



BOARD OF MEDICAL IMAGING

Linda Russell, Executive Director
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Portland, OR 97232
971-673-0215

**Affirmative Action Plan
2011 – 2013 Biennium**



Oregon

Theodore R. Kulongoski, Governor

Oregon Board of Medical Imaging
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August 4, 2010

Peggy Ross, Director
Governor's Affirmative Action Office
155 Cottage Street NE
Salem, OR 97301

RE: 2011-13 Board of Medical Imaging Affirmative Action Plan

Dear Peggy:

Attached please find the Agency's 2011-13 - Affirmative Action Plan. We will continue our firm commitment to valuing diversity and making every effort to achieve our affirmative action goals.

The agency has had only one staff position turn over during the last two years. We have increased multicultural training through staff meetings and strive to seek diversity and cultural competency within our staff and Board Members as much as possible. The Board is currently in the process of identifying ways in which we can reach out to multicultural entities within the state. A natural outcome of this project is an increased understanding about diversity and cultural differences. As future vacancies occur, we intend to expand our recruitment efforts to expand the diversity of our staff.

We have conducted training for staff and Board members with existing limitation. We expect to see additional training occur in the 2011-13 biennium.

If you have any questions about the plan, please contact me at (971) 673-0216.

Respectfully submitted,

Linda A. Russell.
Executive Director

CC: Sarah Anderson and Vicki Jorgensen
Affirmative Action Representatives

**BOARD OF MEDICAL IMAGING
AFFIRMATIVE ACTION PLAN
2011-2013 BIENNIUM**

Table of Contents

I. Description of Agency

A. Name of Agency Director/Administrator	1
B. Name of Governor’s Policy Advisor for your agency.....	1
C. Name of Affirmative Action Representative	1
D. Organizational Chart	2

II. Affirmative Action Plan

A. Agency Affirmative Action Policy Statement.....	3
B. Training, Education, and Developmental Plan (TEDP)	4
1. Employees.....	4
2. Volunteers	4
3. Contractors/Vendors.....	5
C. Programs	5
1. Community Outreach Program(s)	5
2. Diversity Initiative Program(s).....	5
D. Update: Executive Order 08-18.....	5
1. Cultural Competency Assessment and Implementation Services	5
2. Statewide Exit Interview Survey.....	6
3. Performance Evaluations of all Management Personnel.....	6
E. Status of Contracts to Minority-owned Businesses (ORS 659A.015).....	6

III. Roles for Implementation of Affirmative Action Plan

A. Responsibilities and Accountabilities.....	6
1. Director/Administrator	6
2. Managers/Supervisors	7
3. Affirmative Action Representatives.....	8

IV. July 1, 2008 – June 30, 2010

A. Accomplishments.....	9
B. Progress made or lost since previous biennium	10

V. July 1, 2011 – June 30, 2013

A. Goals for Affirmative Action Plan.....	11
B. Strategies and Timelines for achieving your goals	12

VI. Appendix A

- A. Agency's Policy Documentation
 - 1. ADA and Reasonable Accommodation Policy
 - 2. Discrimination and Harassment Free Workplace (Statewide Policy No. 50.010.01)
 - 3. Agency Employee and Training Policy
 - 4. Maintaining a Professional Workplace (No. 50.010.03)
 - 5. Veterans Preference in Employment
 - 6. Other agency documentation in support of its affirmative action plan

VII. Appendix B

- A. Prohibited Employment Policies/Practices
- B. Age Discrimination in Employment Act of 1967 (ADEA)
- C. Disability Discrimination Title I of the Americans with Disability Act of 1990
- D. Equal Pay and Compensation Discrimination Equal Pay Act of 1963, and Title VII of the Civil Rights Act of 1964B
- E. National Origin Discrimination Title VII of the Civil Rights Act of 1964
- F. Pregnancy Discrimination Title VII of the Civil Rights Act of 1964
- G. Race/Color Discrimination Title VII of the Civil Rights Act of 1964
- H. Religious Discrimination Title VII of the Civil Rights Act of 1964
- I. Retaliation Title VII of the Civil Agency Affirmative Action Policy
- J. Sex-Base Discrimination Title VII of the Civil Rights Act of 1964
- K. Sexual Harassment Title VII of the Civil Rights Act of 1964

DESCRIPTION OF AGENCY

The mission: The mission of the Oregon Board of Medical Imaging is to promote, preserve and protect the public health, safety and welfare of Oregonians while undergoing medical imaging studies performed by agency licensees for the purpose of medical diagnosis and therapy.

Statutory Authority: The authority and responsibilities of the Board of Medical Imaging are contained in Chapter 688 of the Oregon Revised Statutes.

ORS 688.405 – 665

Medical Imaging Practitioners and Limited X-ray Machine Operators

OAR 337 Divisions 001 – 030

Board of Medical Imaging Administrative Rules

Statement of Purpose: The practice of medical imaging in the State of Oregon is declared a professional practice affecting the public health, safety and welfare and is subject to regulation and control in the public interest. It is further declared to be a matter of public interest and concern that the practice of medical imaging, as defined in ORS Chapter 688, merit and received the confidence of the public and that only qualified persons be permitted to engage in the practice medical imaging in the State of Oregon.

The current Executive Director of the Oregon Board of Medical Imaging is:

Ms. Linda A. Russell
800 NE Oregon St, Suite 1160A
Portland, OR 97232
Phone number 971-673-0216

The Governor's Policy Advisor for the Oregon Board of Medical Imaging is:

Ms. Claudia Black
Phone number 503-378-6549

The Affirmative Action Representatives for the Oregon Board of Medical Imaging are:

Ms. Sarah Anderson 971-673-0217 and Ms. Vicki Jorgensen, DAS, HRSD 503-378-8344 or 971-673-1539.

A current organizational chart for the Oregon Board of Medical Imaging follows this page.

Agency Staffing: The Oregon Board of Medical Imaging is made up of twelve members; four licensed physician members; at least one radiologist and one imaging specialty, three public members, a representative from each of the five major modalities; MRI, Nuclear Medicine, Radiation Therapy, Radiography and Sonography and a staff of 3 full time employees. The Board is budgeted and accounted for as a single program. The staff is internally organized into three distinct sections including Licensing, LEDS/CE Compliance, and Operation Administration.

The Executive Director directly supervises the Administrative Licensing Specialist and the Administrative LEDS Specialist. Compliance Director, the Board Chair oversees the policy and direction of the Board's mission and objectives and gives direction to the other Board members and to the Executive Director.

2009-2011 Organizational Chart

Governor

Oregon Board of Medical Imaging

Thomas King, Chair, Radiography Member, Portland, position #0005106

Frank Erickson, Radiologist, Physician Member, Pendleton, position #0005101

David Farthing, Radiologist, Physician Member, Salem, position #0005110

Jacob Abraham, Cardiologist, Physician Member, Portland, position # 0005111

William Purnell, Jr., Radiologist, Physician Member, Salem, position # 0005112

Kimberly Earp, Radiation Therapy Member, Portland, position #0005105

Frank Krause, Vice-Chair, Sonography Member, Portland, position #0005104

Shirlee Templeton, Nuclear Medicine Member, K Falls, position #0005109

VACANT, MRI Member, position #0005102

Shaestagir Chowdhury, Public Member, Portland, position #0005107

Public Member, Portland, position #0005108

VACANT, Public Member, position # 0005103

Terry Lindsey, Radiation Protection Services Manager (Advisory)

Executive Director

Linda Russell, position # 620, (1 FTE)

Vincent Mandina, AS1, 1 FTE, position #621

Sarah Anderson, OS2, 1 FTE, position # 622

Confuzer Inc-Grant Moyle,
Shared Network Administrator

II. AFFIRMATIVE ACTION PLAN
A. Agency Affirmative Action Policy

Introduction

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

Policy Statement

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

All staff of the Oregon Board of Medical Imaging shall adhere to the Affirmative Action Policy and Plan. Supervisory and management staff, in particular, shall assure that the intent as well as the stated requirements are implemented in all employee relationships and personnel practices. In addition, it is the duty of every employee of the Oregon Board of Medical Imaging to create a job environment atmosphere which is conducive to non-discrimination policies and free of any form of discrimination or harassment. The application of this policy is the individual responsibility of all administrative and supervisory staff, and each shall be evaluated on his/her performance in achieving this affirmative action policy as well as in other job performance criteria. The Affirmative Action Plan is posted on the Board's website; a hard copy is placed in the reception area, and in the Executive Director's office. The Affirmative Action Policy Statement is posted on the bulletin board where all other required posters are located. Failure to meet our Affirmative Action standards will be subject to disciplinary actions.

All employees shall be advised of the procedure for lodging a discrimination/ harassment complaint, and all employees with concerns of any kind related to affirmative action shall be encouraged to bring them to the attention of the Executive Director. Our internal procedure supports the statewide policy is located on page 31 of this plan.

It is further the policy of the Oregon Board of Medical Imaging to establish and maintain this program of affirmative action to provide for a method of eliminating any effects of past or present discrimination, intended or unintended, which may be indicated by analysis of present employment patterns, practices, or policies.

Duration of Plan

This revision of the Board's Affirmative Action Plan is effective July 30, 2010 and shall be evaluated annually or as needed when statewide changes occur. The Board's Affirmative Action Representatives are Sarah Anderson, 971-673-0217 and Vicki Jorgensen, DAS, HRSD 503-378-8344 or 971-673-1539.



August 04, 2010

Linda A. Russell, Executive Director

Date

Training, Education and Development Plan and Schedule of:

1. Staff

- a. Train and inform managers, supervisors, and employees at New Employee Orientation as to their rights and responsibilities under the Board's affirmative action plan and other Board policies to eliminate discrimination or harassment on the basis of age, color, marital status, mental or physical disability, national origin, race, religion, sex, sexual orientation, or any reason prohibited by state or federal statute.
- b. Managers and employees will attend trainings in the areas of AA/EEO, Valuing Diversity and Harassment. Training may be in the form of guest speakers during all-staff meetings, formal classes, sharing of information from the Governor's Affirmative Action Office, and/or one-on-one discussions. Managers will be evaluated annually for their adherence to this Affirmative Action Plan.
- c. 33% (1 Employee) of the Oregon Board of Medical Imaging's workforce is eligible to retire within the next five years. Succession planning is critical for the seamless transition of employees in key positions. Upper level managers are working to identify people that could move into these key roles.
- d. It is the policy of the Board to provide resources for employees to encourage their career development in state service, as is reasonably practicable to do. To accomplish this mission, the Board may provide opportunities for training to employees for developing proficiency, enhancing skills and encouraging development in areas for potential advancement. Staff shall be eligible for mandated and required training. Suggested training opportunities will be considered by management for approval.
- e. The training plan is designed to reinforce the mission and values of the Oregon Board of Medical Imaging. All employees are given an opportunity to participate in the following training:
 - a) Developing Job Skills – opportunities to developing proficiency, enhancing skills and encouraging development in areas for potential advancement.
 - b) Increase staff and board member knowledge and awareness of affirmative action through review and discussion of the Affirmative Action Plan.
- f. Train and inform managers and employees as to their rights and responsibilities under the Board of Medical Imaging's Affirmative Action policy.
- g. Make the complete Affirmative Action Plan available and accessible to all board members, employees and contractors.
- h. New employees are provided the Board of Medical Imaging's Affirmative Action and Equal Employment Opportunity policy and plan and encouraged to review and discuss questions or concerns with the Executive Director.
- i. The Board of Medical Imaging will continue to educate managers and staff and focus on developing work environment that is attractive to a diverse pool of applicants, retain employees and is accepting and respect of employee's differences.
- j. The Board of Medical Imaging posts a copy of the Affirmative Action and Equal Employment Opportunity policy and plan on its web site for easy access by employees. A copy of the plan is also given to each new employee as part of their orientation.
- k. The Board of Medical Imaging's recruitment announcements and advertisements identify the Agency as an Equal Opportunity/Affirmative Action employer and includes the statement, "THE BOARD OF MEDICAL IMAGING IS AN EQUAL OPPORTUNITY, AFFIRMATIVE ACTION EMPLOYER COMMITTED TO WORK FORCE DIVERSITY"

2. Board Members

- a. Provide new Board Members with a copy of the Affirmative Action Plan or direct them to the Board's website where the Plan is available for public viewing.
- b. Invite them to participate in the Board's cultural diversity training sessions.

