



OREGON EDUCATION INVESTMENT BOARD (OEIB)

2015-2017 AFFIRMATIVE ACTION, DIVERSITY & INCLUSION PLAN

**Dr. Nancy L. Golden
Chief Education Officer
775 Court Street NE
Salem, OR 97301**

2015-2017
AFFIRMATIVE ACTION
DIVERSITY AND
INCLUSION PLAN

Dr. Nancy L. Golden
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503-378-0206

*Oregon
Education
Investment
Board*

Table of Contents

- I. Description of the Agency5
 - A.OEIB Mission Statement.....5
 - 1.Agency Goals.....5
 - 2.Intent of the Goals.....6
 - 3.Our Primary Focus.....6
 - 4.Key Partnerships.....6
 - 5.Agency Alignment and Responsibility.....7
 - 6.Governance.....7
 - 7.What We Do.....7
 - 8.Agency Values.....7
 - B.Name of Agency Head.....7
 - C.Name of Governor’s Policy Advisor for OEIB.....7
 - D.Name of Affirmative Action Representative8
 - E.Identify you Agencies Diversity and Inclusion Officer.....8
 - F.Organizational Chart.9
 - Affirmative Action Policy Statement for Individuals with Disabilities11
 - A.Agency Diversity and Inclusion Statement.....13
 - B.Training, Education and Developmental Plan (TEDP)13
 - 1.Employees.....14
 - 2.Volunteers.....14
 - 3.Contractors/Vendors14
 - C.Programs.....14
 - 1.Internships.....14
 - 2.Mentorship Program(s)14
 - 3.Community Outreach Program15
 - 4.Diversity Awareness Program.....15
 - 5.Leadership Development/Training Program(s)15
 - D.Update: Executive Order 08-1815
 - 1.Cultural Competency Assessment and Implementation Services.....15
 - 2.Statewide Exit Interview Survey.....15
 - 3.Performance Evaluation of all Management Personnel16
 - E.Status of Contracts to Minority Businesses (ORS 659A.015)16
- II. Roles for Implementation of Affirmative Action Plan16

A.Responsibilities and Accountabilities	16
1.Chief Education Officer and Chief of Staff	16
2.Managers/Supervisors	16
3 Affirmative Action Representative	17
III.July 1, 2013-June 30, 2015.....	17
A.Accomplishments.....	17
B.Progress Made or Lost Since Previous Biennium	17
IV.July 1, 2015-June 30, 2017	17
A.Goals for Our Affirmative Action Plan/Programs	17
B.Strategies for Achieving Those Goals	17
V. Appendix A	20
A.Agency's Policy Documentation	20
1.ADA and Reasonable Accommodation Policy (No.50.020.10)	20
2.Discrimination and Harassment Free Workplace (No.50.010.01)	23
3.Employee Development and Implementation of Oregon Benchmarks for Workforce Development (No.50.045.01).....	28
4.Veterans Preference in Employment (No.105.040.0015).....	30
5.Maintaining a Professional Workplace (No.50.010.03)	38
VI.Appendix B.....	41
A.Federal Policy Documentation	41
1.Age Discrimination in Employment Act of 1967 (ADEA)	41
ADEA waiver must:.....	42
2.Disability Discrimination Title 1 of the Americans with Disability Act of 1990.....	43
3.Equal Pay and Compensation Discrimination Equal Pay Act of 1963, and Title VII of the Civil Rights Act of 1964.....	45
4.Genetic Information Discrimination Title II of the Genetic Information Nondiscrimination Act of 2008 (GINA)	47
5.National Origin Discrimination Title VII of the Civil Rights Act of 1964 and The Immigration Reform and Control Act of 1986.....	49
6.Pregnancy Discrimination Title VII of the Civil Rights Act of 1964	51
7.Race/Color Discrimination Title VII of the Civil Rights Act of 1964	53
8.Religious Discrimination Title VII of the Civil Rights Act of 1964.....	55
9.Retaliation Title VII of the Civil Agency Affirmative Action Policy	56
10.Sex-Base Discrimination Title VII of the Civil Rights Act of 1964.....	58

11. Sexual Harassment Discrimination Title VII of the Civil Rights Act of
1964.....59



OREGON EDUCATION INVESTMENT BOARD

November 24, 2014

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

Dear Mr. Garcia,

It is the policy of the Oregon Education Investment Board (OEIB) to provide a workplace for its employees that is free from discrimination on the basis of race, color, sex, marital status, age, religion, ancestry, national origin, sexual orientation, or mental or physical disability.

The OEIB Affirmative Action Plan is a key component of the agency's ongoing diversity development efforts. We continue to engage in numerous and varied activities in support of our affirmative action goals as we strive to become a leader in the area of affirmative action.

