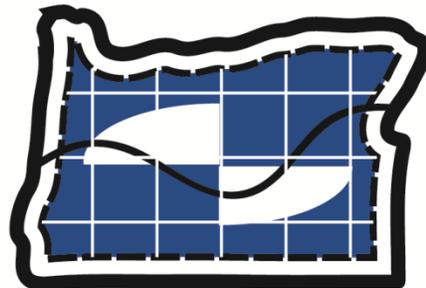


# OREGON STATE BOARD OF EXAMINERS FOR ENGINEERING AND LAND SURVEYING

## DIVERSITY AND INCLUSION PLAN 2015 - 2017 Biennium



**OSBEELS**

Safeguarding life, health, and property

**MARI LOPEZ, BOARD ADMINISTRATOR**

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# Oregon

John A. Kitzhaber, MD, Governor

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January 15, 2015

Frank Garcia, Jr., Director  
Diversity & Inclusion and Affirmative Action  
Office of the Governor  
255 Capitol Street NE, Suite 126  
Salem, OR 97301

RE: OSBEELS Diversity and Inclusion Plan

Dear Mr. Garcia,

Members of the Board and I, along with the Administrator, Mari Lopez are pleased to provide the Board's Diversity and Inclusion Plan. The enclosed Plan was adopted during the Board's meeting on January 15, 2015.

OSBEELS works both inside and outside of state government with a variety of stakeholders that are crucial to public safety. In addition to our mission; *safeguarding, life, health, and property*, we strive to ensure fair, equitable and inclusive business processes when implementing policies, rules and regulations related to the professions we regulate.

Although, the Board, Executive and Management Staff have created and maintained a diverse and inclusive environment, we understand that further discussion with the Governor's Office is anticipated concerning recommendations for the 2017-2019 biennium.

Respectfully submitted,

Susan E. Newstetter, PLS  
Board President



**Oregon State Board of Examiners for  
Engineering and Land Surveying**

**DIVERSITY AND INCLUSION PLAN  
2015-2017**

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## **I. DESCRIPTION OF AGENCY AND ORGANIZATIONAL CHART**

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### **Agency Description**

Engineering licensure in the United States began in 1907 when Wyoming sought to solve the problem of untrained individuals working as engineers and land surveyors. Oregon soon followed suit and established the Engineering Examiners Board in 1919. The Board's first meeting was at the Oregon Building in Portland on July 11, 1919 at 10:30 a.m. At this time, the standards required for licensure varied between states and there was no reciprocity. To improve professional standards and allow for interstate practice, the Iowa State Board of Engineering Examiners invited representatives from the 10 established state engineering boards to meet and discuss forming a national engineering board. This meeting, held on November 8, 1920, would mark the beginning of the National Council of Examiners for Engineering and Surveying (NCEES). Oregon's Board did not send a representative.

During the Oregon Board's first biennium, 1,189 certificates were granted to engineers. Today, the Board currently regulates approximately 25,000 individuals in the practices of engineering, land surveying, photogrammetric mapping, and water right examination.

During the 11<sup>th</sup> Biennium, the Board began regulating the practice of land surveying. Enacted by the 1943 Legislature, The Professional Land Surveyors' Law established licensure for surveyors and regulation of the profession. Following the Law's enactment, the Board received 195 applications from those practicing land surveying who sought licensure under a grandfather clause; 181 were approved and received registration. After January 1, 1945, land surveying registration was only granted through examination or comity.

OSBEELS absorbed administrative oversight for Certified Water Right Examiners (CWRE) on July 10, 1987, in accordance with Oregon Revised Statute (ORS) 537.797. Prior to 1987, there was no requirement for water right examiners to be certified; however, new provisions to statute determined that certification was required for claims of beneficial use and to prepare application maps for new permits and transfers. The Water Resources Department (WRD) was responsible for creating and assessing the examination and OSBEELS handled review of qualifications and the administrative functions of certification. That partnership continues today with WRD still overseeing examinations and OSBEELS managing applications, renewals, continuing professional development and compliance issues.

The Department of Commerce was abolished in 1987, leaving the Engineering Examiners Board as its own agency. It was at this time that OSBEELS began administrative oversight of the Oregon State Board of Geology Examiners (OSBGE). Geologists had been licensed in Oregon since 1977 through House Bill (HB) 2288 and OSBGE formerly relied on the Department of Commerce for administrative support. OSBGE had no staff when they entered into an interagency agreement with OSBEELS for administrative support and office space. OSBGE maintained independent finances, licensing procedures and compliance investigations and sanctions.

Senate Bill (SB) 166 was introduced during the 1993 Legislature to streamline the acquisition, hiring, budgeting, and licensing process for all of the smaller agencies, which were in limbo following the Department of Commerce dissolution. The Bill would have granted semi-independent status to a number of small licensing boards. Boards would still have retained

many of the attributes of government agencies; however, the boards would have been exempted from certain laws concerning purchasing, public printing, general services, state financial administration, salaries and expenses of offices and employees, and receiving, disbursing, and investing funds. While SB 166 did not pass, in 1997 SB 546 established a pilot program to test the effectiveness of the semi-independent service delivery model in regards to small state licensing boards. The pilot program was successful and the status became permanent through SB 1127 in 1999. At this time, OSBGE was also granted semi-independent status. OSBGE hired a Board Administrator to handle board activities and moved their office away from OSBEELS. However, both Boards recognize that the respective statutory definitions and authorities for regulation of the practices of engineering, engineering geology, and geology provide for areas of professional overlap. In 2001, the establishment of a Joint Compliance Committee (JCC) was created to assist in evaluating potential compliance matters associated with work in these areas of professional overlap. The purpose of the JCC is to provide a forum for the Boards to collaborate in carrying out their statutory missions to protect the welfare of the public in safeguarding life, health, and property.

In 2005, through the adoption of SB 55, photogrammetric mapping became the third profession regulated by OSBEELS. It was determined that individuals who wished to become registered as photogrammetrists would sit for the national fundamentals of land surveying examination followed by a state-specific professional photogrammetric mapping examination.

Semi-independent status provides for a significant level of financial independence, but also makes the Board entirely accountable for its performance. The Board may acquire and pay for necessary services from the private sector instead of utilizing the services offered by the Department of Administrative Services (DAS), which is paid for through Central Government Service Assessments. There are no tax dollars or general fund dollars involved in the operation of OSBEELS. OSBEELS is fully self-funded through its licensing and registration fees. In 2007, NCEES and its member boards celebrated the 100<sup>th</sup> anniversary of engineering licensure in the United States. In honor of this milestone, then Governor Theodore Kulongoski proclaimed October 2007 as Engineering Licensure Month in Oregon to officially recognize a century of engineering licensure in America.

The Board consists of 11 members, appointed by the Governor, which includes two professional land surveyors (PLS), five professional engineers (PE), one dually licensed PE and PLS, one registered professional photogrammetrist (RPP), and two public members who are not required to be licensed professionals. Board members establish and maintain standards; examine applicants, register qualified practitioners, enforce laws, rules and regulations governing engineering and land surveying which includes investigations, hearings and penalties, as defined by ORS 672.240.