3. Providers and Volunteers

The Oregon Board of Medical Imaging does not have any Providers or Volunteers.

4. Vendors

When contracts are established or renewed, the Oregon Board of Medical Imaging provides vendors with a copy of the Affirmative Action Plan or directs them to the Board's website where the Plan is available for public viewing.

B. Programs

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

- Communicating to all staff in a variety of mediums the importance of diversity;
- Asking staff to focus on the organization and provide suggestions on ways to improve our diversity performance;
- Identifying tasks well suited for interns and that are related to their career goals. Using interns is a way to teach young people about the mission of the Oregon Board of Medical Imaging and show them possible employment opportunities;
- Making presentations to community organizations such as Oregon Society of Radiologic Technologists meetings and conferences and higher educational facilities about the work of the OBMI which in turn creates interest in our jobs;
- Drawing upon different sources to advertise our recruitments such as the new state recruiting system E-Recruit, and increase awareness of our openings by contacting minority and community organizations.
- Promoting a respectful workplace by offering training on diversity awareness, improving communications, conflict management, and an open atmosphere to talk about problems and ideas;
- Creating a welcoming environment by fostering an acceptance of people's differences and treating everyone with respect and professionalism whether they are staff or customer;
- Posting notices and forwarding e-mails that talk about cultural activities and other information that supports diversity and tolerance; and
- Displaying the agency's commitment to the Affirmative Action Plan by publicizing it on their website and having hard copies available in strategic locations for everyone to read.
- Initiative in cooperation with DHS Office of Multicultural Health and Services to create effective options for outreach to non-prescription outlets with various ethnic focuses. There is an increase in the number of these outlets and the Board is trying to identify relevant methods of communication.

D. Update: Executive Order 08-18

1. Cultural Competency Assessment and Implementation Services

As part of the Oregon Board of Medical Imaging's 2011-2013 Affirmative Action Plan, the agency will increase multicultural training through staff meetings and strive to seek diversity and cultural competency within our staff and Board Members. We have had several meetings with the DHS Office of Multicultural Health to facilitate our knowledge and understanding of cultural competency. We expect to see additional training occur in the 2011-13 biennium.

The Board will work towards implementing a Cultural Competency Assessment within existing budget limitation. We anticipate that this assessment will help determine where OBMI's culture lies in the spectrum from culturally unaware to culturally competent. A culturally competent organization is able to use the policies, people and resources it has to systematically anticipate, recognize and respond to varying expectations of customers and employees. A culturally competent organization values individuals for their differences instead of expecting individuals to adapt to the organizations culture. The OBMI, its employees and customers will immediately benefit from their movement along the spectrum towards cultural competence.

The Oregon Board of Medical Imaging will develop a plan to enhance its cultural competence over the 2011-2013 Biennium. Implementation of the plan will result in:

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

The plan will focus on:

- Licensees understanding and appreciating the value of the Board's requirements.
- Greater awareness among the members of OBMI's workforce;
- Possible changes to policies and procedures that will enhance effective communication and utilize differing strengths;
- Identifying training events that all employees will enjoy and participate in; and
- An increased respect for and understanding of diverse cultures within the workforce.

The Oregon Board of Medical Imaging will benefit from this plan by:

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

2. *Statewide Exit Interview Survey*

The Oregon Board of Medical Imaging offers exit interviews to all departing staff. Discuss and follow-up with Director on any concerns or trends. Ensure each departing employee is sent the link to the State's exit interview survey monkey as required by the Governor's Affirmative Action Office.

3. *Performance Evaluations of all Management Personnel*

The Oregon Board of Medical Imaging remains committed to compliance with the Governor's executive orders requiring the inclusion of diversity and affirmative action requirements in position descriptions and annual performance evaluations. Performance accountability in the areas of Affirmation Action and Diversity will be reviewed during annual evaluations.

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

The Oregon Board of Medical Imaging does not have any contracts that exceed \$5,000 with minority businesses. The majority of our contracts are with subject matter experts that are called upon for single-need issues.

III. Roles for Implementation of Affirmative Action Plan

A. Responsibilities and Accountabilities

1. Director

- a. Foster and promote to employees the importance of a diverse and discrimination and harassment free workplace. Participate in cultural diversity trainings, orientations, and be an example of cultural sensitivity.
- b. Meet as needed, with the Board's Executive Director to review equal employment opportunities, evaluate affirmative action and diverse work environment progress, and identify problems. Approve strategies and timetables for meeting goals.
- c. Annual performance reviews will include ratings on the Director's support and effectiveness of the agency's Affirmative Action Plan.
- d. Hold managers accountable for participating in and promoting affirmative action activities and for communicating this same responsibility to their subordinate supervisors and employees. The effectiveness of managers and supervisors in promoting the affirmative action activities, goals and objectives for OBMI will be included in their annual performance appraisals. ORS 659.025(1) states:

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

2. Managers and Supervisors

- a. Foster and promote to employees the importance of a diverse and discrimination and harassment free workplace.
- b. Managers and supervisors will receive an orientation on the Board's affirmative action goals, understand their own responsibilities, and evaluate how well they are achieving the Board's affirmative action goals and objectives. They will attend cultural competency training, attend orientations, and promote cultural awareness.
- c. Subordinate supervisors will be evaluated on their effectiveness in carrying out the responsibilities they have for participating in and promoting affirmative action activities.
- d. In undertaking these evaluations, managers will consider how well the supervisor fosters and promotes a diverse workforce, how well s/he promotes the affirmative action goals and objectives, and that his/her staff are knowledgeable about OBMI policies and procedures that encourage a welcoming environment.
- e. Inform applicants for vacant positions that the Board is an equal employment employer committed to workforce diversity. Have a copy of the Board's Affirmative Action Plan available for applicants to review on request.
- f. Work with the Human Resources Section to utilize State of Oregon procedures and rules in filling vacancies.
- g. Attend equal opportunity, affirmative action and other diversity-related training in order to be informed of current issues.

- h. Display the Board's Affirmative Action Policy Statement and have available a hard copy of the Affirmative Action Plan in the office. An electronic copy of the Board's Affirmative Action Policy Statement will also be maintained on the OBMI website.
- i. Act in a timely manner if they become aware of any Board employee engaging in any type of harassment.
- j. Periodically report to employees on the Board's progress in attaining its' affirmative action goals and on other affirmative action matters.
- k. Be held accountable for promoting affirmative action on their annual performance evaluations.

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

- a. Work with the Executive Director, managers and supervisors to promote a diverse workforce environment and help attain the AA goals of the Board. Encourage the retention of existing employees and create new learning opportunities for them.
- b. Report AA activities to the Executive Director in one-on-one meetings as well as staff meetings. Obtain support for proposed changes to the AA Plan to reach goals and objectives. Respond to AA issues and attend AA meetings on behalf of the Director.
- c. Emphasize the Board's support of equal employment opportunity, affirmative action and the benefits of a diverse workforce.
- d. Place the statement "THE BOARD OF MEDICAL IMAGING IS AN EQUAL OPPORTUNITY, AFFIRMATIVE ACTION EMPLOYER COMMITTED TO WORK FORCE DIVERSITY" on every announcement and in every advertisement.
- e. Train managers to have diverse interview panels including, when possible, one member who works outside the hiring section/division and one member from a protected class.
- f. Research training opportunities and topics for presentation to all staff. Actively participate in those trainings.
- g. Have hard copies and/or electronic copies of the Board's Affirmative Action Policy Statement and Plan available for review by all managers, supervisors and employees. Make hard or electronic copies available to applicants for employment on request. Recommend changes to the Plan and update it as required. Compile statistics and keep management informed of the Board's AA status during management meetings. Solicit comments from managers requesting how Human Resources can assist them in promoting affirmative action activities and how best to create a more diverse workforce.
- h. Discuss the State of Oregon/Board Affirmative Action Plan and Policy in New Employee Orientation. Make the orientation as welcoming as possible. Include in the discussion:
 - Our expectations surrounding a respectful workplace and talk about what that means to the agency as well as the employee.
 - Our commitment to supporting the personal and professional growth of our employees.
 - Our encouragement to contribute and participate in agency activities that will assist the agency in meeting its objectives.
 - And our doors are always open for questions and concerns.
- i. Train and inform managers, supervisors and employees at New Employee Orientation as to their rights and responsibilities under the Board's affirmative action policy and other Board policies to eliminate any harassment based on race, sex, age, religion, sexual orientation, or disability.

- j. Respond to and investigate complaints. Enforce policies and procedures.
- k. Offer the Statewide Exit Interview Survey to all terminated employees. Analyze for trends. If it appears that discrimination or harassment was a factor in employee separation, conduct an investigation and take appropriate action. Inform the Executive Director of the results.
- l. Evaluate revised and new policies for possible adverse impact on the Board's commitment to affirmative action and equal employment opportunities.
- m. Serve as a liaison between the Board, the state and federal agencies that protect civil rights.

IV. JULY 1, 2008-JUNE 30, 2010

A. Accomplishments

1. Two recruitment has been performed since July 2009. It was conducted in a way that would provide the most diverse candidate pool possible. Every candidate that met the qualifications and rated highest on the scoring criteria was offered an interview. Interviews were conducted by panels that consisted of both men, women, and co-workers. The most qualified candidates were a female who had previously been a payroll specialist for DHS at the Gresham Sufficiency office. The other qualified candidate was a male from the Oregon Racing Commission.
2. We managed to reach a diverse audience without spending anything on advertising. Announcements were placed on the state's job page, and on OBMI's website. Out of our applicant pool of 11 candidates, 2 or 18% of applicants disclosed that they were People of Color.
3. To make prospective employees feel welcome at the Oregon Board of Medical Imaging, emphasis was placed on creating a comfortable interview atmosphere. The interview team all introduced themselves, water, paper and pencils were available, plenty of time was given to the candidate for organizing their thoughts.
4. Management staff is proactive in communicating the importance of diversity with the staff, and includes diversity discussions in periodic staff meetings. The Affirmative Action Representatives attend training to learn more about the development and implementation of a program that fosters cultural competency and multi-cultural organizational development. Management staff made a greater effort to communicate cultural events throughout the area.
5. The Oregon Board of Medical Imaging regularly uses interns from the various higher educational facilities when they have specific projects that fit within an intern's timeframe. Using interns, especially those from protected classes brings a fresh perspective to the way we conduct business at the Board.
6. The following is a list of examples of Cultural and communication training that were provided to our managers and employees.
 - The Office of Multicultural Health and Services Open House 2009.
 - Cultural Competency and Diversity- Valuing, Embracing and Implementing provided by OSPMA
 - Generations in the Workplace provided by OSPMA
 - Generational Differences with a private vendor. Our workforce spans many generations – from 1930 to 1980. The Generational Differences training provided great insight and communication tips that increased our awareness of how different people can work toward common goals.
 - Periodically attended the Affirmative Action statewide monthly meetings.

B. Progress

1. Cross-training and career developmental opportunities are encouraged. Our goal is to retain our employees by keeping them challenged and giving them room for growth. The small size of our agency requires that more than one person knows a job, so it is fairly easy to promote these opportunities.

During the 2009-2011 Biennium, the Board continues to strive to create a culturally diverse staff through the employee recruitment process. 1 employee was retained and 2 employee(s) were hired during the biennium. One of the employees retained is in a protected class.

The Oregon Board of Medical Imaging has 3 positions –and 12 Board Members. Since July 1, 2009 OBMI has had two recruitments. The turnover and its’ effect on protected classes can be summarized as follows:

Category	2007-2009	2009-current	Explanation
People of Color	1 gained 1 lost 1 retained	0 lost 0 gained 1 retained	-Active support for keeping our diverse workforce intact. -Board Member term limits applied.
Women	1 gained 2 lost	0 lost 2 retained	-Lost one when our employee left the workforce to stay home with her first child. -Board Member term limits applied. -Economic conditions supported a low turnover.
Disabled	0 lost 0 gained 1 retained	0 lost 0 gained 1 retained	-Active support for increasing our disabled representation.

The Oregon Board of Medical Imaging’s strategy for retaining our employees is simple:

- Value our employees and urge them to participate in decisions that affect their work;
- Treat our employees with respect and dignity;
- Show our employees the benefits of working for the State of Oregon from pay to health insurance to location;
- Support our employees in their learning and personal development plans;
- Carefully maintain the Board’s reputation for professionalism by making it a business people are proud to work for;
- Keep our processes as lean as possible so work makes sense even to our youngest employees;
- Communicate well and often. Let people know what is happening in the organization;
- Make wise hiring decisions and continually evaluate our hiring practices; and
- Hold people accountable for adhering to our respectful workplace and harassment-free policy.

