she should **do one or both of the following**:
 - (A) Redirect inappropriate conversations or behavior to workplace business
 - (B) Tell an offending employee, temporary employee or volunteer his or her behavior is offensive and ask him or her to stop.
- (3) **Reporting Inappropriate Workplace Behavior**
 - (a) An employee, temporary employee or volunteer should report inappropriate workplace behavior he or she experiences or observes to his or her immediate supervisor as soon as practical. If the employee, temporary employee or volunteer's immediate supervisor is the one engaging in the inappropriate behavior, he or she should report the behavior to upper management, the agency head or agency Human Resource section, as soon as practical. The report may be verbal or written.
 - (b) If past practice exists in the agency, an employee represented by a labor union may have a union representative present during regular work hours, when reporting inappropriate workplace behavior and through the process set forth in this policy.
- (4) **Responding to a Report of Inappropriate Workplace Behavior** Inappropriate workplace behavior must be addressed and corrected before it becomes pervasive, causes further workplace disruption or lowers morale. Unless the agency decides otherwise, the supervisor of the individual allegedly engaging in inappropriate workplace behavior must address² the report as soon as possible.

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

(5) Consequences

- (a) Any employee found to have engaged in inappropriate workplace behavior, will be counseled, or, depending on the severity of the behavior, may be subject to discipline, up to and including dismissal.
- (b) An employee in trial service found to have engaged in inappropriate workplace behavior may be removed from trial service.
- (c) A temporary employee or volunteer found to have engaged in inappropriate workplace behavior will be counseled or, depending on the severity of the behavior, may have his or her service terminated.
- (d) A supervisor who fails to address inappropriate behavior, will be counseled, or, depending on the severity of the behavior, may be subject to disciplinary action, up to and including dismissal.

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

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

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

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

5. Veteran's Preference in Employment Statewide Rule

DEPARTMENT OF ADMINISTRATIVE SERVICES, HUMAN RESOURCE SERVICES DIVISION 40 FILLING POSITIONS

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 whose discharge date is less than 15 years from the date of State employment application and Disabled Veterans are provided with 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) 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 Department of Veteran Affairs, unless the information is included in the DD Form 214 or 215.

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

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

(a) Determine whether or not to interview all applicants who meet the minimum and special qualifications of the position (including all Veterans and Disabled Veterans); or (b) Select a group of Veteran and Disabled Veteran applicants who most closely match the agency's purposes in filling the position. This group of applicants may be considered along with non-veteran applicants who closely match the purposes of the agency in filling the position as determined by:

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

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

consideration will be accomplished by:

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

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

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

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

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

(7) Veteran or a Disabled Veteran applicants 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

6. Other agency documentation in support of its affirmative action plan

(1) Invitation to self identify: Gender, Race/Ethnicity, Veteran Status and Disability Status
The following form used for new and current employees:

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

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

Sex

- Male Female

Race/Ethnicity

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

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

Veteran

Are you a Veteran of the United States Armed Forces?

- Yes No

A Person with a Disability?

- Yes No

Employee Signature: _____ Date: _____

Employee Print Name: _____

VIII. Appendix B

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

The Age Discrimination in Employment Act of 1967 (ADEA) protects individuals who are 40 years of age or older from employment discrimination based on age. The ADEA's protections apply to both employees and job applicants. Under the ADEA, it is unlawful to discriminate against a person because of his/her age with respect to any term, condition, or privilege of employment, including hiring, firing, promotion, layoff, compensation, benefits, job assignments, and training. It is also unlawful to retaliate against an individual for opposing employment practices that discriminate based on age or for filing an age discrimination charge, testifying, or participating in any way in an investigation, proceeding, or litigation under the ADEA.

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

Apprenticeship Programs

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

Job Notices and Advertisements

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

Pre-Employment Inquiries

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

Benefits

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

Waivers of ADEA Rights

An employer may ask an employee to waive his/her rights or claims under the ADEA either in the settlement of an ADEA administrative or court claim or in connection with an exit incentive program or other employment termination program. However, the ADEA, as amended by OWBPA, sets out specific minimum standards that must be met in order for a waiver to be considered knowing and voluntary and, therefore, valid. Among other requirements, a valid ADEA waiver must:

1. be in writing and be understandable;
2. specifically refer to ADEA rights or claims;
3. not waive rights or claims that may arise in the future;
4. be in exchange for valuable consideration;
5. advise the individual in writing to consult an attorney before signing the waiver; and

6. provide the individual at least 21 days to consider the agreement and at least seven days to revoke the agreement after signing it.