Currently, the OSBEELS has a staff of 15 individuals who handle a variety of tasks including application evaluations and approvals, renewals, audits, investigations regarding rules and statutes violations, and community and media outreach.

### **Mission**

The mission of the OSBEELS is to regulate the practices of engineering, land surveying, photogrammetric mapping, and water right certification in the state as they relate to the welfare of the public in safeguarding life, health, and property.

**Name of Agency Administrator**

Mari Lopez, Administrator  
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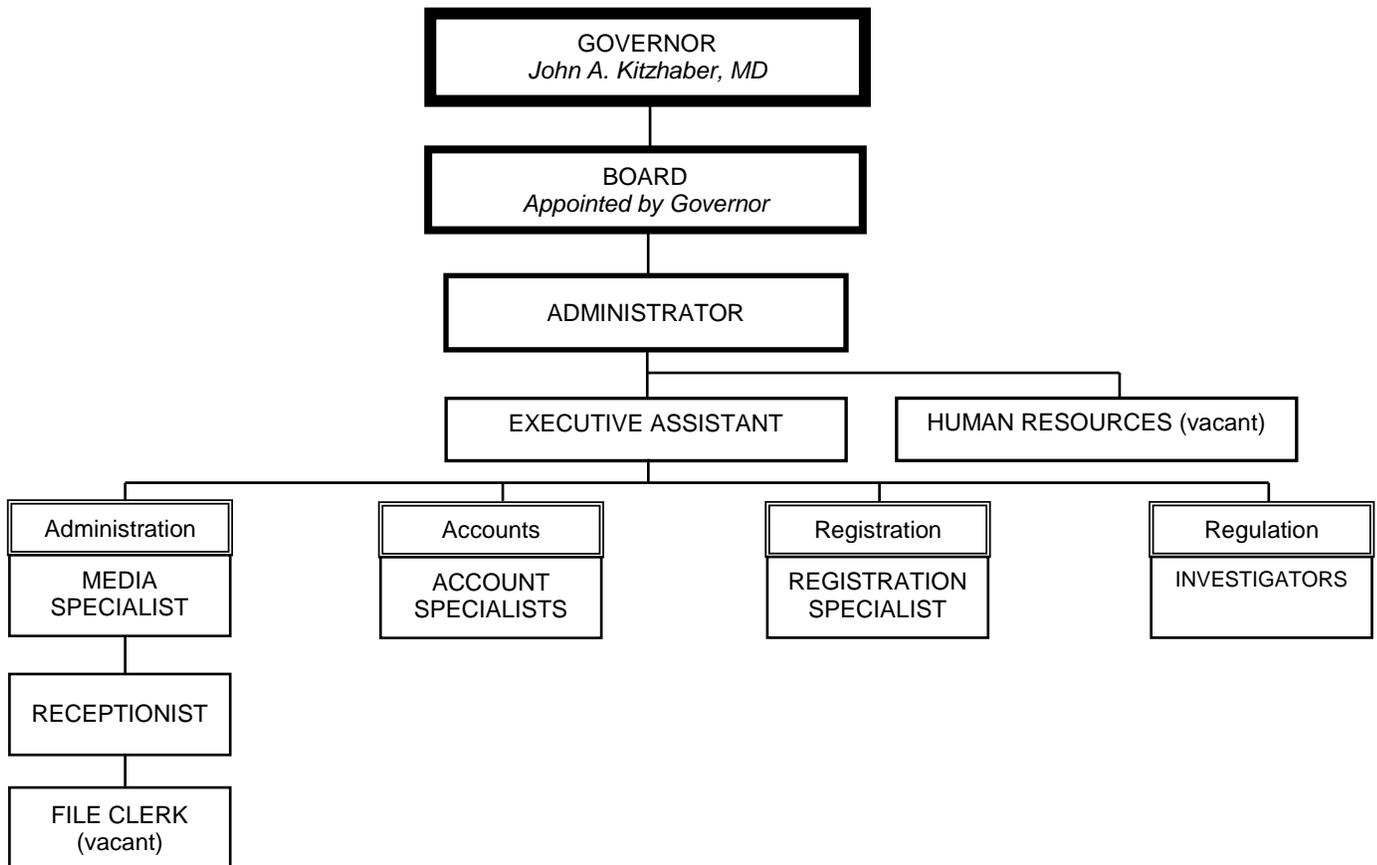
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**Name of Affirmative Action Representative**

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**OSBEELS Organizational Chart**



## II. DIVERSITY AND INCLUSION PLAN

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### A.

#### OSBEELS DIVERSITY and INCLUSION POLICY STATEMENT

Adopted by: Oregon State Board of Examiners for  
Engineering & Land Surveying

Date: January 15, 2015

The OSBEELS is fully committed to providing individuals with fair and equal employment opportunity and equal access to its programs and services. OSBEELS enforces a zero-tolerance policy against any form of discrimination or harassment and has adopted a Diversity and Inclusion Plan as one method of helping to eliminate discrimination on the basis of color, religion, sex, national origin, physical or mental disability, age, marital status, sexual orientation, gender identity, trans-gender status, veteran status, or political belief.

OSBEELS recognizes a diverse workforce is crucial to serve Oregonians. In matters of recruitment and hiring, OSBEELS works with the Department of Administrative Services (DAS) Enterprise Human Resource Services to reach out to the broadest possible labor market. Applications are judged solely on the basis of job position-related characteristics. Job position requirements and tests are position-related and do not have an adverse impact upon protected classes.

In addition to recruiting efforts, the workplace is an important part in maintaining a diverse workforce. Supervisors/Managers shall be accountable for creating and promoting a work environment that is free from any kind of hostility or unwelcome behavior. It is the responsibility of supervisors/managers to monitor the work environment to ensure that it is free from unlawful discrimination and harassing behaviors. Such conduct will not be condoned. It is not acceptable to participate in such conduct and it is not acceptable for any supervisor/manager to remain silent once notified.

It is the responsibility of every employee and board member of OSBEELS to create and maintain an atmosphere that fosters the spirit of this Diversity and Inclusion Policy. The Board shall maintain a current copy of the DIVERSITY and INCLUSION PLAN and POLICY STATEMENT on its web site.

The Board strives to achieve equal employment opportunity and affirmative action objectives through the recruitment, employment and advancement of a diverse workforce. Employees have the right to file a formal complaint of alleged discrimination and/or harassment as outlined in the Diversity and Inclusion Plan, with a supervisor/manager, the Affirmative Action Representative, or the Bureau of Labor and Industries (BOLI) Office.

An individual who has interviewed for employment with OSBEELS and believes they were denied employment based on any of the aforementioned discriminatory factors may review the decision with the Board. If the concern is not resolved to the satisfaction of the individual, they may contact the Equal Employment Opportunity Commission (EEOC), Seattle District Office and/or the BOLI Office.

Implementation of this plan is the responsibility of Mari Lopez, Administrator and the Affirmative Action Representative, available at 503.934.2108 or 503.934.2008.