Our agency’s strength lies in our employees and our customers. We are a very professional organization that lives with high expectations every day. The challenges we face are few:

- Communications – we must learn to communicate better. Not only between our younger and older staff members, but those who are more technologically advanced than others.
- Positive attitudes – the pay cuts and furloughs have had a negative effect on our employees. Helping employees feel valued is difficult.

If these challenges are not faced, we could potentially lose some of our more senior knowledgeable employees as well as our talented younger employees.

V. JULY 1, 2011-JUNE 30, 2013

A. Goals for Affirmative Action Plan / Programs

1. The Board will continue to provide information and opportunities for staff to participate in diversity training and multi-cultural events. The Board will continue to develop strategies to recruit, retain and promote a diverse staff. The Board recognizes the value of individual and cultural difference and creates a work environment where talents and abilities are valued.
2. Management staff is proactive in communicating the importance of diversity in staff meetings, and includes diversity discussions in communications with staff. The Board utilizes diversity within the workforce by incorporating diverse perspectives into business decisions. Management will also continue to attend required training to participate in the development and implementation of a program that fosters cultural competency and multi-cultural organizational development. Management staff will continue to make greater effort to communicate cultural events throughout the area.
3. The Executive Director, supported by the Board Chair, will continue to educate and guide Managers in creating applicant pools and interviewing processes that are welcoming to all people, and helping them understand the benefits of a diverse workforce and supporting our Affirmative Action Plan. This will be accomplished by the Executive Director actively participating in all recruitment and selection activities and including AA performance measures on annual evaluations.
4. All managers will support activities that develop a work environment that is attractive to a diverse pool of applicants, retains employees, and is accepting and respectful of employees' differences. A welcoming environment will be created a number of ways - by sharing e-mail activity notices from the Governor's Affirmative Action Office, posting posters and flyers in the office common area, encouraging employees to share their thoughts and ideas, responding to issues quickly and efficiently, etc. Respectful workplace behaviors will be expected and enforced. Expectations will be presented using formal training, written policies and procedures, and/or one-on-one counseling.
5. Managers will also utilize employee retention ideas that include offering flexible schedules, having open door policies, listening respectfully and responding quickly to problems. Managers will be evaluated on their compliance with the agency's AA objectives by rating them on their annual performance evaluation.

B. Strategies and time lines for achieving our goals

Summer 2010	The Executive Director will present the 2011-2013 Affirmative Action Plan to all employees during a normally scheduled staff meeting and via e-mail/Board Packet to all Board Members.
Winter 2010	The Executive Director will request our employee's assistance in identifying ways we can make our organization more welcoming and meet the goals of this plan.
Spring 2011	The Executive Director will update the Board and managers on OBMI's affirmative action and recruitment statistics. Discuss ways of increasing our diversity and using this plan as our guideline.

- Ongoing - The Executive Director will post recruitments on the state's E-recruit system and other diversity websites. Continually monitor the welcoming environment of this organization.
- Ongoing - Listen and take action on our employee's feedback for creating a more welcoming environment. Continue to keep cultural diversity in the forefront of all employees by sending out information sent to us by the Governor's Affirmative Action Office and showing management's commitment to cultural diversity by being an example of patience, tolerance and respect.
- Ongoing - The Executive Director will encourage staff to sign up for the Cultural-Health E-Newsletter. The E-Newsletter is designed to update members on various multicultural health issues affecting communities.
- Ongoing - Continue to meet with DHS staff to discuss effective options for outreach to non-medical imaging outlets with various cultural focuses. There is an increase in the number of these outlets the Board is trying to identify relevant methods of communication. The DHS Office of Multicultural Health and Services has agreed to help identify a plan that is culturally specific and culturally competent for long term solutions.

VII. Appendix A

B. Agency's Policy Documentation

1. ADA and Reasonable Accommodation in Employment (No.50.020.10)
2. Discrimination and Harassment Free Workplace (No. 50.010.01)
3. Agency Employee and Training Policy
4. Maintaining a Professional Workplace (No. 50.010.03)
5. Veterans Preference in Employment (105-040-0015)
6. Other agency documentation in support of its affirmative action plan
7. Invitation to self identify: Gender, Race/Ethnicity, and Veteran Status

SUBJECT: ADA and Reasonable Accommodation in Employment **NUMBER:** 50.020.10
DIVISION: Human Resource Services Division **EFFECTIVE DATE:** 6/7/10

APPROVED: Signature on file with Human Resource Services Division

POLICY STATEMENT:

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

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

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

AUTHORITY:

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

APPLICABILITY:

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

ATTACHMENTS:

ADA Accommodation Tool Kit

DEFINITIONS:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

POLICY

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

Statewide Policy

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

DIVISION: Human Resource Services Division

EFFECTIVE DATE: 01/25/08

APPROVED: Signature on file with Human Resource Services Division

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

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

APPLICABILITY: All employees, state temporary employees and volunteers.

ATTACHMENTS: None

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

POLICY

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

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

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

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

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

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

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

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

(ii) the name of the complainant;

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

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

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

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

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

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

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

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

- (A) All complaints will be taken seriously and an investigation will be initiated as quickly as possible.
- (B) The agency, board or commission may need to take steps to ensure employees are protected from further potential discrimination or harassment.
- (C) Complaints will be dealt with in a discreet and confidential manner, to the extent possible.
- (D) All parties are expected to cooperate with the investigation and keep information regarding the investigation confidential.
- (E) The agency, board or commission will notify the accused and all witnesses that retaliating against a person for making a report of discrimination, workplace harassment or sexual harassment will not be tolerated.
- (F) The agency, board or commission will notify the complainant and the accused when the investigation is concluded.
- (G) Immediate and appropriate action will be taken if a complaint is substantiated.
- (H) The agency, board or commission will inform the complainant if any part of a complaint is substantiated and that action has been taken. The complainant will not be given the specifics of the action.
- (I) The complainant and the accused will be notified by the agency, board or commission if a complaint is not substantiated.

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

- (A) Employees engaging in conduct in violation of this policy may be subject to disciplinary action up to and including dismissal.
- (B) State temporary employees and volunteers who engage in conduct in violation of this policy may be subject to termination of their working or volunteer relationship with the agency, board or commission.
- (C) An agency, board or commission may be liable for discrimination, workplace harassment or sexual harassment if it knows of or should know of conduct in violation of this policy and fails to take prompt, appropriate action.
- (D) Managers and supervisors who know or should know of conduct in violation of this policy and who fail to report such behavior or fail to take prompt, appropriate action may be subject to disciplinary action up to and including dismissal.
- (E) An employee who engages in harassment of other employees while away from the workplace and outside of working hours may be subject to the provisions of this policy if that conduct has a negative impact on the work environment and/or working relationships.
- (F) If a complaint involves the conduct of a contracted employee or a contractor, the agency, board, or commission Human Resource section, Executive Director, chair, or designee must inform the contractor

of the problem behavior and require prompt, appropriate action.

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

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

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

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

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

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

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

(B) be given directions to read the policy;

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

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

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

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

Performance Standard: 100%

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

Performance Standard: 100%

3. Employee and Training Policy

PURPOSE/POLICY:

Provide resources and learning opportunities for Oregon Board of Medical Imaging employees to perform the duties of their current position and to encourage their career development in state service. In accordance with the Oregon Benchmarks and State Policy, it is the goal of the Oregon Board of Medical Imaging to provide all employees with at least 20 hours of training related to work skills and knowledge each fiscal year.

DEFINITIONS:

Training related to work skills – includes formal instruction that relates to an employee's competence to perform their specific job, an employee's work environment, or an employee's state government career.

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

Job related training – provides knowledge or skills an employee needs to meet agency or state performance expectations. Examples include understanding the agency or state mission and values, policies and procedures, customer service standards, safe work practices, valuing diversity and preventing harassment.

RESPONSIBILITIES:

Manager

1. Asses the training needs of their employees on an on-going basis.
2. Develop and implement individual employee development plans that enable employees to successfully perform their jobs and contribute to the achievement of the Board's mission and goals.
3. Job required and job related training shall be conducted without loss of pay to the employee and the employee shall be paid for the time as time worked.
4. Encourage employees to research training opportunities for consideration.

HR Manager

1. Schedule and provide agency-wide training programs that meet common needs.
2. Provide communication about internal and external training programs, services, resources and opportunities.
3. Track in-agency training completed by employees.
4. Support managers and employees in the goal of participation in at least 20 hours of training each year.

Employees

1. Identify and research training opportunities that are job required or job related. Share information with manager.

SUBJECT: Maintaining a Professional Workplace	NUMBER: 50.010.03
DIVISION: Human Resource Services Division	EFFECTIVE DATE: 08/27/07
APPROVED: Signature on file with Human Resource Services Division	

POLICY STATEMENT: It is the Policy of the State of Oregon is create and maintain a work environment that is respectful, professional and free from inappropriate workplace behavior.

AUTHORITY: ORS 240.145 and ORS 240.250.

APPLICABILITY: All employees, including state temporary employees.

ATTACHMENTS: N/A

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

Agency: Refers to state agencies, boards and commissions

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

Inappropriate Workplace Behavior: Unwelcome or unwanted conduct or behavior that causes a negative impact or disruption to the workplace or the business of the state, or results in the erosion of employee morale and is not associated with an employee's protected class status.

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

Inappropriate workplace behavior includes actions of performance management such as supervisor instructions, expectations or feedback, administering of disciplinary actions, or investigatory meetings.

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

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.

POLICY

(1) It is the policy of the State of Oregon to create and maintain a work environment that is respectful, professional and free from inappropriate workplace behavior.

(a) Conduct Employees at every level of the agency should foster an environment that encourages professionalism and discourages disrespectful behavior. All employees are expected to behave respectfully and professionally and refrain from engaging in inappropriate workplace behavior.

(b) Addressing Inappropriate Workplace Behavior

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

(B) If an employee observes or experiences inappropriate workplace behavior and the employee feels comfortable in doing so, they should:

(i) redirect inappropriate conversations or behavior to workplace business; and/or

(ii) tell an offending employee his/her behavior is offensive and ask him/her to stop.

(c) Reporting Inappropriate Workplace Behavior

(A) An employee should report inappropriate workplace behavior he/she experiences or observes to his/her immediate supervisor as soon as practicable. If the employee's immediate supervisor is the one engaging in the inappropriate behavior, the employee should report the behavior to upper management, the agency head or Human Resource section, as soon as practicable. The report may be made orally or in writing.

(B) If past practice exists in the agency, an employee who is represented by a labor union may have a union representative present during regular work hours, when reporting inappropriate workplace behavior and through the process set forth in this policy. The union representative must not be a witness or party to the investigation.

(C) Reporting behavior or conduct directed toward an employee because of his/her protected class status is addressed in DAS Statewide Policy 50.010.01, Discrimination and Harassment Free Workplace.

(d) Responding to a Report of Inappropriate Workplace Behavior Inappropriate workplace Behavior must be addressed and corrected before it becomes pervasive, causes further workplace disruption or lowers employee morale. Unless the agency decides otherwise, the supervisor of the employee allegedly engaging in the inappropriate workplace behavior must investigate the report as soon as possible.

(e) Consequences

- (A) Any employee found to have engaged in inappropriate workplace behavior, will be counseled, or, depending on the severity of the behavior, may be subject to discipline, up to and including dismissal.
- (B) A supervisor who fails to address inappropriate behavior, will be counseled, or, depending on the severity of the behavior, may be subject to disciplinary action, up to and including dismissal.

(f) Retaliation Retaliating against someone for reporting or addressing inappropriate workplace behavior is prohibited. The agency will investigate reports of retaliation. Any employee

5. Veterans Preference in Employment

105-040-0015

Veteran's Preference in Employment

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Stat. Auth: ORS 240.145(3) & 240.250

Stats. Implemented: ORS 408.225, 408.230 & 408.235

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

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

Persons with Disabilities Policy and Complaint Procedure:

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

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

Definition of Person with a disability: A person who has a physical or mental impairment which substantially limits one or more major life activities, has a record of such impairment or is regarded as having such an impairment. The Agency Administrative Director is designated as the ADA Coordinator pursuant to part 35.107 of the American's with Disabilities Act.