Our affirmative action efforts include reaching across traditional boundaries to ensure the entry and growth of people of color, women, and people with disabilities into our workforce. Each and every employee of OEIB is expected to promote a positive, respectful work place and to appreciate and encourage diversity of backgrounds, situations, and perspectives.

We are pleased to present the OEIB Affirmative Action Plan for the 2015-17 biennium.

If you have any questions about the plan, please contact Candice Obryant at (503) 378-2900.

Sincerely,

A handwritten signature in cursive script that reads "Nancy L. Golden".

Dr. Nancy L. Golden
Chief Education Officer

I. Description of the Agency

Senate Bill 909 (2011) created the Oregon Education Investment Board (OEIB), a 13-member board chaired by the Governor, to ensure that all students in the state reach the education outcomes established for the state. Senate Bill 253 (2011) defined those outcomes to include the “40/40/20” goals for high school and college completion by 2025. Passage of this bill signaled the state’s intention to develop one of the best-educated citizenries in the world with the goal that by 2025, 100 percent of Oregon students will have earned an education degree that represents attainment of a quality education. Specifically, the state will achieve the following for Oregonians in 2025: 40 percent of adult Oregonians will have earned a bachelor’s degree or higher; 40 percent of adult Oregonians will have earned an associate’s degree or postsecondary credential as their highest level of education attainment; and 20 percent of all adult Oregonians will have earned at least a high school diploma, an extended or modified high school diploma, or the equivalent of a high school diploma as their highest level of education attainment. These goals must be achieved equitably, with Oregon’s diversity equally well-represented in each stage.

A. OEIB Mission Statement

OEIB’s vision is to advise and support the building, implementation and investment in a unified public education system in Oregon that meets the diverse learning needs of every pre-K through post-secondary student and provides boundless opportunities that support success. By doing so, we ensure 100% high school graduation by 2025 and ensure that Oregon students are college and career ready. 40-40-20 Goal: 40% completing 2-year degree, 40% completing 4-year degree and 20% career ready.

1. Agency Goals

SB 909 charges the OEIB with (1) creating a seamless system of education, including early learning programs, K-12 and post-secondary; (2) developing a statewide longitudinal database in order to measure progress toward outcomes; and (3) recommending strategic investments “targeted to achieve the education outcomes established for the state.” Based on these statutory charges, the OEIB adopted a strategic plan in 2013, aimed at ensuring the state reaches the 40-40-20 Goal. The OEIB strategic plan is built on three key strategies:

Strategy 1: Create a coordinated, student-centered education system, from birth through college and career readiness

Strategy 2: Focus state investment on achieving key student outcomes

Strategy 3: Build statewide support systems

The three strategies are overlapping, driven by student learning outcomes, and aimed at transforming – rather than simply adjusting – the state’s education system. The strategies represent, for the student, a promise of educational excellence at all levels; for the educator, an invitation to lead and commitment to improving student achievement; for the taxpayer, a return on investment; and to parents, community leaders, employers, policymakers, and educational organizations, a new partnership to strengthen education for every student across Oregon.

2. Intent of the Goals

The OEIB’s overarching outcome is to ensure all Oregonians are prepared for lifelong learning, rewarding work, and engaged citizenship. Never before has this goal been more important to the lives and well-being of Oregonians and its communities. Education cements shared values, enriches culture and expands the personal horizons of individuals. Education advances family life, civic stability and democratic ideals. It provides opportunity for all, no matter their race, home language, disability or family income.

3. Our Primary Focus

The OEIB is focused on building a path to achieve the following:

- More kids ready for school
- More 3rd graders read at or above grade level
- More 9th graders finish strong
- High school and college graduations increase
- More Oregonians ready for rewarding jobs

4. Key Partnerships

- Confederation of School Administrators (COSA)
- Oregon School Boards Association (OSBA)
- Oregon Education Association (OEA)
- Office of the State Superintendent of Education (OSSE)
- Coalition of Communities of Color
- Latino Network
- Stand for Children
- The Chalkboard Project
- Oregon Business Council
- Oregon Business Association
- Oregon Parent Teacher Association
- Governor’s Office

5. Agency Alignment and Responsibility

Alignment with the Early Learning Division, Oregon Department of Education, and the Higher Education Coordinating Commission

6. Governance

OEIB is governed by and/or provides staff resources to the Boards that oversee Oregon's education policy work. The Oregon Education Investment Board, members appointed by the Governor, works to ensure that the 40-40-20 Goal will be met by 2025.

7. What We Do

Create a seamless system, work on key transitions, and recommend investments.