## **B. Training, Education, and Development Plan**

The Board's Diversity and Inclusion Plan is communicated through a variety of methods.

### 1. Employees

- New employees are provided with the Board's Employee Handbook. Employees are encouraged to review and discuss questions or concerns with their supervisor/manager.
- Recruitment announcements and advertisements identify the Board as an Equal Opportunity/Affirmative Action employer.

### 2. Volunteers

- The Board does not provide Affirmative Action training to volunteers.

### 3. Contractors/Vendors

- The Board uses contract service providers infrequently and does not provide Affirmative Action training for those contractors. Additionally, the Board does not provide Affirmative Action training to vendors.

## **C. Programs**

Due to the Board's Mission of *safeguarding, life, health, and property*, the Board does not seek nor has been requested to participate in opportunities that encourage diversity in the professions; however, given the global nature of the engineering practice, it is important that OSBEELS remains an active participant in the global mobility for licensure (*see Appendix C*).

Additionally, in May 2010, the Board adopted Oregon Administrative Rule (OAR) 820-010-0530 to carry out the directives in ORS 408.450, as approved by the Legislature in 1943. OAR 820-010-0530 allows the request for a waiver of fees (biennial renewal and delinquency fees) to the Board, along with a waiver of completing the required Continuing Professional Development (CPD) hours for registrants on active duty with the Uniformed Services of the United States. This rule also requires written notification to be submitted to the Board within 60 days of the date of an honorable discharge in order to change the status of a registration to its former status without fee or penalty.

During Oregon's 2012 Legislative Assembly, HB 4063, introduced by the House Interim Committee on Veterans Affairs and favored by OSBEELS, passed. HB 4063 was designed to quickly return service members back to work after serving in the military. This Bill eliminated the need for veterans to attend school for training that they had already received in the military, saving time and money. Training in engineering and land surveying were among the professions specified in the Bill.

Beginning with the Spring 2013 examination administration, the Oregon Veterans Benefits Administration approved the Board's Oregon state specific examinations for inclusion under VA benefits. A veteran taking (or wishing to take) *any* Oregon state specific examination offered by OSBEELS may qualify for the examination(s) to be reimbursed in whole or in part.

#### **D. Update: Executive Order 08-18**

1. Cultural Competency Assessment and Implementation Services
  - The Board has not requested or received a Cultural Competency Assessment.
2. Statewide Exit Interview Survey
  - The Board does not participate in using the Statewide Exit Interview Survey.
3. Performance Evaluations of all Management Personnel
  - The evaluation of the Administrator, the Executive Assistant, and the Affirmative Action Representative will include an evaluation of affirmative action efforts and accomplishments.

#### **E. Status of Contracts to Minority Business (ORS 659A.015)**

The Board has awarded one personal service contract in an amount less than \$10,000 to provide an audit of the Board's financial statements for the two fiscal years ending June 30, 2013 during the 2013-2015 biennium. The Board posts all competitive contracts on the Oregon Procurement Information Network (ORPIN) to ensure that the responders are given fair and equal consideration.

### **III. ROLES FOR IMPLEMENTATION OF DIVERSITY AND INCLUSION PLAN**

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Responsibility for achieving the Affirmative Action goals is shared by all board members, management, and employees at OSBEELS. The following individuals will provide the leadership for OSBEELS to have a workforce rich in diversity and free of unlawful discrimination and harassing behaviors.

#### **A. Responsibilities and Accountabilities**

Pursuant to ORS 670.306, the Board entrusts and delegates to the Administrator the responsibility for implementation and adherence to the Affirmative Action goals to which the Board is committed.

1. **Administrator** – The Board’s Administrator has overall responsibility for compliance with policy and achievement of the Affirmative Action goals to which the Board is committed and will provide leadership and monitor progress toward meeting goals and objectives and ensure compliance with applicable federal and state laws, rules, regulations and executive orders. The annual performance evaluation for the Administrator will include evaluation of affirmative action efforts and accomplishments.
2. **Supervisors and Managers** – The Executive Assistant is responsible for:
  - a. Fostering and promoting to board members, supervisors/managers and employees the importance of a diverse, discrimination and harassment free workplace;
  - b. Informing employees of the goals and objectives for the OSBEELS Diversity and Inclusion Plan;
  - c. Displaying the OSBEELS’ DIVERSITY and INCLUSION POLICY STATEMENT in prominent areas in the office;
  - d. Attending, and encouraging staff to attend, diversity-related activities and training. Sharing information received with supervisors/managers and staff who were unable to attend; and
  - e. Following the procedures outlined in DAS 50.010.01, Discrimination and Harassment Free workplace and notifying the Administrator, if supervisor/manager becomes aware of any type of harassment or discriminatory behavior.
3. **Affirmative Action Representative (AAR)** – The Board’s Human Resources Staff will serve as the Affirmative Action Representative and is responsible for:
  - a. Fostering and promoting to board members, supervisors/managers and employees the importance of a diverse and discrimination and harassment free workplace;
  - b. Working with supervisors/managers to make sure they understand their responsibility for promoting a diverse, inclusive and welcoming workforce environment;
  - c. Attending, and encouraging staff to attend, diversity-related activities and training. Sharing information received with supervisors/managers and staff who were unable to attend;

- d. Working with the DAS, Enterprise HR Services to utilize State of Oregon procedures and rules in filling vacancies and assuring that agency recruitments are conducted in compliance with AA and EEO goals;
- e. Discussing the OSBEELS' DIVERSITY and INCLUSION POLICY STATEMENT during new board member and employee orientations;
- f. Following the procedures outlined in DAS 50.010.01, Discrimination and Harassment Free workplace, and notifies the Administrator, if the AAR becomes aware of any type of harassment or discriminatory behavior. The AAR will receive and investigate all complaints and incidents promptly and report to the Administrator and/or Board President;
- g. Ensuring the OSBEELS' DIVERSITY and INCLUSION PLAN and POLICY STATEMENT are maintained on the OSBEELS web site and is accessible by all board members, management, and employees; and
- h. Attending equal opportunity, affirmative action and diversity training to be informed of current affirmative action laws and issues and to continue developing knowledge and skills for working with a diverse workforce.

#### **Board Management Staff**

- Administrator: Mari Lopez, Board Administrator
- Supervisor: Jenn Gilbert, Executive Assistant
- Affirmative Action Representative: *Vacant*

#### **IV. ACCOMPLISHMENTS AND PROGRESS FROM JULY 1, 2012 TO JUNE 30, 2014**

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OSBEELS takes pride in its diverse board and staff, coming together in fulfilling the Board's mission. We are known for our innovation, agility, and for our outstanding working relationships.

OSBEELS' Administrator works in partnership with the Governor's Office of Executive Appointments in applying a commitment to Affirmative Action for OSBEELS Board recruitments.

As of May 2014, an Interagency Agreement was entered between the OSBEELS and the DAS, Enterprise HR Services for providing the Board with recruitment services and position management services, including and not limited to: promoting consistency throughout the entire recruitment process, ensure all recruitment documents meet all applicable rules, policies, procedures, and are AA/EEO compliant, provide advertisement suggestions and outreach efforts, and handle applicant appeal process per applicable rules. (*Authority granted in ORS 182.460(4), ORS 190.110 and ORS 283.110, state agencies, including semi-independent agencies under ORS 182.454*).