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

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

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 non-discrimination standards also apply to federal sector employees under section 501 of the Rehabilitation Act, as amended, and its implementing rules.

An individual with a disability is a person who:

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

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

- Making existing facilities used by employees readily accessible to and usable by persons with disabilities.
- Job restructuring, modifying work schedules, reassignment to a vacant position;
- Acquiring or modifying equipment or devices, adjusting or modifying examinations, training materials, or policies, and providing qualified readers or interpreters.

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

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

Title I of the ADA also covers:

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.

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.

C. 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 (EEOC): the Equal Pay Act of 1963, Title VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act of 1967, and Title I of the Americans with Disabilities Act of 1990.

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

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

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

Effort - The amount of physical or mental exertion needed to perform the job. For example, suppose that men and women work side by side on a line assembling machine parts. The person at the end of the line must also lift the assembled product as he or she completes the work and place it on a board. That job requires 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. However, in some circumstances, physically separate places of business should be treated as one establishment. For example, if a central administrative unit hires employees, sets their compensation, and assigns them to work locations, the separate work sites can be considered part of one establishment.

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

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

D. Genetic Information Discrimination Act of 2008

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

Under Title II of GINA, it is illegal to discriminate against employees or applicants because of genetic information. Title II of GINA prohibits the use of genetic information in making employment decisions, restricts acquisition of genetic information by employers and other entities covered by Title II, and strictly limits the disclosure of genetic information.

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

Definition of “Genetic Information”

Genetic information includes information about an individual’s genetic tests and the genetic tests of an individual’s family members, as well as information about any disease, disorder, or condition of an individual’s family members (i.e. an individual’s family medical history). Family medical history is included in the definition of genetic information because it is often used to determine whether someone has an increased risk of getting a disease, disorder, or condition in the future.

Discrimination Because of Genetic Information

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

Harassment Because of Genetic Information

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

Retaliation

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

Rules Against Acquiring Genetic Information

It will usually be unlawful for an employer to get genetic information. There are six narrow exceptions to this prohibition:

- Inadvertent acquisitions of genetic information do not violate GINA, such as in situations where a manager or supervisor overhears someone talking about a family member’s illness.
- Genetic information (such as family medical history) may be obtained as part of health or genetic services, including wellness programs, offered by the employer on a voluntary basis, if certain specific requirements are met.
- Genetic information may be acquired as part of the certification process for FMLA leave (or leave under similar state or local laws), where an employee is asking for leave to care for a family member with a serious health condition.

- Acquisition through commercially and publicly available documents like newspapers is permitted, as long as the employer is not searching those sources with the intent of finding genetic information.
- Acquisition through a genetic monitoring program that monitors the biological effects of toxic substances in the workplace is permitted where the monitoring is required by law or, under carefully defined conditions, where the program is voluntary.
- Acquisition of genetic information of employees by employers who engage in DNA testing for law enforcement purposes as a forensic lab or for purposes of human remains identification is permitted, but the genetic information may only be used for analysis of DNA markers for quality control to detect sample contamination.

Confidentiality of Genetic Information

It is also unlawful for an employer to disclose genetic information about applicants or employees. Employers must keep genetic information confidential and in a separate medical file. (Genetic information may be kept in the same file as other medical information in compliance with the Americans with Disabilities Act.) There are limited exceptions to this non-disclosure rule.

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

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

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

About National Origin Discrimination

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

Employment Decisions

Title VII prohibits any employment decision, including recruitment, hiring, and firing or layoffs, based on national origin.

Harassment

Title VII prohibits offensive conduct, such as ethnic slurs, that creates a hostile work environment based on national origin. Employers are required to take appropriate steps to prevent and correct unlawful harassment. Likewise, employees are responsible for reporting harassment at an early stage to prevent its escalation.

Language

Accent discrimination: An employer may not base a decision on an employee's foreign accent unless the accent materially interferes with job performance.

English fluency: A fluency requirement is only permissible if required for the effective performance of the position for which it is imposed.