In compliance with ADA guidelines, the Board will provide special materials, services or assistance to individuals with a disability upon sufficient notice to the Board office. For the hearing impaired, the Board may be contacted through Oregon Relay at 1-800-735-1232.

- An employee, volunteer, provider, or vendor who believes he/she has been discriminated due to their disability should contact the Administrative Director or Executive Director. If the issue is not resolved to the employee's satisfaction, they should file a complaint regarding employment with the Equal Employment Opportunity Commission; or a complaint regarding services with the U.S. Department of Justice, Civil Rights Division.

Harassment In The Workplace Policy And Complaint Procedure

(1) Discrimination prohibited. It is the policy of the Board of Medical Imaging to provide a work environment free from unlawful discrimination on the basis of race, color, religion, gender, sexual orientation, marital status, national origin, disability, age (18 or older), or because of the race, color, religion, gender, sexual orientation, marital status, national origin, disability or age of any other person with whom the individual associates, or any other factor that an employer is prohibited by law from considering when making employment decisions (protected class status). This policy applies to all matters relating to hiring, firing, transfer, promotion, benefits, compensation, and other terms and conditions of employment.

(2) Workplace harassment prohibited. It is also the policy of the Board of Medical Imaging that all employees should enjoy a work environment that is free from unlawful harassment (harassment based on the employee's protected class status). All employees are expected to refrain from sexual and other unlawful harassment.

(3) Retaliation prohibited. This policy prohibits retaliation against employees who report violations or potential violations of this policy or assist the Board in investigating matters raised under this policy. It also prohibits retaliation for testifying, assisting or participating in an investigation, proceeding or hearing conducted by the Oregon Bureau of Labor and Industries (BOLI) or the Equal Employment Opportunity Commission (EEOC).

(4) Penalties. Conduct in violation of this policy will not be tolerated, and may result in disciplinary action up to and including dismissal. Also, managers and supervisors who know or should have known of

conduct in violation of this policy and who fail to promptly report such behavior are subject to disciplinary action up to and including dismissal.

(5) Harassment definition and examples: Harassment is conduct or a display (verbal, physical or visual) that demeans or shows hostility or aversion toward an individual or group because of the person's or group's race, color, religion, gender, sexual orientation, marital status, national origin, disability, age, or other protected class status and that: (1) has the purpose or effect of creating an intimidating, hostile, or offensive working environment; (2) has the purpose or effect of unreasonably interfering with an individual's work performance; or (3) otherwise adversely affects an individual's employment opportunities.

(a) Examples of prohibited harassment may include (these examples are not meant to be all-inclusive): epithets, jokes, slurs, negative stereotyping, demeaning comments or labels, or threatening, intimidating or hostile acts that relate to race, color, religion, gender, sexual orientation, marital status, national origin, disability, age, or other protected class status; written or graphic material that puts down or shows hostility or dislike toward an individual or group because of race, color, religion, gender, sexual orientation, marital status, national origin, disability, age, or other protected class status and is placed on walls, bulletin boards, computers or elsewhere on the employer's premises, or accessed or circulated in the workplace, electronically or otherwise.

(b) Sexual harassment is a form of unlawful workplace harassment. Sexual harassment is defined as unwelcome sexual advances, requests for sexual favors, and other verbal or physical behavior of a sexual nature when:

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

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

(3) Examples of prohibited sexual harassment may include (these examples are not intended to be all-inclusive): unwelcome touching or closeness of a personal nature, including sexual contact, leaning over, cornering, pinching, sexual innuendoes, teasing and other sexual talk such as jokes, intimate inquiries, persistent unwanted courting, sexist put-downs or insults, sexually suggestive comments, inappropriate use of state communication systems including email, internet and telephone, and written or graphic material of a sexual or sexist nature. See also the examples under part (a) above.

(6) Complaint Procedure:

(a) Complaint. An employee who is subject to or is aware of conduct which violates or might violate this policy should report that information immediately to his/her immediate supervisor, the Executive Director or the Board Chair (if the complaint is against the Executive Director). If at all possible, the report should be made before the behavior becomes severe. The complaint should be reported verbally or in writing within 30 calendar days of the alleged act, preferably earlier. However, complaints filed late will still be investigated pursuant to this policy to the extent possible. All supervisors and managers shall promptly report complaints and incidents in violation of or potential violation of this policy, or reported to the supervisor/manager as being or potentially being in violation of this policy, to the Executive Director or the Board Chair (if the complaint is against the Executive Director). Complaints should include the name of the complainant, the name(s) of the person(s) alleged to have been discriminated against or harassed (if different from the person bringing the complaint), the name(s) of the person(s) alleged to have engaged in the prohibited conduct, a specific and detailed description of the conduct that the employee believes is discrimination or harassment, and a description of the remedy the employee desires.

- (b) Investigation. The recipient of a discrimination or harassment complaint shall promptly forward it to the Executive Director (or to the Board Chair in the event the complaint is about the Executive Director), who will coordinate in consultation with Human Resources, or delegate responsibility for coordinating, the Board of Medical Imaging's investigation. The complaint will be given prompt and thorough attention including an initial inquiry into whether discrimination or harassment has occurred, steps to prevent any ongoing discrimination or harassment, and an impartial investigation. If the complaint is substantiated, prompt and appropriate corrective action will be taken. The affected parties will be informed that the investigation has concluded and, if the complaint is sustained, that appropriate corrective action will be or has been taken. All personnel can be assured that complaints will be taken seriously, will be investigated as necessary, and will to the extent possible consistent with applicable laws, rules, policies and investigatory needs, be dealt with in a confidential manner.
- (c) Other complaints and grievances. Nothing in this policy precludes any person from filing a grievance in accordance with the SEIU Collective Bargaining Agreement, or a complaint with BOLI and/or the EEOC, or a lawsuit. Timelines for filing grievances, lawsuits, and/or complaints with BOLI/EEOC are different from those established in this policy. Employees should contact SEIU, private counsel, or BOLI/EEOC directly for specific guidance on filing deadlines and procedures.



EXECUTIVE ORDER 08-18

AMENDING EXECUTIVE ORDER 05-01 RELATING TO AFFIRMATIVE ACTION

On January 26, 2005, I issued Executive Order 05-01, relating to affirmative action. That Executive Order directs Agency Directors and Administrators to review and discuss their affirmative action plans, to initiate training on affirmative action issues, to include affirmative action responsibilities in key job descriptions and to conduct Cultural Competency Assessment and Training.

Since the issuance of Executive Order 05-01, many state agencies have met with the Governor's Affirmative Action Office (GAAO) to review and discuss their affirmative action plans. The Department of Administrative Services (DAS) has concluded an audit of position descriptions for the inclusion of affirmative action duties and has shared audit results with GAAO. In addition, a number of state agencies have completed Cultural Competency Assessment and Training.

Despite these gains, much more can be accomplished. The State of Oregon remains committed to the right of all persons to work and advance on the basis of merit, ability and potential. In order to clarify the provisions of Executive Order No. 05-01, I amend that order as follows.

NOW THEREFORE, IT IS HEREBY DIRECTED AND ORDERED:

1. The GAAO and each Agency Director and Administrator shall review and discuss each agency's affirmative action plan and affirmative action goals to identify resources for improving the hiring and developmental opportunities of underrepresented persons.
2. To continue the State of Oregon's progress in the elimination of the effects of past and present discrimination, intended or unintended, Agency Directors and Administrators shall:
 - a. Provide ongoing leadership in implementing agency's affirmative action plan;
 - b. Include affirmative action and diversity responsibilities in executive and/or management job descriptions, as appropriate, on or before January 31, 2009;
 - c. Ensure that Affirmative Action Representatives attend GAAO's informational trainings to assist Representatives in fulfilling their affirmative action responsibilities;



Oregon

Theodore R. Kulongoski, Governor

Board of Medical Imaging

800 NE Oregon St Ste 1160A

Portland, OR 97232-2162

Phone: (971) 673-0215

Fax: (971) 673-0218

TTY: (503) 731-4031

August 23, 2010

Sara M. Anderson
800 NE Oregon St., Suite 1160A
Portland, OR 97232

Re: Request for Self-Identification of Race/Ethnicity, and Veteran Status for Affirmative Action/Equal Opportunity Employment (EEO) Data Reporting

Dear Sarah,

As you may know, the Oregon is required to report EEO data to the federal government. To date, we have asked employees to self-identify their race/ethnicity, and have given the option for employees to decline to self-identify. We have recently learned that in order to be in compliance with federal EEO reporting requirements, agencies are required to provide race/ethnic information for all employees, even those who wish not to self-disclose. You have received this letter because your employee record on the statewide personnel data system indicates that we either do not have race/ethnic data recorded for you, or that you have declined to self-identify in the past.

In light of this new information, we are giving employees who have previously declined to self-identify an opportunity to do so now. The conditions under which this data is collected and used is explained on the attached "Self-Identification Form." Submission of this information is voluntary; refusal to provide it will not subject you to any adverse treatment. The information obtained will be kept confidential and may only be used in accordance with the provisions of applicable federal laws, executive orders, and regulations, including those which require the information to be summarized and reported to the federal government for civil rights-enforcement purposes. We hope you will consider completing the attached form. Completed forms may be returned to me at the Oregon Board of Medical Imaging as soon as possible.

Please keep in mind that if you choose not to identify your race/ethnicity at this time, the federal government requires the state to determine this information by visual assessment: As you might imagine, this rarely results in accurate information. Agencies are required to update their records by September 1, 2010. If you intend to send in your Self-Identification Form, please as soon as possible.

We appreciate your consideration. Please feel free to contact me with any questions or concerns you may have.

Best regards,

Linda A Russell, Executive Director

Attachment



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

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

Sex

- Male Female

Race/Ethnicity

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

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

Veteran

Are you a Veteran of the United States Armed Forces?

- Yes No

Employee Signature: _____ Date: 8-23-2010

Employee Print Name: Sarah H. Anderson



Oregon

Theodore R. Kulongoski, Governor

Board of Medical Imaging

800 NE Oregon St Ste 1160A

Portland, OR 97232-2162

Phone: (971) 673-0215

Fax: (971) 673-0218

TTY: (503) 731-4031

August 23, 2010

Vincent Mandina
800 NE Oregon St., Suite 1160A
Portland, OR 97232

Re: Request for Self-Identification of Race/Ethnicity, and Veteran Status for Affirmative Action/Equal Opportunity Employment (EEO) Data Reporting

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We appreciate your consideration. Please feel free to contact me with any questions or concerns you may have.

Best regards,

Linda A Russell, Executive Director

Attachment



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

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

Sex

- Male Female

Race/Ethnicity

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- Two or More Races:** All persons claiming origins in more than one of the above racial/ethnic categories.
- Decline to answer

Veteran

Are you a Veteran of the United States Armed Forces?

- Yes No

Employee Signature: Vincent Mandina Date: 8/23/10

Employee Print Name: Vincent Mandina



Oregon

Theodore R. Kulongoski, Governor

Board of Medical Imaging

800 NE Oregon St Ste 1160A

Portland, OR 97232-2162

Phone: (971) 673-0215

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TTY: (503) 731-4031

August 23, 2010

Linda Russell
800 NE Oregon St., Suite 1160A
Portland, OR 97232

Re: Request for Self-Identification of Race/Ethnicity, and Veteran Status for Affirmative Action/Equal Opportunity Employment (EEO) Data Reporting

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We appreciate your consideration. Please feel free to contact me with any questions or concerns you may have.

Best regards,

Linda A Russell, Executive Director

Attachment



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

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

Sex

- Male Female

Race/Ethnicity

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- Two or More Races:** All persons claiming origins in more than one of the above racial/ethnic categories.
- Decline to answer

Veteran

Are you a Veteran of the United States Armed Forces?

- Yes No

Employee Signature: 

Date: 8/22/2010

Employee Print Name: Linda A. Russell

II. Appendix B

- A. Prohibited Employment Policies/Practices
- B. Age Discrimination in Employment Act of 1967 (ADEA)
- C. Disability Discrimination Title I of the Americans with Disability Act of 1990
- D. Equal Pay and Compensation Discrimination Equal Pay Act of 1963, and Title VII of the Civil Rights Act of 1964
- E. National Origin Discrimination Title VII of the Civil Rights Act of 1964
- F. Pregnancy Discrimination Title VII of the Civil Rights Act of 1964
- G. Race/Color Discrimination Title VII of the Civil Rights Act of 1964
- H. Religious Discrimination Title VII of the Civil Rights Act of 1964
- I. Retaliation Title VII of the Civil Agency Affirmative Action Policy
- J. Sex-Base Discrimination Title VII of the Civil Rights Act of 1964
- K. Sexual Harassment Title VII of the Civil Rights Act of 1964

Prohibited Employment Policies/Practices

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

The law forbids discrimination in every aspect of employment.