#### **Accomplishments and Progress**

Some of the accomplishments and progress during the July 1, 2012 – June 30, 2014 period include:

- Successful recruiting and hiring of diverse populations, including the board representation of diverse state geographic regions (see ORS 672.240(2)).

OSBEELS continues its efforts to maintain workplace diversity. During the reporting period of July 1, 2012 to June 30, 2014, the Board had 33 employees and board members. During the reporting period, statistics show a total employee count of 15. The following represents the percent of workforce for people of color, people with disabilities, veterans, and women:

#### **OSBEELS WORKFORCE REPRESENTATION AS OF JUNE 30, 2014**

<b>GROUP</b>	<b>ACTUAL # FOR GROUP</b>	<b>PERCENT OF GROUP</b>
People of Color	8	53%
People with Disabilities	1	<1%
Veterans	1	<1%
Women	12	80%

## **V. GOALS AND STRATEGIES FOR JULY 1, 2015 TO JUNE 30, 2017**

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OSBEELS has a diverse workforce that represents its registrants, professional organizations, and the public.

### **Goals and Strategies**

In the 2015-17 biennium, the Board will pursue the following goals and strategies:

1. Recruit and hire staff for the Human Resources position. This position will also serve as the Board's Affirmative Action Representative.

#### **Strategy**

- Collaborate with the DAS, Enterprise HR Services to carry out the employee recruitment and selection processes, including development of recruitment and advertising, outreach strategies, and recruitment announcements.

2. Maintain the Board's commitment to affirmative action through the continued development and adherence to its Diversity and Inclusion Plan.

#### **Strategy**

- Evaluate and revise policies and procedures as needed to promote the Board's commitment to affirmative action and equal employment opportunity.

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

#### **Strategy**

- The Board shall be supportive of training opportunities to ensure all board members, management, and employees at OSBEELS receive training concerning affirmative action, cultural competency, workplace harassment, discrimination, and related matters.
- Increase staff and board member knowledge and awareness of affirmative action through review and discussion of the Diversity and Inclusion Plan.
- Train and inform employees regarding their rights and responsibilities under the Board's OSBEELS' DIVERSITY and INCLUSION POLICY STATEMENT.
- Make the complete Diversity and Inclusion Plan available and accessible to all board members management, and employees.

4. Support and promote diversity within the professions the Board regulates.

#### **Strategy**

- Increase awareness of the Board's commitment to affirmative action and equal employment opportunities within the professions regulated by the Board.

### *Disclaimer:*

*OSBEELS, a semi-independent state agency, is not subject to the provisions of the State Personnel Relations Law, found in ORS Chapter 240. Nothing in this policy is intended to subject the Board to the application of ORS Chapter 240, including the use of guidance provided in DAS human resource policies referenced above.*

Section VI

Appendix A

<b>SUBJECT:</b> Discrimination and Harassment Free Workplace	<b>NUMBER:</b> 50.010.01
<b>DIVISION:</b> Human Resource Services Division	<b>EFFECTIVE DATE:</b> 01/25/08
<b>APPROVED:</b> Signature on file with Human Resource Services Division	

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

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

**APPLICABILITY:** All employees, state temporary employees and volunteers.

**ATTACHMENTS:** None

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

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

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

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

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

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

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

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.

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**(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%

**Section VII**

**Appendix B**

## The Age Discrimination in Employment Act of 1967

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

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

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

- **Apprenticeship Programs**

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

- **Job Notices and Advertisements**

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

- **Pre-Employment Inquiries**

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

- **Benefits**

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

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

- **Waivers of ADEA Rights**

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

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

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

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

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

An individual with a disability is a person who:

- Has a physical or mental impairment that substantially limits one or more major life activities;
- Has a record of such an impairment; or
- Is regarded as having such an impairment.
- A qualified employee or applicant with a disability is an individual who, with or without reasonable accommodation, can perform the essential functions of the job in question. Reasonable accommodation may include, but is not limited to:
  - Making existing facilities used by employees readily accessible to and usable by persons with disabilities.
  - Job restructuring, modifying work schedules, reassignment to a vacant position;
  - Acquiring or modifying equipment or devices, adjusting or modifying examinations, training materials, or policies, and providing qualified readers or interpreters.

An employer is required to make a reasonable accommodation to the known disability of a qualified applicant or employee if it would not impose an "undue hardship" on the operation of the employer's business. Reasonable accommodations are adjustments or modifications provided by an employer to enable people with disabilities to enjoy equal employment opportunities.

Accommodations vary depending upon the needs of the individual applicant or employee. Not all people with disabilities (or even all people with the same disability) will require the same accommodation. For example:

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

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

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

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

Title I of the ADA also covers:

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

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

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

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

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

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

- **Small Business Tax Credit (Internal Revenue Code Section 44: Disabled Access Credit)**  
Small businesses with either \$1,000,000 or less in revenue or 30 or fewer full-time employees may take a tax credit of up to \$5,000 annually for the cost of providing reasonable accommodations such as sign language interpreters, readers, materials in alternative format

(such as Braille or large print), the purchase of adaptive equipment, the modification of existing equipment, or the removal of architectural barriers.

- **Work Opportunity Tax Credit (Internal Revenue Code Section 51)**  
Employers who hire certain targeted low-income groups, including individuals referred from vocational rehabilitation agencies and individuals receiving Supplemental Security Income (SSI) may be eligible for an annual tax credit of up to \$2,400 for each qualifying employee who works at least 400 hours during the tax year. Additionally, a maximum credit of \$1,200 may be available for each qualifying summer youth employee.
- **Architectural/Transportation Tax Deduction (Internal Revenue Code Section 190 Barrier Removal):**  
This annual deduction of up to \$15,000 is available to businesses of any size for the costs of removing barriers for people with disabilities, including the following: providing accessible parking spaces, ramps, and curb cuts; providing wheelchair-accessible telephones, water fountains, and restrooms; making walkways at least 48 inches wide; and making entrances accessible.

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## **Disability Discrimination**

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

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

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

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

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

### **Disability Discrimination & Work Situations**

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

## Disability Discrimination & Harassment

It is illegal to harass an applicant or employee because he has a disability, had a disability in the past, or is believed to have a physical or mental impairment that is not transitory (lasting or expected to last six months or less) and minor (even if he does not have such an impairment). Harassment can include, for example, offensive remarks about a person's disability. Although the law doesn't prohibit simple teasing, offhand comments, or isolated incidents that aren't very serious, harassment is illegal when it is so frequent or severe that it creates a hostile or offensive work environment or when it results in an adverse employment decision (such as the victim being fired or demoted).

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

## Disability Discrimination & Reasonable Accommodation

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

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

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

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

## Disability Discrimination & Reasonable Accommodation & Undue Hardship

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

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

## Definition Of Disability

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

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

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

- A person may be disabled if he is believed to have a physical or mental impairment that is not transitory (lasting or expected to last six months or less) and minor (even if he does not have such an impairment).