8. Agency Values

- Every student has the ability to learn
- Speaking a language other than English is an asset
- Special Education Services are an educational responsibility
- Students previously described as "at risk" are the best opportunity to improve outcomes
- Intentional, proven practices must be implemented to return out of school youth to an educational setting
- Supporting great teachers is important
- Ending disparities and gaps in achievement begin in quality delivery
- Resource allocation demonstrates priorities and values
- Shared decision making with communities will improve outcomes
- All students should have access to information about future opportunities
- Community colleges and universities play a critical role in serving diverse, rural and ELL communities
- Rich history and culture is an asset to celebrate

B. Name of Agency Head

Dr. Nancy L. Golden
Chief Education Officer
775 Court Street NE
Salem, OR 97301
503-378-0206

C. Name of Governor's Policy Advisor for OEIB

Daniel Ledezma, Education Policy Advisor
5503-378-3072, daniel.ledezma@oregon.gov

D. Name of Affirmative Action Representative

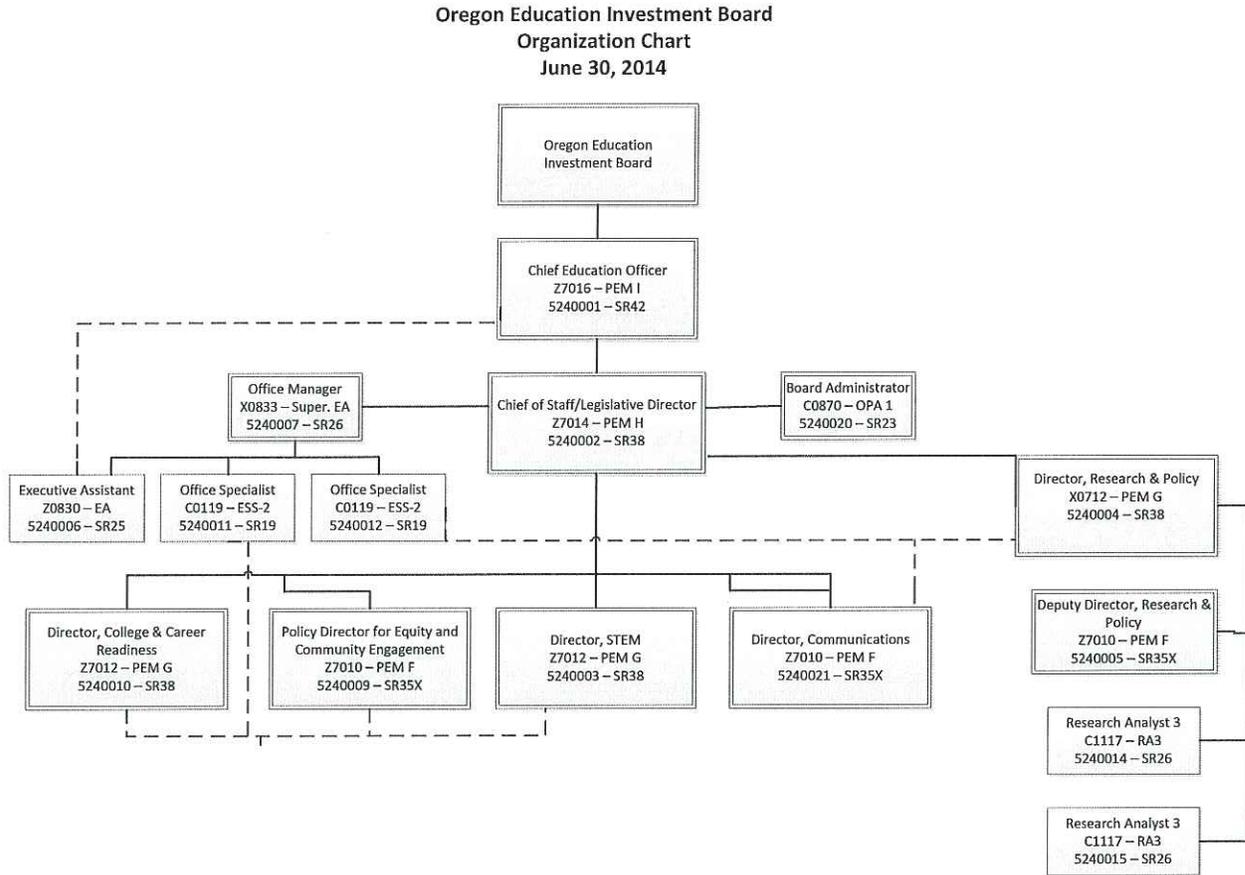
Candice O'Bryant, Human Resource Analyst
Enterprise Human Resource Services
503.378.2900, Candice.c.obryant@oregon.gov

E. Identify you Agencies Diversity and Inclusion Officer

Candice O'Bryant, Human Resource Analyst
Enterprise Human Resource Services
503.378.2900, Candice.c.obryant@oregon.gov

Please Note: We do not have dedicated FTE that have "diversity", "inclusion", "access", or "equity" in their working title.