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

Job Advertisements

It is illegal for an employer to publish a job advertisement that shows a preference for or discourages someone from applying for a job because of his or her race, color, religion, sex (including pregnancy), national origin, age (40 or older), disability or genetic information. For example, a help-wanted ad that seeks "females" or "recent college graduates" may discourage men and people over 40 from applying and may violate the law.

Recruitment

It is also illegal for an employer to recruit new employees in a way that discriminates against them because of their race, color, religion, sex (including pregnancy), national origin, age (40 or older), disability or genetic information. For example, an employer's reliance on word-of-mouth recruitment by its mostly Hispanic work force may violate the law if the result is that almost all new hires are Hispanic.

Application & Hiring

It is illegal for an employer to discriminate against a job applicant because of his or her race, color, religion, sex (including pregnancy), national origin, age (40 or older), disability or genetic information. For example, an employer may not refuse to give employment applications to people of a certain race. An employer may not base hiring decisions on stereotypes and assumptions about a person's race, color, religion, sex (including pregnancy), national origin, age (40 or older), disability or genetic information. If an employer requires job applicants to take a test, the test must be necessary and related to the job and the employer may not exclude people of a particular race, color, religion, sex (including pregnancy), national origin, or individuals with disabilities. In addition, the employer may not use a test that excludes applicants age 40 or older if the test is not based on a reasonable factor other than age. If a job applicant with a disability needs an accommodation (such as a sign language interpreter) to apply for a job, the employer is required to provide the accommodation, so long as the accommodation does not cause the employer significant difficulty or expense.

Job Referrals

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

Job Assignments & Promotions

It is illegal for an employer to make decisions about job assignments and promotions based on an employee's race, color, religion, sex (including pregnancy), national origin, age (40 or older), disability or genetic information. For example, an employer may not give preference to employees of a certain race when making shift assignments and may not segregate employees of a particular national origin from other employees or from customers. An employer may not base assignment and promotion decisions on stereotypes and assumptions about a person's race, color, religion, sex (including pregnancy), national origin, age (40 or older), disability or genetic information. If an employer requires employees to take a test before making decisions about assignments or promotions, the test may not exclude people of a particular race, color, religion, sex (including pregnancy), or national origin, or individuals with disabilities, unless the employer can show that the test is necessary and related to the job. In addition, the employer may not use a test that excludes employees age 40 or older if the test is not based on a reasonable factor other than age.

Pay And Benefits

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

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

Discipline & Discharge

An employer may not take into account a person's race, color, religion, sex (including pregnancy), national origin, age (40 or older), disability or genetic information when making decisions about discipline or discharge. For example, if two employees commit a similar offense, an employer may not discipline them differently because of their race, color, religion, sex (including pregnancy), national origin, age (40 or older), disability or genetic information. When deciding which employees will be laid off, an employer may not choose the oldest workers because of their age. Employers also may not discriminate when deciding which workers to recall after a layoff.

Employment References

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

Reasonable Accommodation & Disability

The law requires that an employer provide reasonable accommodation to an employee or job applicant with a disability, unless doing so would cause significant difficulty or expense for the employer. A reasonable accommodation is any change in the workplace (or in the ways things are usually done) to help a person with a disability apply for a job, perform the duties of a job, or enjoy the benefits and privileges of employment. Reasonable accommodation might include, for example, providing a ramp for a wheelchair user or providing a reader or interpreter for a blind or deaf employee or applicant.

Reasonable Accommodation & Religion

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

Training & Apprenticeship Programs

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

Harassment

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

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

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

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

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

Read more about [harassment](#).

Terms & Conditions Of Employment

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

Pre-Employment Inquiries (General)

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

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

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

Therefore, inquiries about organizations, clubs, societies, and lodges of which an applicant may be a member or any other questions, which may indicate the applicant's race, sex, national origin, disability status, age, religion, color or ancestry if answered, should generally be avoided. Similarly, employers should not ask for a photograph of an applicant. If needed for identification purposes, a photograph may be obtained after an offer of employment is made and accepted.

Pre-Employment Inquiries and:

Race

Height & Weight

Credit Rating Or Economic Status

Religious Affiliation Or Beliefs

Citizenship

Marital Status, Number Of Children

Gender

Arrest & Conviction

Security/Background Checks For Certain Religious Or Ethnic Groups

Disability

Medical Questions & Examinations

Dress Code

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

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

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

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

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

Constructive Discharge/Forced To Resign

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

Age Discrimination

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

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

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

Apprenticeship Programs

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

Job Notices and Advertisements

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

Pre-Employment Inquiries

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

Benefits

The Older Workers Benefit Protection Act of 1990 (OWBPA) amended the ADEA to specifically prohibit employers from denying benefits to older employees. Congress recognized that the cost of providing certain benefits to older workers is greater than the cost of providing those same benefits to younger workers, and that those greater costs might create a disincentive to hire older workers. Therefore, in limited circumstances, an employer may be permitted to reduce benefits based on age, as long as the cost of providing the reduced benefits to older workers is no less than the cost of providing benefits to younger workers. Employers are permitted to coordinate retiree health benefit plans with eligibility for Medicare or a comparable state-sponsored health benefit.

Waivers of ADEA Rights

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

be in writing and be understandable;

specifically refer to ADEA rights or claims;

not waive rights or claims that may arise in the future;

be in exchange for valuable consideration in addition to anything of value to which the individual already is entitled;

advise the individual in writing to consult an attorney before signing the waiver; and

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

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



U.S. Equal Employment Opportunity Commission FACT SHEET

Age Discrimination

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

FIND THIS ARTICLE ON THE WEB AT:

Facts About Age Discrimination FSE/9
<http://www.eeoc.gov/eeoc/publications/age.cfm>

SEE ALSO:

Filing a Charge of Discrimination
<http://www.eeoc.gov/employees/charge.cfm>

This document was last modified on December 28, 2009

■ Benefits

The Older Workers Benefit Protection Act of 1990 (OWBPA) amended the ADEA to specifically prohibit employers from denying benefits to older employees. Congress recognized that the cost of providing certain benefits to older workers is greater than the cost of providing those same benefits to younger workers, and that those greater costs might create a disincentive to hire older workers. Therefore, in limited circumstances, an employer may be permitted to reduce benefits based on age, as long as the cost of providing the reduced benefits to older workers is no less than the cost of providing benefits to younger workers. Employers are permitted to coordinate retiree health benefit plans with eligibility for Medicare or a comparable state-sponsored health benefit.

■ Waivers of ADEA Rights

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

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

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

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](#)

[Veterans with Service-Connected Disabilities in the Workplace and the ADA](#)

[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 with Service-Connected Disabilities in the Workplace 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 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)

Facts About the Americans with Disabilities Act

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

An individual with a disability is a person who:

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

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

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

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

A deaf applicant may need a sign language interpreter during the job interview.

An employee with diabetes may need regularly scheduled breaks during the workday to eat properly and monitor blood sugar and insulin levels.

A blind employee may need someone to read information posted on a bulletin board.

An employee with cancer may need leave to have radiation or chemotherapy treatments.

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

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

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

Title I of the ADA also covers:

Medical Examinations and Inquiries

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

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

Drug and Alcohol Abuse

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

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

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

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

Small Business Tax Credit (Internal Revenue Code Section 44: Disabled Access Credit)

Small businesses with either \$1,000,000 or less in revenue or 30 or fewer full-time employees may take a tax credit of up to \$5,000 annually for the cost of providing reasonable accommodations such as sign language interpreters, readers, materials in alternative format (such as Braille or large print), the purchase of adaptive equipment, the modification of existing equipment, or the removal of architectural barriers.

Work Opportunity Tax Credit (Internal Revenue Code Section 51)

Employers who hire certain targeted low-income groups, including individuals referred from vocational rehabilitation agencies and individuals receiving Supplemental Security Income (SSI) may be eligible for an annual tax credit of up to \$2,400 for each qualifying employee who works at least 400 hours during the tax year. Additionally, a maximum credit of \$1,200 may be available for each qualifying summer youth employee.

Architectural/Transportation Tax Deduction (Internal Revenue Code Section 190 Barrier Removal): This annual deduction of up to \$15,000 is available to businesses of any size for the costs of removing barriers for people with disabilities, including the following: providing accessible parking spaces, ramps, and curb cuts; providing wheelchair-accessible telephones, water fountains, and restrooms; making walkways at least 48 inches wide; and making entrances accessible.

The Equal Pay Act of 1963

EDITOR'S NOTE: The following is the text of the Equal Pay Act of 1963 (Pub. L. 88-38) (EPA), as amended, as it appears in volume 29 of the United States Code, at section 206(d). The EPA, which is part of the Fair Labor Standards Act of 1938, as amended (FLSA), and which is administered and enforced by the EEOC, prohibits sex-based wage discrimination between men and women in the same establishment who perform jobs that require substantially equal skill, effort and responsibility under similar working conditions. Cross references to the EPA as enacted appear in italics following the section heading. Additional provisions of the Equal Pay Act of 1963, as amended, are included as they appear in volume 29 of the United States Code.

MINIMUM WAGE

SEC. 206. [Section 6]

(d) Prohibition of sex discrimination

(1) No employer having employees subject to any provisions of this section shall discriminate, within any establishment in which such employees are employed, between employees on the basis of sex by paying wages to employees in such establishment at a rate less than the rate at which he pays wages to employees of the opposite sex in such establishment for equal work on jobs the performance of which requires equal skill, effort, and responsibility, and which are performed under similar working conditions, except where such payment is made pursuant to (i) a seniority system; (ii) a merit system; (iii) a system which measures earnings by quantity or quality of production; or (iv) a differential based on any other factor other than sex: *Provided*, That an employer who is paying a wage rate differential in violation of this subsection shall not, in order to comply with the provisions of this subsection, reduce the wage rate of any employee.

(2) No labor organization, or its agents, representing employees of an employer having employees subject to any provisions of this section shall cause or attempt to cause such an employer to discriminate against an employee in violation of paragraph (1) of this subsection.

(3) For purposes of administration and enforcement, any amounts owing to any employee which have been withheld in violation of this subsection shall be deemed to be unpaid minimum wages or unpaid overtime compensation under this chapter.

(4) As used in this subsection, the term "labor organization" means any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.

ADDITIONAL PROVISIONS OF EQUAL PAY ACT OF 1963

An Act

To prohibit discrimination on account of sex in the payment of wages by employers engaged in commerce or in the production of goods for commerce.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Equal Pay Act of 1963."

DECLARATION OF PURPOSE

Not Reprinted in U.S. Code [Section 2]

(a) The Congress hereby finds that the existence in industries engaged in commerce or in the production of goods for commerce of wage differentials based on sex-

- (1) depresses wages and living standards for employees necessary for their health and efficiency;
- (2) prevents the maximum utilization of the available labor resources;
- (3) tends to cause labor disputes, thereby burdening, affecting, and obstructing commerce;
- (4) burdens commerce and the free flow of goods in commerce; and
- (5) constitutes an unfair method of competition.

(b) It is hereby declared to be the policy of this Act, through exercise by Congress of its power to regulate commerce among the several States and with foreign nations, to correct the conditions above referred to in such industries.

[Section 3 of the Equal Pay Act of 1963 amends section 6 of the Fair Labor Standards Act by adding a new subsection (d). The amendment is incorporated in the revised text of the Fair Labor Standards Act.]

EFFECTIVE DATE

Not Reprinted in U.S. Code [Section 4]

The amendments made by this Act shall take effect upon the expiration of one year from the date of its enactment: Provided, That in the case of employees covered by a bona fide collective bargaining agreement in effect at least thirty days prior to the date of enactment of this Act entered into by a labor organization (as defined in section 6(d)(4) of the Fair Labor Standards Act of 1938, as amended) [subsection (d)(4) of this section], the amendments made by this Act shall take effect upon the termination of such collective bargaining agreement or upon the expiration of two years from the date of enactment of this Act, whichever shall first occur.