### Disability & Medical Exams During Employment Application & Interview Stage

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

For example, an employer may not ask a job applicant to answer medical questions or take a medical exam before extending a job offer. An employer also may not ask job applicants if they have a disability (or about the nature of an obvious disability). An employer may ask job applicants whether they can perform the job and how they would perform the job, with or without a reasonable accommodation.

### Disability & Medical Exams After A Job Offer For Employment

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

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

Once a person is hired and has started work, an employer generally can only ask medical questions or require a medical exam if the employer needs medical documentation to support an employee's request for an accommodation or if the employer believes that an employee is not able to perform a job successfully or safely because of a medical condition.

The law also requires that employers keep all medical records and information confidential and in separate medical files.

### Available Resources

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

- [Your Employment Rights as an Individual With a Disability](#)
- [Job Applicants and the ADA](#)
- [Understanding Your Employment Rights Under the ADA: A Guide for Veterans](#)
- [Questions and Answers: Promoting Employment of Individuals with Disabilities in the Federal Workforce](#)
- [The Family and Medical Leave Act, the ADA, and Title VII of the Civil Rights Act of 1964](#)
- [The ADA: A Primer for Small Business](#)
- [Your Responsibilities as an Employer](#)
- [Small Employers and Reasonable Accommodation](#)
- [Work At Home/Telework as a Reasonable Accommodation](#)
- [Applying Performance And Conduct Standards To Employees With Disabilities](#)
- [Obtaining and Using Employee Medical Information as Part of Emergency Evacuation Procedures](#)
- [Veterans and the ADA: A Guide for Employers](#)
- [Pandemic Preparedness in the Workplace and the Americans with Disabilities Act](#)

- [Employer Best Practices for Workers with Caregiving Responsibilities](#)
- [Reasonable Accommodations for Attorneys with Disabilities](#)
- [How to Comply with the Americans with Disabilities Act: A Guide for Restaurants and Other Food Service Employers](#)
- [Final Report on Best Practices For the Employment of People with Disabilities In State Government](#)
- [ABCs of Schedule A Documents](#)

#### The ADA Amendments Act

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

#### The Questions and Answers Series

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

#### Mediation and the ADA

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

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

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

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

### Equal Pay Act

The Equal Pay Act requires that men and women be given equal pay for equal work in the same establishment. The jobs need not be identical, but they must be substantially equal. It is job content, not job titles, that determines whether jobs are substantially equal. Specifically, the EPA provides that employers may not pay unequal wages to men and women who perform jobs that require substantially equal skill, effort and responsibility, and that are performed under similar working conditions within the same establishment. Each of these factors is summarized below:

#### **Skill**

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

#### **Effort**

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

#### **Responsibility**

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

#### **Working Conditions**

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

## Establishment

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

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

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

## Title VII, ADEA, and ADA

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

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

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

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

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

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

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

### Definition of "Genetic Information"

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

### Discrimination Because of Genetic Information

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

### Harassment Because of Genetic Information

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

## Retaliation

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

## Rules Against Acquiring Genetic Information

- It will usually be unlawful for a covered entity to get genetic information. There are six narrow exceptions to this prohibition:
- Inadvertent acquisitions of genetic information do not violate GINA, such as in situations where a manager or supervisor overhears someone talking about a family member’s illness.
- Genetic information (such as family medical history) may be obtained as part of health or genetic services, including wellness programs, offered by the employer on a voluntary basis, if certain specific requirements are met.
- Family medical history may be acquired as part of the certification process for FMLA leave (or leave under similar state or local laws or pursuant to an employer policy), where an employee is asking for leave to care for a family member with a serious health condition.
- Genetic information may be acquired through commercially and publicly available documents like newspapers, as long as the employer is not searching those sources with the intent of finding genetic information or accessing sources from which they are likely to acquire genetic information (such as websites and on-line discussion groups that focus on issues such as genetic testing of individuals and genetic discrimination).
- Genetic information may be acquired through a genetic monitoring program that monitors the biological effects of toxic substances in the workplace where the monitoring is required by law or, under carefully defined conditions, where the program is voluntary.
- Acquisition of genetic information of employees by employers who engage in DNA testing for law enforcement purposes as a forensic lab or for purposes of human remains identification is permitted, but the genetic information may only be used for analysis of DNA markers for quality control to detect sample contamination.

## Confidentiality of Genetic Information

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

## National Origin Discrimination

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

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

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

### National Origin Discrimination & Work Situations

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

### National Origin & Harassment

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

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

### National Origin & Employment Policies/Practices

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

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

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

### Citizenship Discrimination & Workplace Laws

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

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

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

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

1-800-255-7688 (voice for employees/applicants),

1-800-237-2515 (TTY for employees/applicants),

1-800-255-8155 (voice for employers), or

1-800-362-2735 (TTY for employers), or

<http://www.usdoj.gov/crt/osc>.

## Pregnancy Discrimination

### Pregnancy Discrimination

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

### Pregnancy Discrimination & Work Situations

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

### Pregnancy Discrimination & Temporary Disability

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

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

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

For information about the ADA Amendments Act, see [http://www.eeoc.gov/laws/types/disability\\_regulations.cfm](http://www.eeoc.gov/laws/types/disability_regulations.cfm).

### Pregnancy Discrimination & Harassment

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

### Pregnancy, Maternity & Parental Leave

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

An employer may not single out pregnancy-related conditions for special procedures to determine an employee's ability to work. However, if an employer requires its employees to submit a doctor's statement concerning their ability to work before granting leave or paying sick benefits, the employer may require employees affected by pregnancy-related conditions to submit such statements. Further, under the Family and Medical Leave Act (FMLA) of 1993, a new parent (including foster and adoptive parents) may be eligible for 12 weeks of leave (unpaid or paid if the employee has earned or

accrued it) that may be used for care of the new child. To be eligible, the employee must have worked for the employer for 12 months prior to taking the leave and the employer must have a specified number of employees. See <http://www.dol.gov/whd/regs/compliance/whdfs28.htm>.

#### Pregnancy & Workplace Laws

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

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

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

## **Race/Color Discrimination**

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

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

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

### **Race/Color Discrimination & Work Situations**

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

### **Race/Color Discrimination & Harassment**

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

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

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

### **Race/Color Discrimination & Employment Policies/Practices**

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

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## **Facts About Race/Color Discrimination**

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

It is unlawful to discriminate against any employee or applicant for employment because of race or color in regard to hiring, termination, promotion, compensation, job training, or any other term, condition, or privilege of employment. Title VII also prohibits employment decisions based on

stereotypes and assumptions about abilities, traits, or the performance of individuals of certain racial groups.