F. Organizational Chart



II. Affirmative Action Plan

II. Affirmative Action Plan

A. Agency Affirmative Action Policy Statement

OEIB is committed to establishing and maintaining a diverse workforce, reflective of the diverse population within the State of Oregon. OEIB is committed to an affirmative action program that provides equal opportunities for all persons regardless of race, color, religion, sex, sexual orientation, national origin, marital status, age, or disability.

It is also the policy of OEIB to provide an environment for each applicant and employees that is free from sexual harassment, as well as harassment and intimidation on account of an individual's race, color, religion, gender, sexual orientation, national origin, age, or disability.

OEIB is an equal-opportunity employer that is committed to a pro-active role in the recruitment and selection process. OEIB will use diverse recruitment strategies to identify and attract candidates, and establish interview panels that represent protected-class groups.

OEIB will not discriminate, nor tolerate discrimination, against any applicant employee because of physical or mental disability in regard to any position for which the known applicant for employment is qualified.

OEIB agrees to take affirmative action to employ, advance in employment, and otherwise treat known qualified individuals with disabilities without regard to their physical or mental disabilities in all human resources selection and decision practices, such as: advertising, benefits, compensation, discipline (including probation, suspension, and/or termination for cause or layoff) recreational programs, and training. OEIB will also continue to administer these practices without regard to race, color, religion, gender, sexual orientation, national origin, age, or disability.

Additionally, all applicants and employees are protected from coercion, intimidation, interference, or discrimination for filing a complaint or assisting in an investigation under this policy.

OEIB will not discriminate or tolerate discrimination, against any employee because they are a member of, apply to be a member of, perform, has performed, applied to perform or have an obligation to perform service in a uniformed service.



Dr. Nancy L. Golden, Chief Education Officer

Aug. 28, 2014
Date

7

G. Affirmative Action Policy Statement for Individuals with Disabilities

OEIB will not discriminate, nor tolerate discrimination, against any applicant or employee because of physical or mental disability in regard to any position for which the known applicant for employment is qualified.

OEIB agrees to use affirmative action to employ, advance in employment, and otherwise treat known qualified individuals with disabilities without regard to their physical or mental disabilities in all human resources selection and decision practices, such as: advertising, benefits, compensation, discipline (including probation, suspension, and/or termination for cause or layoff), employee facilities, performance evaluation, recruitment, social/recreational programs, and training. OEIB will also continue to administer these practices without regard to race, color, religion, gender, sexual orientation, national origin, age or disability.

Additionally, all applicants and employees of OEIB are protected from coercion, intimidation, interference, or discrimination for filing a complaint or assisting in an investigation under this policy.

Affirmative Action Policy for Members Uniform Services (ORS 659A.082)

OEIB will not discriminate or tolerate discrimination, against any employee because they are a member of, apply to be a member of, performs, has performed, applies to perform or has an obligation to perform service in a uniformed service.

Harassment Policy and Complaint Procedure

State policy 50.010.01, *Discrimination and Harassment Free Workplace*, states that OEIB will provide a work environment free from unlawful discrimination on the basis of race, color, religion, sex, marital status, national origin, disability, age, or any other factor employers are prohibited by law from considering when making employment decisions. This policy applies to all matters relating to hiring, firing, transfer, promotion, benefits, compensation, and other terms and conditions of employment.

It is also the policy of OEIB that all employees, customers, clients, contractors and visitors to the work site enjoy a positive, respectful and productive work environment, free from behavior, actions or language that constitute workplace harassment. Harassment is prohibited, whether between managers and subordinates; or between employees and clients, contractors, the public, or co-workers.

Grievance/Complaint Procedure

For workplace harassment: Any employee who is subject to or is aware of workplace harassment should report that information immediately to agency management. The report may be made orally or in writing to the employee's immediate supervisor or to a higher management staff member if the employee prefers. (Note: Incidents involving violence, threats of violence or other matters deemed substantial by a supervisor shall be reported immediately to Chief of Staff.) Employees may report to any of the persons listed above and need not observe any particular chain of command. If the complainant desires, an investigation shall be conducted according to the investigation portion of this policy. If an investigation is not requested, the supervisor and employee shall document the incident.

Discrimination Complaints Procedure

Any employee who believes that employment-related discrimination was directed toward him/her by a member or representative of agency management may file a complaint with the Chief of Staff. Please submit complaints in writing except for reasons of disability. The complaint should be filed with the agency within 30 calendar days of the alleged act.