English-only rules: English-only rules must be adopted for nondiscriminatory reasons. An English-only rule may be used if it is needed to promote the safe or efficient operation of the employer's business.

Coverage of foreign nationals

Title VII and the other antidiscrimination laws prohibit discrimination against individuals employed in the United States, regardless of citizenship. However, relief may be limited if an individual does not have work authorization.

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

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

Title VII's pregnancy-related protections include:

Hiring

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

Pregnancy and Maternity Leave

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

If an employee is temporarily unable to perform her job due to pregnancy, the employer must treat her the same as any other temporarily disabled employee. For example, if the employer allows temporarily disabled employees to modify tasks, perform alternative assignments or take disability leave or leave without pay, the employer also must allow an employee who is temporarily disabled due to pregnancy to do the same.

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

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

Health Insurance

Any health insurance provided by an employer must cover expenses for pregnancy-related conditions on the same basis as costs for other medical conditions. Health insurance for expenses arising from abortion is not required, except where the life of the mother is endangered.

Pregnancy-related expenses should be reimbursed exactly as those incurred for other medical conditions, whether payment is on a fixed basis or a percentage of reasonable-and-customary-charge basis.

The amounts payable by the insurance provider can be limited only to the same extent as amounts payable for other conditions. No additional, increased, or larger deductible can be imposed. Employers must provide the same level of health benefits for spouses of male employees as they do for spouses of female employees.

Fringe Benefits

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

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

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

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

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

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

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

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

Title VII's protections include:

Recruiting, Hiring, and Advancement

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

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

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

Harassment/Hostile Work Environment

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

Compensation and Other Employment Terms, Conditions, and Privileges

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

Segregation and Classification of Employees

Title VII is violated where employees who belong to a protected group are segregated by physically isolating them from other employees or from customer contact. In addition, employers may not assign employees according to race or color. For example, Title VII prohibits assigning primarily African-Americans to predominantly African-American establishments or geographic areas. It is also illegal to exclude members of one group from particular positions or to group or categorize employees or jobs so that certain jobs are generally held by members of a certain protected group. Coding applications/resumes to designate an applicant's race, by either an employer or employment agency, constitutes evidence of discrimination where people of a certain race or color are excluded from employment or from certain positions.

Retaliation

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

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

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

Under Title VII:

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

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

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

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

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

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

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

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

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

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

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

Adverse Action

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

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

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

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

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

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

Of course, employees are not excused from continuing to perform their jobs or follow their company's legitimate workplace rules just because they have filed a complaint with the EEOC or opposed discrimination.

For more information about adverse actions, see EEOC's Compliance Manual Section 8, Chapter II, Part D.

Covered Individuals

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

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

Protected Activity

Protected activity includes:

Opposition to a practice believed to be unlawful discrimination

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

Examples of protected opposition include:

Complaining to anyone about alleged discrimination against oneself or others;

Threatening to file a charge of discrimination;

Picketing in opposition to discrimination; or

Refusing to obey an order reasonably believed to be discriminatory.

Examples of activities that are NOT protected opposition include:

Actions that interfere with job performance so as to render the employee ineffective; or

Unlawful activities such as acts or threats of violence.

Participation in an employment discrimination proceeding.

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

Filing a charge of employment discrimination;

Cooperating with an internal investigation of alleged discriminatory practices; or
Serving as a witness in an EEO investigation or litigation.

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

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

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

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

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

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

Sexual Harassment

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

Pregnancy Based Discrimination

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

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

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

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

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

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

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

The victim as well as the harasser may be a woman or a man. The victim does not have to be of the opposite sex.

The harasser can be the victim's supervisor, an agent of the employer, a supervisor in another area, a co-worker, or a non-employee.

The victim does not have to be the person harassed but could be anyone affected by the offensive conduct.

Unlawful sexual harassment may occur without economic injury to or discharge of the victim.

The harasser's conduct must be unwelcome.

It is helpful for the victim to inform the harasser directly that the conduct is unwelcome and must stop. The victim should use any employer complaint mechanism or grievance system available.

When investigating allegations of sexual harassment, EEOC looks at the whole record: the circumstances, such as the nature of the sexual advances, and the context in which the alleged incidents occurred. A determination on the allegations is made from the facts on a case-by-case basis.

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

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