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

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

#### Race-Related Characteristics and Conditions

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

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

#### Color Discrimination

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

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

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

Title VII's protections include:

- **Recruiting, Hiring, and Advancement**

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

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

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

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

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

- **Harassment**

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

- **Retaliation**

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

- **Segregation and Classification of Employees**

Title VII is violated where minority employees are segregated by physically isolating them from other employees or from customer contact. Title VII also prohibits assigning primarily minorities to predominantly minority establishments or geographic areas. It is also illegal to exclude minorities from certain positions or to group or categorize employees or jobs so that certain jobs are generally held by minorities. Title VII also does not permit racially motivated decisions driven by business concerns – for example, concerns about the effect on employee relations, or the negative

reaction of clients or customers. Nor may race or color ever be a bona fide occupational qualification under Title VII.

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

- **Pre-Employment Inquiries and Requirements**

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

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

Other pre-employment information requests which disclose or tend to disclose an applicant's race are personal background checks, such as criminal history checks. Title VII does not categorically prohibit employers' use of criminal records as a basis for making employment decisions. Using criminal records as an employment screen may be lawful, legitimate, and even mandated in certain circumstances. However, employers that use criminal records to screen for employment must comply with Title VII's nondiscrimination requirements.

## Religious Discrimination

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

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

### Religious Discrimination & Work Situations

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

### Religious Discrimination & Harassment

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

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

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

### Religious Discrimination and Segregation

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

### Religious Discrimination & Reasonable Accommodation

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

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

### Religious Accommodation/Dress & Grooming Policies

Unless it would be an undue hardship on the employer's operation of its business, an employer must reasonably accommodate an employee's religious beliefs or practices. This applies not only to schedule changes or leave for religious observances, but also to such things as dress or grooming practices that an employee has for religious reasons. These might include, for example,

wearing particular head coverings or other religious dress (such as a Jewish yarmulke or a Muslim headscarf), or wearing certain hairstyles or facial hair (such as Rastafarian dreadlocks or Sikh uncut hair and beard). It also includes an employee's observance of a religious prohibition against wearing certain garments (such as pants or miniskirts).

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

#### **Religious Discrimination & Reasonable Accommodation & Undue Hardship**

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

#### **Religious Discrimination And Employment Policies/Practices**

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

## Retaliation

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

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

### Retaliation & Work Situations

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

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## Facts About Retaliation

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

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

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

### *Adverse Action*

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

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

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

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

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

#### *Covered Individuals*

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

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

#### *Protected Activity*

Protected activity includes:

Opposition to a practice believed to be unlawful discrimination

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

Examples of protected opposition include:

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

Examples of activities that are NOT protected opposition include:

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

Participation in an employment discrimination proceeding.

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

Examples of participation include:

- Filing a charge of employment discrimination;
- Cooperating with an internal investigation of alleged discriminatory practices; or

- Serving as a witness in an EEO investigation or litigation.

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

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

## **Sex-Based Discrimination**

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

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

### **Sex Discrimination & Work Situations**

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

### **Sex Discrimination Harassment**

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

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

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

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

### **Sex Discrimination & Employment Policies/Practices**

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

## Sexual Harassment

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

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

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

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

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

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## Facts About Sexual Harassment

Sexual harassment is a form of sex discrimination that violates [Title VII of the Civil Rights Act of 1964](#). Title VII applies to employers with 15 or more employees, including state and local governments. It also applies to employment agencies and to labor organizations, as well as to the federal government. Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when this conduct explicitly or implicitly affects an individual's employment, unreasonably interferes with an individual's work performance, or creates an intimidating, hostile, or offensive work environment.

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

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

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

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

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

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

**Section VIII**

**Appendix C**

JOHN A. KITZHABER, M.D.  
GOVERNOR



March 12, 2001

Richard Zbinden, President  
Oregon State Board of Examiners for Engineering & Land Surveying  
728 Hawthorne Ave NE  
Salem OR 97301

Dear Mr. Zbinden:

I am writing to encourage the Board of Examiners for Engineering and Land Surveying to extend the opportunity for non-Oregon residents at overseas locations to take the Fundamentals of Engineering exam. As you know, this exam has been made available to citizens of foreign countries and provides an important service to their engineering professions. I understand that this past October 598 people took the examination. In addition, administration of the exam at overseas locations is efficient for the state to administer.

By offering the examination, the State of Oregon is extending its goodwill to the citizens of Japan and other countries. There are many students who have entered engineering programs in anticipation of taking the State of Oregon exam in the future. It is important that we not only honor this perceived commitment, but that we adopt an approach of fostering better communication and interchange between our countries.

I appreciate your consideration of my comments.

Sincerely,

A handwritten signature in black ink, appearing to read "John A. Kitzhaber".

John A. Kitzhaber, M.D.

JAK/NR/sm

**THEODORE R. KULONGOSKI**  
GOVERNOR



September 4, 2003

Stuart Albright, President  
Oregon Board of Examiners for Engineering and Land Surveying  
728 Hawthorne Ave., NE  
Salem, OR 97301

Dear Mr. Albright:

I am writing to support the request of the Japan PE/FE Examiners Council to continue providing the Fundamentals of Engineering exams twice each year in Tokyo. I appreciate the efforts the Oregon Board of Examiners for Engineering and Land Surveying makes to provide these examinations in a foreign country. I'd like to explain to you why I feel the testing in Tokyo is valuable for Oregon.

First of all, if you translated the Japan PE/FE Examiners Council website, you would see that it mentions Oregon several times and shows genuine gratitude for the examination. Since the professionals who take this exam come from the top companies in Japan, Oregon benefits from the exposure with the examination and the website. It's free marketing to a targeted audience of select Japanese companies.

This program has resulted in the exchange of technology between Oregon and Japan and has encouraged Japanese engineering students to enter our university engineering programs. The connection between your organization and the Japanese one has resulted in revenue for your board as well as education and tourism dollars coming into the state.

Most important of all, the Japanese companies who have located in Oregon have been a tremendous boost to our economy. Japan is one of the top three trading partners for Oregon. Japan has been and continues to be a solid overseas partner.

Providing the examination in Japan is a goodwill gesture that proves Oregon appreciates Japan's business. Oregon is unique in this regard and therefore the efforts your group makes to support the engineering examinations in Japan benefit the Oregon economy. It may be an indirect benefit but it certainly is a real one.

I hope you agree with my thoughts and continue this program. Thank you.

Sincerely,

THEODORE R. KULONGOSKI  
Governor



c: Patty McWayne, OECDD  
NGD:pje



# Oregon

John A. Kitzhaber, MD, Governor

State Board of Examiners for  
Engineering & Land Surveying  
670 Hawthorne Ave SE  
Suite 220  
Salem, OR 97301  
Telephone: (503) 362-2666  
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President Masami Yoshimoto  
Japan PE/FE Examiners Council (JPEC)  
2-10-12F Akasaka, Minatoku, Tokyo 107-0052  
Japan

January 9, 2013

Dear President Yoshimoto,

The Oregon State Board of Examiners for Engineering and Land Surveying (OSBEELS) has always been extremely proud of the partnership and experiences we were able to have with the Japan Technology Transfer Association (JTTAS)/Japan Society of Professional Engineers (JSPE) and, later, with the Japan PE/FE Examiners Council (JPEC). Our staff and administrators truly valued the time spent with JPEC counterparts and in the beautiful country of Japan.