Approved June 10, 1963, 12 m.

[In the following excerpts from the Fair Labor Standards Act of 1938, as amended, authority given to the Secretary of Labor is exercised by the Equal Employment Opportunity Commission for purposes of enforcing the Equal Pay Act of 1963.]

ATTENDANCE OF WITNESSES

SEC. 209 [Section 9]

For the purpose of any hearing or investigation provided for in this chapter, the provisions of sections 49 and 50 of title 15 [Federal Trade Commission Act of September 16, 1914, as amended (U.S.C., 1934 edition)] (relating to the attendance of witnesses and the production of books, papers, and documents), are made applicable to the jurisdiction, powers, and duties of the Administrator, the Secretary of Labor, and the industry committees.

COLLECTION OF DATA

SEC. 211 [Section 11]

(a) Investigations and inspections

The Administrator or his designated representatives may investigate and gather data regarding the wages, hours, and other conditions and practices of employment in any industry subject to this chapter, and may enter and inspect such places and such records (and make such transcriptions thereof), question such employees, and investigate such facts, conditions, practices, or matters as he may deem necessary or appropriate to determine whether any person has violated any provision of this chapter, or which may aid in the enforcement of the provisions of this chapter. Except as provided in section 212 [section 12] of this title and in subsection (b) of this section, the Administrator shall utilize the bureaus and divisions of the Department of Labor for all the investigations and inspections necessary under this section. Except as provided in section 212 [section 12] of this title, the Administrator shall bring all actions under section 217 [section 17] of this title to restrain violations of this chapter.

(b) State and local agencies and employees

With the consent and cooperation of State agencies charged with the administration of State labor laws, the Administrator and the Secretary of Labor may, for the purpose of carrying out their respective functions and duties under this chapter, utilize the services of State and local agencies and their employees and, notwithstanding any other provision of law, may reimburse such State and local agencies and their employees for services rendered for such purposes.

(c) Records

Every employer subject to any provision of this chapter or of any order issued under this chapter shall make, keep, and preserve such records of the persons employed by him and of the wages, hours, and other conditions and practices of employment maintained by him, and shall preserve such records for such periods of time, and shall make such reports therefrom to the Administrator as he shall prescribe by regulation or order as necessary or appropriate for the enforcement of the provisions of this chapter or the regulations or orders thereunder. The employer of an employee who performs substitute work described in section 207(p)(3) [section 7(p)(3)] of this title may not be required under this subsection to keep a record of the hours of the substitute work.

(d) Homework regulations

The Administrator is authorized to make such regulations and orders regulating, restricting, or prohibiting industrial homework as are necessary or appropriate to prevent the circumvention or evasion of and to safeguard the minimum wage rate prescribed in this chapter, and all existing regulations or orders of the Administrator relating to industrial homework are continued in full force and effect.

EXEMPTIONS

SEC. 213 [Section 13]

(a) Minimum wage and maximum hour requirements

The provisions of sections 206 [section 6] (except subsection (d) in the case of paragraph (1) of this subsection) and section 207 [section 7] of this title shall not apply with respect to-

(1) any employee employed in a bona fide executive, administrative, or professional capacity (including any employee employed in the capacity of academic administrative personnel or teacher in elementary or secondary schools), or in the capacity of outside salesman (as such terms are defined and delimited from time to time by regulations of the Secretary, subject to the provisions of subchapter II of chapter 5 of Title 5 [the Administrative Procedure Act], except that an employee of a retail or service establishment shall not be excluded from the definition of employee employed in a bona fide executive or administrative capacity because of the number of hours in his workweek which he devotes to activities not directly or closely related to the performance of executive or administrative activities, if less than 40 per centum of his hours worked in the workweek are devoted to such activities); or

(2) *[Repealed]*

[Note: Section 13(a)(2) (relating to employees employed by a retail or service establishment) was repealed by Pub. L. 101-157, section 3(c)(1), November 17, 1989.]

(3) any employee employed by an establishment which is an amusement or recreational establishment, organized camp, or religious or non-profit educational conference center, if (A) it does not operate for more than seven months in any calendar year, or (B) during the preceding calendar year, its average receipts for any six months of such year were not more than 33 1/3 per centum of its average receipts for the other six months of such year, except that the exemption from sections 206 and 207 *[sections 6 and 7]* of this title provided by this paragraph does not apply with respect to any employee of a private entity engaged in providing services or facilities (other than, in the case of the exemption from section 206 *[section 6]* of this title, a private entity engaged in providing services and facilities directly related to skiing) in a national park or a national forest, or on land in the National Wildlife Refuge System, under a contract with the Secretary of the Interior or the Secretary of Agriculture; or

(4) *[Repealed]*

[Note: Section 13(a)(4) (relating to employees employed by an establishment which qualified as an exempt retail establishment) was repealed by Pub. L. 101-157, Section 3(c)(1), November 17, 1989.]

(5) any employee employed in the catching, taking, propagating, harvesting, cultivating, or farming of any kind of fish, shellfish, crustacea, sponges, seaweeds, or other aquatic forms of animal and vegetable life, or in the first processing, canning or packing such marine products at sea as an incident to, or in conjunction with, such fishing operations, including the going to and returning from work and loading and unloading when performed by any such employee; or

(6) any employee employed in agriculture (A) if such employee is employed by an employer who did not, during any calendar quarter during the preceding calendar year, use more than five hundred man-days of agricultural labor, (B) if such employee is the parent, spouse, child, or other member of his employer's immediate family, (C) if such employee (i) is employed as a hand harvest laborer and is paid on a piece rate basis in an operation which has been, and is customarily and generally recognized as having been, paid on a piece rate basis in the region of employment, (ii) commutes daily from his permanent residence to the farm on which he is so employed, and (iii) has been employed in agriculture less than thirteen weeks during the preceding calendar year, (D) if such employee (other than an employee described in clause (C) of this subsection) (i) is sixteen years of age or under and is employed as a hand harvest laborer, is paid on a piece rate basis in an operation which has been, and is customarily and generally recognized as having been, paid on a piece rate basis in the region of employment, (ii) is employed on the same farm as his parent or person standing in the place of his parent, and (iii) is paid at the same piece rate as employees over age sixteen are paid on the same farm, or (E) if such employee is principally engaged in the range production of livestock; or

(7) any employee to the extent that such employee is exempted by regulations, order, or certificate of the Secretary issued under section 214 *[section 14]* of this title; or

(8) any employee employed in connection with the publication of any weekly, semiweekly, or daily newspaper with a circulation of less than four thousand the major part of which circulation is within the county where published or counties contiguous thereto; or

(9) *[Repealed]*

[Note: Section 13(a)(9) (relating to motion picture theater employees) was repealed by section 23 of the Fair Labor Standards Amendments of 1974. The 1974 amendments created an exemption for such employees from the overtime provisions only in section 13(b)27.]

(10) any switchboard operator employed by an independently owned public telephone company which has not more than seven hundred and fifty stations; or

(11) *[Repealed]*

[Note: Section 13(a)(11) (relating to telegraph agency employees) was repealed by section 10 of the Fair Labor Standards Amendments of 1974. The 1974 amendments created an exemption from the overtime provisions only in section 13(b)(23), which was repealed effective May 1, 1976.]

(12) any employee employed as a seaman on a vessel other than an American vessel; or

(13) *[Repealed]*

[Note: Section 13(a)(13) (relating to small logging crews) was repealed by section 23 of the Fair Labor Standards Amendments of 1974. The 1974 amendments created an exemption for such employees from the overtime provisions only in section 13(b)(28).]

(14) *[Repealed]*

[Note: Section 13(a)(14) (relating to employees employed in growing and harvesting of shade grown tobacco) was repealed by section 9 of the Fair Labor Standards Amendments of 1974. The 1974 amendments created an exemption for certain tobacco producing employees from the overtime provisions only in section 13(b)(22). The section 13(b)(22) exemption was repealed, effective January 1, 1978, by section 5 of the Fair Labor Standards Amendments of 1977.]

(15) any employee employed on a casual basis in domestic service employment to provide babysitting services or any employee employed in domestic service employment to provide companionship services for individuals who (because of age or infirmity) are unable to care for themselves (as such terms are defined and delimited by regulations of the Secretary); or

(16) a criminal investigator who is paid availability pay under section 5545a of Title 5 *[Law Enforcement Availability Pay Act of 1994]*; or

(17) any employee who is a computer systems analyst, computer programmer, software engineer, or other similarly skilled worker, whose primary duty is—

(A) the application of systems analysis techniques and procedures, including consulting with users, to determine hardware, software, or system functional specifications;

(B) the design, development, documentation, analysis, creation, testing, or modification of computer systems or programs, including prototypes, based on and related to user or system design specifications;

(C) the design, documentation, testing, creation, or modification of computer programs related to machine operating systems; or

(D) a combination of duties described in subparagraphs (A), (B), and (C) the performance of which requires the same level of skills, and who, in the case of an employee who is compensated on an hourly basis, is compensated at a rate of not less than \$27.63 an hour.

(g) Certain employment in retail or service establishments, agriculture

The exemption from section 206 *[section 6]* of this title provided by paragraph (6) of subsection (a) of this section shall not apply with respect to any employee employed by an establishment (1) which controls, is controlled by, or is under common control with, another establishment the activities of which are not related for a common business purpose to, but materially support the activities of the establishment employing such employee; and (2) whose annual gross volume of sales made or business done, when combined with the annual gross volume of sales made or business done by each establishment which

controls, is controlled by, or is under common control with, the establishment employing such employee, exceeds \$10,000,000 (exclusive of excise taxes at the retail level which are separately stated).

PROHIBITED ACTS

SEC. 215 [Section 15]

(a) After the expiration of one hundred and twenty days from June 25, 1938 [the date of enactment of this Act], it shall be unlawful for any person-

(1) to transport, offer for transportation, ship, deliver, or sell in commerce, or to ship, deliver, or sell with knowledge that shipment or delivery or sale thereof in commerce is intended, any goods in the production of which any employee was employed in violation of section 206 [section 6] or section 207 [section 7] of this title, or in violation of any regulation or order of the Secretary issued under section 214 [section 14] of this title, except that no provision of this chapter shall impose any liability upon any common carrier for the transportation in commerce in the regular course of its business of any goods not produced by such common carrier, and no provision of this chapter shall excuse any common carrier from its obligation to accept any goods for transportation; and except that any such transportation, offer, shipment, delivery, or sale of such goods by a purchaser who acquired them in good faith in reliance on written assurance from the producer that the goods were produced in compliance with the requirements of this chapter, and who acquired such goods for value without notice of any such violation, shall not be deemed unlawful;

(2) to violate any of the provisions of section 206 [section 6] or section 207 [section 7] of this title, or any of the provisions of any regulation or order of the Secretary issued under section 214 [section 14] of this title;

(3) to discharge or in any other manner discriminate against any employee because such employee has filed any complaint or instituted or caused to be instituted any proceeding under or related to this chapter, or has testified or is about to testify in any such proceeding, or has served or is about to serve on an industry committee;

(4) to violate any of the provisions of section 212 [section 12] of this title;

(5) to violate any of the provisions of section 211(c) [section 11(c)] of this title, or any regulation or order made or continued in effect under the provisions of section 211(d) [section 11(d)] of this title, or to make any statement, report, or record filed or kept pursuant to the provisions of such section or of any regulation or order thereunder, knowing such statement, report, or record to be false in a material respect.

(b) For the purposes of subsection (a)(1) of this section proof that any employee was employed in any place of employment where goods shipped or sold in commerce were produced, within ninety days prior to the removal of the goods from such place of employment, shall be prima facie evidence that such employee was engaged in the production of such goods.

PENALTIES

SEC. 216 [Section 16]

(a) Fines and imprisonment

Any person who willfully violates any of the provisions of section 215 [section 15] of this title shall upon conviction thereof be subject to a fine of not more than \$10,000, or to imprisonment for not more than six months, or both. No person shall be imprisoned under this subsection except for an offense committed after the conviction of such person for a prior offense under this subsection.