Complaints shall include the name of the complainant, the name 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 discriminatory, and a description of the relief requested. An investigation shall be conducted according to the investigation section of this policy.

ADA and Reasonable Accommodation in Employment and Workplace

State policy 50.020.10 *ADA and Reasonable Accommodation in Employment*, states that OEIB will reasonably accommodate qualified individuals with disabilities. In accordance with the Americans with Disabilities Act, accommodations will be provided to qualified individuals with disabilities when such accommodations are directly related to performing the essential functions of a job, competing for a job, or to enjoy equal benefits and privileges of employment. This policy applies to all applicants, employees, and employees seeking promotional opportunities.

Reasonable Accommodation

A reasonable accommodation is a modification or adjustment to a job, an employment practice, or the work environment that makes it possible for a qualified individual with a disability to enjoy an equal employment opportunity.

Examples of accommodations may include acquiring or modifying equipment or devices; modifying training materials; making facilities readily accessible; modifying work schedules; and reassignment to a vacant position.

Reasonable accommodation applies to three aspects of employment

1. To assure equal opportunity in the employment process;
2. To enable a qualified individual with a disability to perform the essential functions of a job; and
3. To enable an employee with a disability to enjoy equal benefits and privileges of employment.

A. Agency Diversity and Inclusion Statement

OEIB is committed to establishing, monitoring, and maintaining a work environment where all employees are valued, treated fairly, and given opportunities to develop and grow to their full potential. Every employee plays a part in our diverse workforce and inclusive work environment by being respectful and supportive, and by acting with integrity to one another. Each person's skills, talents, knowledge, experiences, and personalities broaden the range of perspectives in and approaches to conducting the work we do at OEIB.

OEIB can best promote excellence by recruiting, retaining, and accommodating a diverse group of staff in an environment of respect that is supportive of their workplace success. This climate of diversity, inclusion and excellence is critical to successfully attaining our mission of contributing leadership and resources to increase the skills, knowledge and career opportunities of Oregonians.

B. Training, Education and Developmental Plan (TEDP)

At OEIB, State Policy 50.045.01, *Employee Development and Implementation of Oregon Benchmarks for Workforce Development* is used to promote employee career growth.

OEIB became a stand-alone agency July 1, 2013 with a sunset of March, 2016 and at this time OEIB has not developed promotional opportunities for its employees. OEIB is in the process of developing formal employee performance evaluations which will be done on a yearly basis.

1. Employees

- Upon the approval and adoption of OEIB's Affirmative Action Plan including the agency's AA Statement it will be posted on the agency website's home page.
- All staff have access to training opportunities per the Statewide Employee Development and Implementation of Oregon Benchmarks for Workforce Development Policy (50.045.01).
- OEIB New Employee Orientation is provided within the first two weeks of employment to new employees as well as assignment of staff to guide them through their first days of employment at the agency and to answer any questions.

2. Volunteers

There are no current volunteers.

3. Contractors/Vendors

OEIB does not provide diversity training to vendors currently. OEIB vendors are notified of EEO policy via our federally mandated electronic EEO clause included in our RFP's and contracts which states:

To the best of the undersigned's knowledge, Contractor has not discriminated against and will not discriminate against minority, women or emerging small business enterprises certified under ORS 200.055 in obtaining any required subcontracts.

C. Programs

1. Internships

The OEIB believes internships help develop future leaders, and provide an opportunity to translate theory into practice. The agency provides unpaid internships when opportunities and physical space become available. Internships are organized around work on specialized projects. The agency intends to implement a more formal internship program through Oregon's colleges and universities.

2. Mentorship Program(s)

The OEIB will develop a mentorship program by the end of the current biennium.

3. Community Outreach Program

By the end of the current biennium, the agency will complete the review of practices and programs consistent with the 10-Point Community Outreach/Engagement Strategies developed by the Governor's Office of Diversity & Inclusion/Affirmative Action.

The OEIB adopted an equity lens to evaluate and assess education policy, program and investments across the P-20 education system. The agency has staff dedicated to coordinating and implementing initiatives aimed at improving outcomes for students and families of color in which community engagement, diversity and inclusion are integrated strategies.

The OEIB participates in the regularly scheduled Government to Government education cluster meetings and activities. This includes quarterly meetings for the cluster, as well as special informational and educational activities related to education and workforce development.

4. Diversity Awareness Program

By the end of the current biennium, the agency will develop a formal diversity awareness program and adopt policies and practices to accommodate diverse needs of agency staff. OEIB job announcements are sent to the Governor's Affirmative Action Office for additional posting and dissemination.

5. Leadership Development/Training Program(s)

By the end of the current biennium, the agency will complete a plan for leadership development and training.