When OSBEELS began offering the Fundamentals of Engineering examination in October 1994, no one knew that there was more than a decade of cooperation and learning ahead. In the early days of examination administration, JTTAS and JSPE were instrumental in ensuring engineers in Japan had every opportunity available to join the global community of registered professional engineers. With the organization of JPEC in 2001, OSBEELS had yet another valuable organization to work.

The final FE examination administration in October 2005 was the end of a wonderful era of close cooperation. Although our organizations are from two very different cultures and backgrounds, our interactions were always respectful, enlightening, and focused on safeguarding the life, health, and property of communities around the world. The 2005 examination administration in Tokyo represented everything both organizations had worked so hard to achieve; it was professional and well-organized. Representatives from the National Council of Examiners for Engineering and Surveying (NCEES) were impressed by the process, organization, and the amount of volunteer proctors involved with the examination. Staff and administrators were praised for their participation and dedication.

OSBEELS looks back so fondly on everything learned and shared during those 12 years and, although examinations are no longer a responsibility, Oregon Senate Bill 144, a result of the 2009 Legislative Session, allows OSBEELS to continue welcoming Japanese engineers to the diverse community of Oregon registered professional engineers. The Board looks forward to many more years of cooperation with our Japanese counterparts.

Happy 10 year anniversary,

DAN LINSCHIED  
Board President

MARI LOPEZ  
Executive Secretary

*A number of US organizations are working to facilitate PE licensure for international candidates and aid the mobility of domestic PEs overseas.*

BY EVA KAPLAN-LEISERSON

# GOING GLOBAL

**A**s engineering increasingly becomes a profession that crosses international borders, a number of organizations have initiated efforts to not only facilitate the flow of engineers and projects but also to ensure rigorous standards of competence and professionalism.

Groups in the US are no exception. Their work is helping to provide global citizens access to the US licensure system. In addition, initiatives and partnerships benefit domestic PEs whose qualifications become better recognized overseas. That enhances the ability of US professional engineers to work internationally.

## Education

In recent years, US educational accreditor ABET has been working with an increasing number of programs in other countries.

ABET first began accrediting international programs in 2007, based on demand from global partners. (Previously, it evaluated programs by request to determine if they were “substantially equivalent.”) Overseas programs now comprise 10% of the organization’s total portfolio; 283 are in engineering.

According to executive director Michael Milligan, P.E., the largest number of programs are in the Middle East, with additional significant activity in Latin America and Asia.

He explains that ABET is recognized as a gold standard throughout the world, and that institutions that want to attract students, faculty, and industry support use the accreditation to demonstrate the quality of their education. But having an ABET-accredited degree also eases the path to becoming a PE.

ABET’s global efforts offer benefits at home as well. As an importer of technical talent and consumer of global technology, the US gains from initiatives to ensure quality workers and products overseas, Milligan notes.

The accrediting process is just the same overseas as it is domestically. However, ABET does ask institutions to coordinate their request with their in-country accreditor or overseeing body to ensure the work is welcomed.

It’s common that institutions may be dual-accredited, Milligan explains, as an “additional seal of approval.”

Milligan predicts that more programs will reach out to ABET for accreditation. “I don’t imagine the international growth will slow down anytime soon,” he says. “We only accredit a fraction of the programs currently.”

However, he acknowledges that not all programs need to be ABET-accredited, since other quality systems exist. “Part of the effort to raise the quality of engineering education worldwide is to develop those partnerships,” he says.

ABET has signed a mutual recognition agreement with Engineers Canada and participates in the International Engineering Alliance, which comprises three educational accords and three competence agreements. The Washington, Sydney, and Dublin Accords recognize substantial equivalency of educational programs for professional engineers, engineering technologists, and technicians, respectively.

The accords benefit both engineers wanting to achieve US licensure and US PEs demonstrating credentials in other signatory nations.

## Exams

Mobility of professional engineers is an important issue for the National Council of Examiners for Engineering and Surveying and a key part of the organization’s strategic plan. As the council’s CEO, Jerry Carter, puts it, “mobility is the foundation for NCEES. It’s why we were created in the 1920s.”

That means not only mobility within the US, but also outside of it. The council needs to venture outside the country’s boundaries, says Carter, because of the global nature of today’s work.

NCEES first offered overseas exams in Japan in 2006, taking over administration there from the Oregon State Board of Examiners for Engineering and Land Surveying, which had provided the exams at the request of the Japan Technology Transfer Association.

NCEES signed an agreement with the nonprofit Japanese PE/FE Examiners Council (JPEC) to continue the exams. Another with the Korean Professional Engineer Association (KPEA) soon followed. “We found we were dealing with professionals with the same values and professionalism as [in the US],” says Carter.

In December, NCEES renewed its examination agreement with JPEC during a ceremony in Tokyo. NCEES also has agreements to offer the FE and PE exams in Canada, Saudi Arabia, the United Arab Emirates, Egypt, and Turkey. Discussions are in the works for additional countries in Asia and the Middle East.

Carter says one of the driving forces behind the growth in international exams has been the increase in ABET accreditation overseas. Once organizations become accredited, they’ve been interested in accessing the FE exam as an outcomes assessment tool. “That always leads to, ‘but we also want to afford [candidates] the ability to pursue licensure,’” he explains.

## Licensure

According to Carter, it’s becoming more common for people outside of the US to be interested in obtaining the PE. He says that candidates who take the US licensing exams overseas may work for international firms that require the credential. For other applicants, obtaining the PE license is not required but is viewed as an honor.

Like Milligan, Carter believes the US system is becoming a de facto standard. However, as ABET does, NCEES participates in the International Engineering Alliance, in particular the agreements recognizing the substantial equivalence of individuals’ competencies.

For instance, the International Professional Engineers Agreement (IPEA) creates the framework to establish an international standard of competence for professional engineering. Its members maintain individual registers of engineers that meet international standards and are entitled to the credential International Professional Engineer (IntPE).

Engineers can qualify for their country’s register if they hold a Washington Accord-recognized degree or equivalent, earn seven years of practical experience (including two years in responsible charge), and maintain continuing professional development. In the US, about 500 people participate in NCEES’s register.

Basil Wakelin, CPEng (chartered professional engineer in New Zealand) and IntPE, is the chair of the International Engineering Alliance and the International Professional

Engineers Agreement. He says the international agreements are raising the global standard through benchmarking, as well as easing the flow of engineers.

But Wakelin points out that there are differences around the world as to what constitutes an engineer. "In some countries there is no professional engineering body at all," he says. "They understand engineering qualifications, but the development of professionalism is in its infancy." The benefit of the registers, he says, is that individuals from countries whose national standards might not meet the criteria can still belong.

According to Carter, those countries with less formal or rigorous systems are often interested in the US licensure system.

As NCEES signs agreements to offer its exams overseas, the council must clarify for both partners and candidates that the US licensure process is quite different from that of other countries with nationalized systems. Passage of the exams is only one step in the process and obtaining a license in this country still requires application through a state board, due to the sovereign rights of individual states.

"We're unique in that aspect," says Carter. "I'm always having to explain that to foreign associates."