(b) Damages; right of action; attorney's fees and costs; termination of right of action

Any employer who violates the provisions of section 206 [section 6] or section 207 [section 7] of this title shall be liable to the employee or employees affected in the amount of their unpaid minimum wages, or their unpaid overtime compensation, as the case may be, and in an additional equal amount as liquidated damages. Any employer who violates the provisions of section 215(a)(3) [section 15(a)(3)] of this title shall be liable for such legal or equitable relief as may be appropriate to effectuate the purposes of section 215(a)(3) [section 15(a)(3)] of this title, including without limitation employment, reinstatement, promotion, and the payment of wages lost and an additional equal amount as liquidated damages. An action to recover the liability prescribed in either of the preceding sentences may be maintained against any employer (including a public agency) in any Federal or State court of competent jurisdiction by any one or more employees for and in behalf of himself or themselves and other employees similarly situated. No employee shall be a party plaintiff to any such action unless he gives his consent in writing to become such a party and such consent is filed in the court in which such action is brought. The court in such action shall, in addition to any judgment awarded to the plaintiff or plaintiffs, allow a reasonable attorney's fee to be paid by the defendant, and costs of the action. The right provided by this subsection to bring an action by or on behalf of any employee, and the right of any employee to become a party plaintiff to any such action, shall terminate upon the filing of a complaint by the Secretary of Labor in an action under section 217 [section 17] of this title in which (1) restraint is sought of any further delay in the payment of unpaid minimum wages, or the amount of unpaid overtime compensation, as the case may be, owing to such employee under section 206 [section 6] or section 207 [section 7] of this title by an employer liable therefor[sic] under the provisions of this subsection or (2) legal or equitable relief is sought as a result of alleged violations of section 215(a)(3) [section 15(a)(3)] of this title.

(c) Payment of wages and compensation; waiver of claims; actions by the Secretary; limitation of actions

The Secretary is authorized to supervise the payment of the unpaid minimum wages or the unpaid overtime compensation owing to any employee or employees under section 206 [section 6] or section 207 [section 7] of this title, and the agreement of any employee to accept such payment shall upon payment in full constitute a waiver by such employee of any right he may have under subsection (b) of this section to such unpaid minimum wages or unpaid overtime compensation and an additional equal amount as liquidated damages. The Secretary may bring an action in any court of competent jurisdiction to recover the amount of the unpaid minimum wages or overtime compensation and an equal amount as liquidated damages. The right provided by subsection (b) of this section to bring an action by or on behalf of any employee to recover the liability specified in the first sentence of such subsection and of any employee to become a party plaintiff to any such action shall terminate upon the filing of a complaint by the Secretary in an action under this subsection in which a recovery is sought of unpaid minimum wages or unpaid overtime compensation under sections 206 and 207 [sections 6 and 7] of this title or liquidated or other damages provided by this subsection owing to such employee by an employer liable under the provisions of subsection (b) of this section, unless such action is dismissed without prejudice on motion of the Secretary. Any sums thus recovered by the Secretary of Labor on behalf of an employee pursuant to this subsection shall be held in a special deposit account and shall be paid, on order of the Secretary of Labor, directly to the employee or employees affected. Any such sums not paid to an employee because of inability to do so within a period of three years shall be covered into the Treasury of the United States as miscellaneous receipts. In determining when an action is commenced by the Secretary of Labor under this subsection for the purposes of the statutes of limitations provided in section 255(a) of this title [section 6(a) of the Portal-to-Portal Act of 1947], it shall be considered to be commenced in the case of any individual claimant on the date when the complaint is filed if he is specifically named as a party plaintiff in the complaint, or if his name did not so appear, on the subsequent date on which his name is added as a party plaintiff in such action.

(d) Savings provisions

In any action or proceeding commenced prior to, on, or after August 8, 1956 [*the date of enactment of this subsection*], no employer shall be subject to any liability or punishment under this chapter or the Portal-to-Portal Act of 1947 [29 U.S.C. 251 et seq.] on account of his failure to comply with any provision or provisions of this chapter or such Act (1) with respect to work heretofore or hereafter performed in a workplace to which the exemption in section 213(f) [*section 13(f)*] of this title is applicable, (2) with respect to work performed in Guam, the Canal Zone or Wake Island before the effective date of this amendment of subsection (d), or (3) with respect to work performed in a possession named in section 206(a)(3) [*section 6(a)(3)*] of this title at any time prior to the establishment by the Secretary, as provided therein, of a minimum wage rate applicable to such work.

(e)(1)(A) Any person who violates the provisions of sections 212 or 213(c) [*sections 12 or 13(c)*] of this title, relating to child labor, or any regulation issued pursuant to such sections, shall be subject to a civil penalty of not to exceed—

(i) \$11,000 for each employee who was the subject of such a violation; or

(ii) \$50,000 with regard to each such violation that causes the death or serious injury of any employee under the age of 18 years, which penalty may be doubled where the violation is a repeated or willful violation.

(B) For purposes of subparagraph (A), the term “serious injury” means—

(i) permanent loss or substantial impairment of one of the senses (sight, hearing, taste, smell, tactile sensation);

(ii) permanent loss or substantial impairment of the function of a bodily member, organ, or mental faculty, including the loss of all or part of an arm, leg, foot, hand or other body part; or

(iii) permanent paralysis or substantial impairment that causes loss of movement or mobility of an arm, leg, foot, hand or other body part.

(2) Any person who repeatedly or willfully violates section 206 or 207 [*section 6 or 7*], relating to wages, shall be subject to a civil penalty not to exceed \$1,100 for each such violation.

(3) In determining the amount of any penalty under this subsection, the appropriateness of such penalty to the size of the business of the person charged and the gravity of the violation shall be considered. The amount of any penalty under this subsection, when finally determined, may be—

(A) deducted from any sums owing by the United States to the person charged;

(B) recovered in a civil action brought by the Secretary in any court of competent jurisdiction, in which litigation the Secretary shall be represented by the Solicitor of Labor; or

(C) ordered by the court, in an action brought for a violation of section 215(a)(4) [*section 15(a)(4)*] of this title or a repeated or willful violation of section 215(a)(2) [*section 15(a)(2)*] of this title, to be paid to the Secretary.

(4) Any administrative determination by the Secretary of the amount of any penalty under this subsection shall be final, unless within 15 days after receipt of notice thereof by certified mail the person charged with the violation takes exception to the determination that the violations for which the penalty is imposed occurred, in which event final determination of the penalty shall be made in an administrative proceeding after opportunity for hearing in accordance with section 554 of Title 5 [*Administrative Procedure Act*], and regulations to be promulgated by the Secretary.

(5) Except for civil penalties collected for violations of section 212 [section 12] of this title, sums collected as penalties pursuant to this section shall be applied toward reimbursement of the costs of determining the violations and assessing and collecting such penalties, in accordance with the provision of section 9a of Title 29 [An Act to authorize the Department of Labor to make special statistical studies upon payment of the cost thereof and for other purposes]. Civil penalties collected for violations of section 212 [section 12] of this title shall be deposited in the general fund of the Treasury.

INJUNCTION PROCEEDINGS

SEC. 217 [Section 17]

The districts courts, together with the United States District Court for the District of the Canal Zone, the District Court of the Virgin Islands, and the District Court of Guam shall have jurisdiction, for cause shown, to restrain violations of section 215 [section 15] of this title, including in the case of violations of section 215(a)(2) of this title the restraint of any withholding of payment of minimum wages or overtime compensation found by the court to be due to employees under this chapter (except sums which employees are barred from recovering, at the time of the commencement of the action to restrain the violations, by virtue of the provisions of section 255 of this title [section 6 of the Portal-to-Portal Act of 1947].

RELATION TO OTHER LAWS 20

SEC. 218 [Section 18]

(a) No provision of this chapter or of any order there under shall excuse noncompliance with any Federal or State law or municipal ordinance establishing a minimum wage higher than the minimum wage established under this chapter or a maximum work week lower than the maximum workweek established under this chapter, and no provision of this chapter relating to the employment of child labor shall justify noncompliance with any Federal or State law or municipal ordinance establishing a higher standard than the standard established under this chapter. No provision of this chapter shall justify any employer in reducing a wage paid by him which is in excess of the applicable minimum wage under this chapter, or justify any employer in increasing hours of employment maintained by him which are shorter than the maximum hours applicable under this chapter.

SEPARABILITY OF PROVISIONS

SEC. 219 [Section 19]

+If any provision of this chapter or the application of such provision to any person or circumstance is held invalid, the remainder of this chapter and the application of such provision to other persons or circumstances shall not be affected thereby.

Approved June 25, 1938.

[In the following excerpts from the Portal-to-Portal Act of 1947, the authority given to the Secretary of Labor is exercised by the Equal Employment Opportunity Commission for purposes of enforcing the Equal Pay Act of 1963.]

PART IV - MISCELLANEOUS STATUTE OF LIMITATIONS

SEC. 255 [Section 6]

Any action commenced on or after May 14, 1947 [the date of the enactment of this Act], to enforce any cause of action for unpaid minimum wages, unpaid overtime compensation, or liquidated damages, under the Fair Labor Standards Act of 1938, as amended, [29 U.S.C. 201 et seq.], the Walsh-Healey Act [41 U.S.C. 35 et seq.], or the Bacon-Davis Act [40 U.S.C. 276a et seq.]-

(a) if the cause of action accrues on or after May 14, 1947 [the date of the enactment of this Act]-may be commenced within two years after the cause of action accrued, and every such action shall be forever barred unless commenced within two years after the cause of action accrued, except that a cause of action arising out of a willful violation may be commenced within three years after the cause of action accrued;

DETERMINATION OF COMMENCEMENT OF FUTURE ACTIONS

SEC. 256 [Section 7]

In determining when an action is commenced for the purposes of section 255 [section 6] of this title, an action commenced on or after May 14, 1947 [the date of the enactment of this Act] under the Fair Labor Standards Act of 1938, as amended, [29 U.S.C. 201 et seq.], the Walsh-Healey Act [41 U.S.C. 35 et seq.], or the Bacon-Davis Act [40 U.S.C. 276a et seq.], shall be considered to be commenced on the date when the complaint is filed; except that in the case of a collective or class action instituted under the Fair Labor Standards Act of 1938, as amended, or the Bacon-Davis Act, it shall be considered to be commenced in the case of any individual claimant—

- (a) on the date when the complaint is filed, if he is specifically named as a party plaintiff in the complaint and his written consent to become a party plaintiff is filed on such date in the court in which the action is brought; or
- (b) if such written consent was not so filed or if his name did not so appear—on the subsequent date on which such written consent is filed in the court in which the action was commenced.

RELIANCE IN FUTURE ON ADMINISTRATIVE RULINGS, ETC.

SEC. 259 [Section 10]

(a) In any action or proceeding based on any act or omission on or after May 14, 1947 [the date of the enactment of this Act], no employer shall be subject to any liability or punishment for or on account of the failure of the employer to pay minimum wages or overtime compensation under the Fair Labor Standards Act of 1938, as amended, [29 U.S.C. 201 et seq.], the Walsh-Healey Act [41 U.S.C. 35 et seq.], or the Bacon-Davis Act [40 U.S.C. 276a et seq.], if he pleads and proves that the act or omission complained of was in good faith in conformity with and in reliance on any written administrative regulation, order, ruling, approval, or interpretation, of the agency of the United States specified in subsection (b) of this section, or any administrative practice or enforcement policy of such agency with respect to the class of employers to which he belonged. Such a defense, if established, shall be a bar to the action or proceeding, notwithstanding that after such act or omission, such administrative regulation, order, ruling, approval, interpretation, practice, or enforcement policy is modified or rescinded or is determined by judicial authority to be invalid or of no legal effect.

(b) The agency referred to in subsection (a) shall be-

(1) in the case of the Fair Labor Standards Act of 1938, as amended [29 U.S.C. 201 et seq.]- the Administrator of the Wage and Hour Division of the Department of Labor;

LIQUIDATED DAMAGES

SEC. 260 [Section 11]

In any action commenced prior to or on or after May 14, 1947 [the date of the enactment of this Act] to recover unpaid minimum wages, unpaid overtime compensation, or liquidated damages, under the Fair Labor Standards Act of 1938, as amended [29 U.S.C. 201 et seq.], if the employer shows to the satisfaction of the court that the act or omission giving rise to such action was in good faith and that he had reasonable grounds for believing that his act or omission was not a violation of the Fair Labor Standards Act of 1938, as amended [29 U.S.C. 201 et seq.], the court may, in its sound discretion, award

no liquidated damages or award any amount thereof not to exceed the amount specified in section 216 [section 16] of this title.