D. Update: Executive Order 08-18

1. Cultural Competency Assessment and Implementation Services

OEIB is committed to the goals of enriching the diversity of the agency and increasing the level of cultural competency, both internally and throughout our customer and partner base. As a new agency, the Cultural Competency Assessment will be in process of being completed by the end of the current biennium.

2. Statewide Exit Interview Survey

OEIB encourages all employees to complete this DAS web-based, exit-interview tool prior to their transfer or departure:

<http://www.surveymonkey.com/s.asp?u=206582533018>

Participation is optional and all responses are anonymous and cannot be traced back to an individual.

3. Performance Evaluation of all Management Personnel

OEIB is in the process of establishing a Performance Management Plan, in accordance with the statewide Performance Management Process Policy (50.035.01)

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

OEIB provides notice to certified firms for all competitive solicitations through Oregon Procurement Information Network (ORPIN). During the 2013-2015 biennium, OEIB contracted with Beverly Stein & Associates an emerging small business and women owned business.

III. Roles for Implementation of Affirmative Action Plan

A. Responsibilities and Accountabilities

1. Chief Education Officer and Chief of Staff

- Direct and supervise all activities of the Office of the Chief Education Officer of the Oregon Education Investment Board.
- The Chief Education Officer reports to the Oregon Education Investment Board annually and biennially to the Legislative Ways and Means Committee, on the progress and outcomes of the Board's Affirmative Action Plan.
- The Chief of Staff directs agency affirmative action functions, ensuring that the agency plan, targets and goals are followed, implemented, and achieved.
- The Chief of Staff conducts all final interviews to ensure there is no intended or unintended bias.

2. Managers/Supervisors

- Foster and promote the importance of a diverse workforce free of discrimination and harassment to staff.
- Ensure subordinates receive an orientation on the agency's affirmative action goals and responsibilities and understand their own responsibilities for helping promote diversity and a harassment free work environment.

- Work with OEIB Chief of Staff, following agency and State of Oregon procedures and rules in filling of employment vacancies.
- 3. Affirmative Action Representative**
- OEIB contracts HR services with the Department of Administrative Services, Enterprise HR Services Division (EHRS). The HR Affirmative Action Representative reports to the EHRS Administrator and works directly with the HR Manager assigned to support OEIB:
 - Ensure employees receive and engage in a thorough orientation to the OEIB and to state government; this includes review of AA and EEO policy with employees during the New Employee Orientation;
 - Promote and oversees effective retention practices using the Affirmative Action Plan.
 - Assist with and/or investigate and address EEO/AA complaints;
 - Report EEO complaints or areas needing improvement to management team members; and
 - Provide EEO/AA and ADA training options to the agency.

IV. July 1, 2013-June 30, 2015

A. Accomplishments

OEIB is a new agency; therefore, there is no data at this time.

B. Progress Made or Lost Since Previous Biennium

No results available at this time.

V. July 1, 2015-June 30, 2017

A. Goals for Our Affirmative Action Plan/Programs

Key Goals: To increase the knowledge of our agency employees regarding affirmative action, and to increase the diversity of our staff.

B. Strategies for Achieving Those Goals

OEIB is applying active strategies in alignment with ORS 243.305 policy of affirmative action and fair and equal employment opportunities and advancement, and DAS recruitment policies and guidelines. Increasing workplace diversity and awareness efforts will include:

1. Upon the removal of OEIB's sunset, OEIB will develop volunteer membership for an OEIB Affirmative Action Workgroup, dedicated to the advancement of diversity; recommending affirmative action goals and better diversity within the agency.
2. OEIB will ensure that affirmative action and diversity responsibilities are included in the hiring manager's job descriptions.
 - So that they apply such philosophies in their day-to-day work; and that management effectiveness in taking affirmative action is included in annual performance appraisals, in compliance with ORS 659.025 (1) *"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, disability 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."*
3. To educate and encourage diversity among those who are hired or appointed so they may assist in identifying and removing barriers that hinder or prevent a diverse work environment.
4. To ensure employees receive and engage in a thorough orientation to OEIB's affirmative action policy, goals and an employee's role in contributing to a diverse workforce free of harassment;
5. To coordinate annual presentation and review of the plan at:
 - An All-Staff meeting; additionally, OEIB will place a diversity related agenda item at All Staff meetings twice a year.
 - A Oregon Education Investment Board meeting.
6. To encourage all employees to complete the DAS web-based exit interview survey tool prior to their transfer or departure.
7. By posting the Affirmative Action Plan on the OEIB website upon approval and adoption.
8. By public announcement of the Plan and its availability on the web, to partners and state agency personnel.
9. To ensure that the OEIB will include the biennial affirmative action information as part of the regular Ways and Means presentation to the legislature.

10. Succession Plan

Currently there is no formal succession plan.