### State Boards

Some licensing boards have been paving the way for US licensure for overseas candidates. For instance, the Oregon board offers registration to international engineers with equivalent qualifications who have passed the FE and PE exams.

These international engineers are not only required to meet the same standards as domestic applicants but also must comply with the state's continuing professional development requirement. It's critical to maintain consistency regardless of an individual's location, says board administrator Mari Lopez.

She explains that welcoming international candidates helps ensure responsible practices and safer projects, regardless of location. "Public safety improvements and economic growth aren't fully realized if international borders are treated like barricades," she says.

The Texas Board of Professional Engineers has been involved with international

mobility issues over the last 15 years, including signing mutual recognition agreements with Engineers Canada and the Mexican government through the North American Free Trade Agreement (NAFTA) and with Engineers Australia through the Australia-United States Free Trade Agreement (AUSFTA).

These agreements allow engineers who are currently licensed in their own countries to apply for a temporary one-year license in Texas in order to provide mobility for project work. The temporary license can be renewed for a total of three years, explains



**"We found we were dealing with professionals with the same values and professionalism as [in the US],"**

**JERRY CARTER**

board executive director Lance Kinney, P.E. After that, applicants must apply through the standard process.

The Texas board, along with the boards for North Carolina and Kentucky, also recently signed a memorandum of understanding with JPEC. This doesn't change the standard requirements for licensure, but simply puts the cooperation in writing.

Some states have regulatory requirements that impede international candidates, such as a minimum six months of residency or the need for a social security number. NCEES had assisted JPEC in identifying state boards with requirements that would allow their candidates to apply for licensure and with processes to evaluate their experience. (Once international candidates have obtained an initial PE, they can often receive additional licenses in those states with more stringent requirements.)

According to Gene Hirose, P.E., JPEC's liaison officer, the organization hopes to smooth the application process for candidates and plans to sign agreements with other state boards that are willing.

Although Japan does have its own long-standing professional engineer credential (P.E. Jp), Hirose explains that obtaining the

US license enables the country's citizens to join the cadre of "overseas-qualified" engineers.

According to Carter, the Texas Board of Professional Engineers has been the most progressive with international licensure so far. Like the Oregon board, the Texas board is also motivated by the desire to better protect citizens. "If it's difficult for overseas engineers to get licensed [in this country], they may work [here] in an unregulated way," Kinney notes.

But the agreements also facilitate opportunities for Texas engineers to work overseas. For instance, Kinney says more Texas engineers have gone to work in Australia than Australians have come to Texas.

### Lessons Learned

Washington is another state that has worked to facilitate international licensure and mobility. The Washington State Board of Registration for Professional Engineers and Land Surveyors has received license applications from Canada and Japan, and grants the PE to candidates who have fulfilled the same processes as US candidates.

However, the board recently got into a sticky situation with candidates from Egypt. The board offered those applicants comity licensure based on the passage of NCEES exams, qualifying education and experience, and a credential from the Egyptian Syndicate of Engineers, which the Washington Board believed to be equivalent to the US license.

However, upon closer examination, the board realized that the organization is more like a union or professional association rather than a licensing body. With that discovery, the board then had to individually examine credentials to determine whether they met the qualifications for initial licensure by Washington.

"[The situation] forced us to pay very close attention to the differences that exist in the global arena," explains executive director George Twiss. Determining the reliability of information at global distances is probably the single biggest challenge to the international mobility effort, he believes.

### Roadblocks and On Ramps

Navigating individual state requirements can be a tricky process for those in other



## NSPE Aids International Cooperation

NSPE has played a key role in advancing global cooperation and international mobility of engineers.

For instance, the Society has signed affiliation agreements with the Japan Society of Professional Engineers, the Society of Professional Engineers (UK), and the Korean Professional Engineers Association. These agreements encourage eligible members of the groups (those licensed in the US or other countries, graduates of ABET-accredited programs, and graduates of ABET-equivalent programs) to become NPSE members. In return, NSPE promises to provide these groups the same services as chapters of NSPE member state societies.

Members of the Japanese and Korean affiliate societies attend NSPE annual meetings, and the NSPE president regularly visits those countries.

The Japan Society of Professional Engineers also provided extensive review comments on a draft of NSPE's new *Engineering Body of Knowledge*.

In addition, NSPE has been an important part of advancing the US licensure system around the world by helping to facilitate meetings and discussions among cooperating partners.

countries. For instance, Washington's rules require anyone outside of the ABET system to get prior board approval before taking the Fundamentals of Engineering Exam.

If an overseas applicant has an ABET-accredited degree, the educational part of licensure is straightforward. But Milligan says ABET encourages state licensing boards to also recognize the graduates from programs participating in the Washington Accord (some will, but some will not), since a lot of effort goes into verifying the consistency and quality of those accrediting systems.

Candidates outside the ABET system can also have their education evaluated by a credential evaluating service—such as NCEES's. This is a course-by-course evaluation to determine if the degree is equivalent to a US one.

But even candidates from countries with licensing systems similar to the US still have to apply and meet the requirements of individual states. The US system doesn't provide for automatic equivalency, Carter explains, due to the decentralized nature of licensure. At a minimum, candidates will have to take NCEES exams.

Although there is no permanent one-to-one equivalency of international licenses in the US, the international agreements aim to help the process.

The International Engineering Alliance's Wakelin believes that bilateral agreements between countries (or countries and states in the case of the US) can be cumbersome and expensive. Instead, he emphasizes a global standard, even if it doesn't result in automatic transference of credentials. "At least people can say, 'I know what it means.' They might impose additional conditions...but the base experience is recognized."

### Moving Forward

Despite efforts to ease the process, questions about international licensure and mobility remain.

According to Wakelin, the alliance is in the early stages of reviewing whether national systems' equivalency can be judged versus individual engineers' competencies. He believes that will be easy for some systems, but more difficult for others.

The Washington board's Twiss has worked on NCEES's Foreign Experience Evaluation Task Force, which is developing recommendations to the council about a clearinghouse that would help support overseas licensing processes and requirements of member boards. "Instead of a search on the Internet, it would be a clearinghouse hosted by NCEES to give us a far more reliable source of info," says Twiss.



**"If it's difficult for overseas engineers to get licensed [in this country], they may work [here] in an unregulated way."**

LANCE KINNEY, P. E.

But he brings up disciplinary action as a concern—how will state regulatory systems address misbehavior of foreign candidates? "Is there a remedy to protect the public if behavior is unacceptable to standards?" he asks.

Still, Twiss is a supporter of international mobility. "Common sense dictates that the whole world community is merging," he says. "Everybody is a keyboard away."

Carter says that NCEES has been trying to educate member boards about the need to think outside of not only state but also national boundaries to eliminate obstacles that are just bureaucratic and don't add to public protection.

The council has found that all the international partners they've worked with have shown the highest degree of professionalism, he says, and the same motivation to practice ethically.

And, Carter says, for US engineers, it's not enough to be licensed in a couple of states now. "You're going to have to grow, look worldwide for business. It's just going to be [required for] the engineer of the future." **PE**