DEFINITIONS

SEC. 262 [Section 13]

(a) When the terms "employer", "employee", and "wage" are used in this chapter in relation to the Fair Labor Standards Act of 1938, as amended [29 U.S.C. 201 et seq.], they shall have the same meaning as when used in such Act of 1938.

SEPARABILITY

Not Reprinted in U.S. Code [Section 14]

If any provision of this Act or the application of such provision to any person or circumstance is held invalid, the remainder of this Act and the application of such provision to other persons or circumstances shall not be affected thereby.

SHORT TITLE

Not Reprinted in U.S. Code [Section 15]

This Act may be cited as the 'Portal-to-Portal Act of 1947.'

Approved May 14, 1947.



U.S. Equal Employment Opportunity Commission FACT SHEET

Equal Pay and Compensation Discrimination

The right of employees to be free from discrimination in their compensation is protected under several federal laws, including the following enforced by the U.S. Equal Employment Opportunity Commission: 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.

FIND THIS ARTICLE ON THE WEB AT:

Facts About Equal Pay and Compensation Discrimination FSE/15
<http://www.eeoc.gov/eeoc/publications/index.cfm>

SEE ALSO:

Filing a Charge of Discrimination
<http://www.eeoc.gov/employees/charge.cfm>

- **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.

Genetic Information Discrimination

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

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

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

Definition of “Genetic Information”

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

Discrimination Because of Genetic Information

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

Harassment Because of Genetic Information

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

Retaliation

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

Rules Against Acquiring Genetic Information

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

Inadvertent acquisitions of genetic information do not violate GINA, such as in situations where a manager or supervisor overhears someone talking about a family member’s illness.

Genetic information (such as family medical history) may be obtained as part of health or genetic services, including wellness programs, offered by the employer on a voluntary basis, if certain specific requirements are met.

Genetic information may be acquired as part of the certification process for FMLA leave (or leave under similar state or local laws), where an employee is asking for leave to care for a family member with a serious health condition.

Acquisition through commercially and publicly available documents like newspapers is permitted, as long as the employer is not searching those sources with the intent of finding genetic information.

Acquisition through a genetic monitoring program that monitors the biological effects of toxic substances in the workplace is permitted where the monitoring is required by law or, under carefully defined conditions, where the program is voluntary.

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

Confidentiality of Genetic Information

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

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>.



U.S. Equal Employment Opportunity Commission FACT SHEET

National Origin Discrimination

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

About National Origin Discrimination

It is unlawful to discriminate against any employee or applicant because of the individual's national origin. No one can be denied equal employment opportunity because of birthplace, ancestry, culture, linguistic characteristics common to a specific ethnic group, or accent. Equal employment opportunity cannot be denied because of marriage or association with persons of a national origin group; membership or association with specific ethnic promotion groups; attendance or participation in schools, churches, temples or mosques generally associated with a national origin group; or a surname associated with a national origin group. Examples of violations covered under Title VII include:

Employment Decisions

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

Harassment

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

Language

- **Accent discrimination**

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

- **English fluency**

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

FIND THIS ARTICLE ON THE WEB AT:
Facts About National Origin Discrimination FSE/1

SEE ALSO:
Filing a Charge of Discrimination

- **English-only rules**

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

- **Coverage of foreign nationals**

Title VII and the other antidiscrimination laws prohibit discrimination against individuals employed in the United States, regardless of citizenship. However, relief may be limited if an individual does not have work authorization. The Immigration Reform and Control Act of 1986 (IRCA) requires employers to prove all employees hired after November 6, 1986, are legally authorized to work in the United States. IRCA also prohibits discrimination based on national origin or citizenship. This document was last modified on March 30, 2010. FSE/

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 law forbids discrimination 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 the same as any other temporarily disabled employee. For example, the employer may have to provide modified tasks, alternative assignments, disability leave or unpaid leave.

Pregnancy Discrimination & Harassment

It is unlawful to harass a woman because of pregnancy, childbirth, or a medical condition related to pregnancy or childbirth.

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.

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. For more information on FMLA, contact the nearest office of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor. The Wage and Hour Division can be reached at:

202-693-0051 (voice), 202-693-7755 (TTY), or at http://www.dol.gov/esa/public/whd_org.htm.

Pregnancy, Maternity & Parental Leave

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

If an employer provides personal leave for other reasons, e.g., to take courses or other training, then the employer must grant personal leave for care of a new child.

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/dol/allcfr/ESA/Title_29/Part_825/29CFR825.110.htm.)



U.S. Equal Employment Opportunity Commission FACT SHEET

Pregnancy Discrimination

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

Title VII's pregnancy-related protections include:

- **Hiring**

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

- **Pregnancy & Maternity Leave**

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

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

Pregnant employees must be permitted to work as long as they are able to perform their jobs. If an employee has been absent from work as a result of a pregnancy-related condition and recovers, her employer may not require her to remain on leave until the baby's birth.

- **Health Insurance**

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

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

FIND THIS ARTICLE ON THE WEB AT:

Facts About Pregnancy Discrimination Filing a Charge of Discrimination FSE/2
<http://www.eeoc.gov/eeoc/publications/index.cfm>

SEE ALSO:

Filing a Charge of Discrimination
<http://www.eeoc.gov/employees/charge.cfm>

This document was last modified on March 31, 2010

FSE/2 ■ Page 1

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

■ Fringe Benefits

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

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

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

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

Race/Color Discrimination

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

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

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

Race/Color Discrimination & Work Situations

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

Race/Color Discrimination & Harassment

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

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

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

Race/Color Discrimination & Employment Policies/Practices

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

Facts About Race/Color Discrimination

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

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

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

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

Race-Related Characteristics and Conditions

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

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

Color Discrimination

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

Although a plaintiff may prove a claim of discrimination through direct or circumstantial evidence, some courts take the position that if a white person relies on circumstantial evidence to establish a reverse discrimination claim, he or she must meet a heightened standard of proof. The Commission, in contrast,

applies the same standard of proof to all race discrimination claims, regardless of the victim's race or the type of evidence used. In either case, the ultimate burden of persuasion remains always on the plaintiff.

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

Title VII's protections include:

Recruiting, Hiring, and Advancement

Job requirements must be uniformly and consistently applied to persons of all races and colors. Even if a job requirement is applied consistently, if it is not important for job performance or business needs, the requirement may be found unlawful if it excludes persons of a certain racial group or color significantly more than others. Examples of potentially unlawful practices include: (1) soliciting applications only from sources in which all or most potential workers are of the same race or color; (2) requiring applicants to have a certain educational background that is not important for job performance or business needs; (3) testing applicants for knowledge, skills or abilities that are not important for job performance or business needs. Employers may legitimately need information about their employees or applicants race for affirmative action purposes and/or to track applicant flow. One way to obtain racial information and simultaneously guard against discriminatory selection is for employers to use separate forms or otherwise keep the information about an applicant's race separate from the application. In that way, the employer can capture the information it needs but ensure that it is not used in the selection decision.

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

Compensation and Other Employment Terms, Conditions, and Privileges

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

Harassment

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

Retaliation

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

Segregation and Classification of Employees

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

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

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

Pre-Employment Inquiries and Requirements

Requesting pre-employment information which discloses or tends to disclose an applicant's race suggests that race will be unlawfully used as a basis for hiring. Solicitation of such pre-employment information is presumed to be used as a basis for making selection decisions. Therefore, if members of minority groups are excluded from employment, the request for such pre-employment information would likely constitute evidence of discrimination. However, employers may legitimately need information about their employees' or applicants' race for affirmative action purposes and/or to track applicant flow. One way to obtain racial information and simultaneously guard against discriminatory selection is for employers to use "tear-off sheets" for the identification of an applicant's race. After the applicant completes the application and the tear-off portion, the employer separates the tear-off sheet from the application and does not use it in the selection process. Other pre-employment information requests which disclose or tend to disclose an applicant's race are personal background checks, such as criminal history checks. Title VII does not categorically prohibit employers' use of criminal records as a basis for making employment decisions. Using criminal records as an employment screen may be lawful, legitimate, and even mandated in certain circumstances. However, employers that use criminal records to screen for employment must comply with Title VII's nondiscrimination requirements.

Religious Discrimination

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

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

Religious Discrimination & Work Situations

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

Religious Discrimination & Harassment

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

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

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

Religious Discrimination & 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.



U.S. Equal Employment Opportunity Commission FACT SHEET

Religious Discrimination

Title VII of the Civil Rights Act of 1964 prohibits employers from discriminating against individuals because of their religion in hiring, firing, and other terms and conditions of employment. The Act also requires employers to reasonably accommodate the religious practices of an employee or prospective employee, unless to do so would create an undue hardship upon the employer (see also 29 CFR 1605). A reasonable religious accommodation is any adjustment to the work environment that will allow the employee to practice his religion. Flexible scheduling, voluntary substitutions or swaps, job reassignments and lateral transfers are examples of accommodating an employee's religious beliefs.

Employers generally should not schedule examinations or other selection activities in conflict with a current or prospective employee's religious needs, inquire about an applicant's future availability at certain times, maintain a restrictive dress code, or refuse to allow observance of a Sabbath or religious holiday, unless the employer can show that not doing so would cause an undue hardship.

An employer can claim undue hardship when asked to accommodate an applicant's or employee's religious practices if allowing such practices requires more than ordinary administrative costs, diminishes efficiency in other jobs, infringes on other employees' job rights or benefits, impairs workplace safety, causes co-workers to carry the accommodated employee's share of potentially hazardous or burdensome work, or if the proposed accommodation conflicts with another law or regulation. Undue hardship also may be shown if the request for an accommodation violates the terms of a collective bargaining agreement or job rights established through a seniority system.

An employee whose religious practices prohibit payment of union dues to a labor organization cannot be required to pay the dues, but may pay an equal sum to a charitable organization.

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

FIND THIS ARTICLE ON THE WEB AT:
Facts About Religious Discrimination FSE/3
<http://www.eeoc.gov/eeoc/publications/index.cfm>

SEE ALSO:
Filing a Charge of Discrimination
<http://www.eeoc.gov/employees/charge.cfm>

This document was last modified on April 1, 2010

FSE/3 ■ Page 1

Retaliation

All of the laws we enforce make it illegal to fire, demote, harass, or otherwise “retaliate” against people (applicants or employees) because they filed a charge of discrimination, because they complained to their [employer or other covered entity](#) about discrimination on the job, or because they participated in an employment discrimination proceeding (such as an investigation or lawsuit). For example, it is illegal for an employer to refuse to promote an employee because she filed a charge of discrimination with the EEOC, even if EEOC later determined no discrimination occurred.

Retaliation & Work Situations

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

Facts About Retaliation

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

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

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

Adverse Action

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

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

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

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

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

Even if the prior protected activity alleged wrongdoing by a different employer, retaliatory adverse actions are unlawful. For example, it is unlawful for a worker's current employer to retaliate against him for pursuing an EEO charge against a former employer. Of course, employees are not excused from continuing to perform their jobs or follow their company's legitimate workplace rules just because they have filed a complaint with the EEOC or opposed discrimination.

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

Covered Individuals

Covered individuals are people who have opposed unlawful practices, participated in proceedings, or requested accommodations related to employment discrimination based on race, color, sex, religion, national origin, age, or disability.

Individuals who have a close association with someone who has engaged in such protected activity also are covered individuals. For example, it is illegal to terminate an employee because his spouse participated in employment discrimination litigation. Individuals who have brought attention to violations of law other than employment discrimination are NOT covered individuals for purposes of anti-discrimination retaliation laws. For example, "whistleblowers" who raise ethical, financial, or other concerns unrelated to employment discrimination are not protected by the EEOC enforced laws.

Protected Activity

Protected activity includes:

Opposition to a practice believed to be unlawful discrimination.

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

Examples of protected opposition include:

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

Examples of activities that are NOT protected opposition include:

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

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

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

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

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

Sex-Based Discrimination

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

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

Sex Discrimination & Work Situations

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

Sex Discrimination Harassment

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

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

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

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

Sex Discrimination & Employment Policies/Practices

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

Sexual Harassment

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

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

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

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



U.S. Equal Employment Opportunity Commission FACT SHEET

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

FIND THIS ARTICLE ON THE WEB AT:

Facts About Sexual Harassment Discrimination FSE/4
<http://www.eeoc.gov/facts/fs-sex.html>

SEE ALSO:

Filing a Charge of Discrimination
<http://www.eeoc.gov/employees/charge.cfm>

This document was last modified on December 14, 2009

FSE/4 ■ Page 1