11. Timelines

The plan will be posted on the OEIB website upon approval of the plan from the Governor's Diversity, Inclusion & Affirmative Action Office.

B. Appendix A

A. Agency's Policy Documentation

1. ADA and Reasonable Accommodation Policy (No.50.020.10)



Statewide Policy

SUBJECT: ADA and Reasonable Accommodation in Employment	NUMBER: 50.020.10
DIVISION: Human Resource Services Division	EFFECTIVE DATE: 6/7/10
APPROVED: Signature on file with Human Resource Services Division	

POLICY STATEMENT:

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

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

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

AUTHORITY:

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

APPLICABILITY:

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

ATTACHMENTS:

ADA Accommodation Tool Kit

DEFINITIONS:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

POLICY

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

2. Discrimination and Harassment Free Workplace (No.50.010.01)



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

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

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 Development and Implementation of Oregon Benchmarks for Workforce Development (No.50.045.01)

State of Oregon
DEPARTMENT OF ADMINISTRATIVE SERVICES
Human Resource Services Division



State Policy: 50.045.01 Employee Development and Implementation of Oregon Benchmarks for Workforce Development

APPLICABILITY: Classified (where not in conflict with the collective bargaining contract), management service, executive service and unclassified unrepresented employees

REFERENCE: ORS 240.145(3)(4); 240.250; Oregon Benchmarks

(1) **Policy:** Oregon state government shall be a leader in achieving or exceeding the Oregon workforce development benchmarks of developing the best trained workforce in the U.S. by the year 2000 and in the world by the year 2010.

- (a) For each biennium, an agency head shall develop a written agency training plan to require a minimum of 20 hours of education and training related to work skills and knowledge for at least 50% of their permanent employees in each fiscal year.
- (b) Supervisors, in discussion with their employees, shall develop and update annually a written development plan for each employee that provides for the continuous improvement of the employee's job related knowledge and skills.
- (c) An agency head shall maintain written documentation of agency workforce development hours and expenditures per instructions from Department of Administrative Services regarding expenditures and account numbers related to training and travel.
- (d) When opportunities permit, agencies shall invite other state agencies to fill staff development openings and share training facilities and other employee development resources.
- (e) An agency head may provide educational assistance to employees when it directly relates to their job responsibility and can be accommodated within the agency budget:
 - (A) When an employee is assigned to attend courses, the agency shall reimburse all of the costs of course registration fees, course materials, and necessary travel.
 - (B) When an employee makes a request to attend a class(s), either during or after working hours, the agency may reimburse all or part of the costs attendant to the class(s).
 - (C) Educational assistance to employees may include paid leave. Provisions of the paid leave agreement between the agency and the employee shall be documented and maintained in the agency file.

(2) **Policy Clarification:**

- (a) The written agency training plan is intended to relate individual employee development plans and agency workforce development priorities to the agency mission.
- (b) Training or education related to work skills and knowledge includes formal instructions or a structured learning plan related to:
 - (A) employee's competence to perform a specific job,
 - (B) employee's state government career, or
 - (C) Employee's work environment.

Policy: 50.045.01

1 of 2

Effective: 07/19/95

(c) Modes of training delivery may be formal education, on the job training, supervised learning activities, and other specific training approved by the employee's supervisor as job related.

- | | |
|---------------------------------|---|
| (1) Performance Measure: | Percentage of agency employees who received 20 or more hours of job related training in each fiscal year. |
| Performance Standard: | 50% |
| (2) Performance Measure: | A current, completed written agency training plan for each biennium. |
| Performance Standard: | 100% |
| (3) Performance Measure: | Percentage of agency employees with current written individual development plans. |
| Performance Standard: | 100% |

4. Veterans Preference in Employment (No.105.040.0015)

Veterans' Preference in Employment

839-006-0435

Veterans' Preference in Public Employment

(1) It is the policy of the State of Oregon that a public employer grant a preference in hiring and promotion to veterans and disabled veterans under the provisions of ORS 408.230.

(2) The requirement to grant a preference in hiring and promotion to veterans and disabled veterans under the provisions of ORS 408.230 applies only to a public employer's civil service positions.

Stat. Auth.: ORS 659A.805

Stats. Implemented: ORS 408.230, 408.235

839-006-0440

Definitions

(1) "Active duty" does not include attendance at a school under military orders, except schooling incident to an active enlistment or a regular tour of duty, or normal military training as a reserve officer or member of an organized reserve or a National Guard unit.

(2) "Armed Forces" means the United States Army, Navy, Marine Corps, Air Force, and Coast Guard, including the reserve components thereof. (Title 38 USC Part I Chapter 1 Section 101). Reserve components mean:

(a) The Army Reserve;

(b) The Navy Reserve;

(c) The Marine Corps Reserve;

(d) The Air force Reserve;

(e) The Coast Guard Reserve;

(f) The Army National Guard of the United States; and

(g) The Air National Guard of the United States.

(3) "Civil service position" means any position for which a hiring or promotion decision is made or required to be made based on the results of a merit based, competitive process that includes, but is not limited to, consideration of an applicant's or employee's relative ability, knowledge, experience and other skills.

(a) A "civil service" position need not be labeled a "civil service position."

(4) "Combat zone" means an area designated by the President of the United States by executive order in which, on the dates designated by executive order, the Armed Forces of the United States are or have engaged in combat.

(5) "Disabled veteran" means a person **who has a disability rating from the United States** [entitled to disability compensation under the laws administered by the U.S.] Department of Veterans Affairs, a person whose discharge or release from active duty was for a disability incurred or aggravated in the line of duty or a person who was awarded the Purple Heart for wounds received in combat.

(6) "Eligibility list" means a list of ranked eligible candidates for a civil service position who have become eligible for the position through a test or series of tests and who will be considered for the civil service position in ranked order.

(7) [(6)] "Military leave" means any period of time for which a person is absent from a permanent civil service position for the performance of active duty in the Armed Forces of the United States.

(8) [(7)] "Promotion" means any position with a higher maximum salary rate.

(9) [(8)] "Public employer" includes a public body as defined in ORS 174.109, and any person authorized to act on behalf of the public body, with respect to control, management or supervision of any employee. "Public employer" includes but is not limited to:

(a) Employers in local governments;

(b) Employers in a public corporation created under a statute of this state and specifically designated as a public corporation; and

(c) Employers in any public body that is created by statute, ordinance or resolution that is not part of state government or local government.

(10) "Transferable skill" means a skill that a veteran has obtained through military education or experience that substantially relates, directly or indirectly, to the civil service position for which the veteran is applying. For instance, an Army infantryman receives training in the use, maintenance and storage of weapons, skills which are transferable to positions in corrections or law enforcement.

(11) [(9)] "Veteran" means a person who:

(a) Served on active duty with the Armed Forces of the United States:

(i) For a period of more than 178 consecutive days and was discharged or released from active duty under honorable conditions;

(ii) For 178 days or less and was discharged or released from active duty under honorable conditions because of a service-connected disability; or

(iii) For at least one day in a combat zone and was discharged or released from active duty under honorable conditions; or

(b) Received a combat or campaign ribbon for service in the Armed Forces of the United States.

Stat. Auth.: ORS 659A.805

Stats. Implemented: ORS 408.225, 408.230, 408.235, **OL 2011 Ch 484, OL 2011 Ch 29**

839-006-0445

Eligibility for Employment Preference

(1) A veteran is eligible to use the preference provided for in OAR 839-006-0450 and 839-006-0455 for a civil service position for which application is made at any time after discharge or release from service in the Armed Forces of the United States.

(2) Except as provided in (1) of this rule there are no limitations to the number of times a person can claim the preference.

Stat. Auth.: ORS 659A.805

Stats. Implemented: ORS 408.230, 408.235

839-006-0450

Applying the Employment Preference

(1) At each stage of the application process a public employer will grant a preference to a veteran or disabled veteran who successfully completes an initial application screening or an application examination or a civil service test the public employer administers to establish eligibility for a vacant civil service position.

(2) For an initial application screening used to develop a list of persons for interviews, the public employer will add five preference points to a veteran's score and ten preference points to a disabled veteran's score.

(3) For an application examination, given after the initial application screening, that results in a score, the public employer will add five preference points to a veteran's and ten preference points to a disabled veteran's total combined examination score without allocating the points to any single feature or part of the examination.

(4) If a public employer uses an application examination that consists of an evaluation method of ranking an applicant that does not result in a score, the public employer will devise and apply methods by which the public employer gives special consideration in the public employer's hiring decision to veterans and disabled veterans.

(5) When an interview is a component of the selection process for a civil service position or for an eligibility list for a civil service position, a public employer shall interview each veteran:

(a) Whom the public employer determines meets the minimum qualifications and special qualifications for the civil service position or eligibility list; and

(b) Who submits application materials that the public employer determines show sufficient evidence that the veteran has the transferable skills required and requested by the public employer for the civil service position or eligibility list.

(6) A public employer is not required to comply with subsection (5) of this rule if the employer conducts interviews only as part of the process of selecting a candidate for a civil service position from an eligibility list.

(7) A public employer may consult with the Oregon Military Department and the Department of Veterans' Affairs to determine whether certain military education or experience produces a transferable skill. To evaluate a veteran's transferable skills from a transcript of military training, a public employer may consult the American Council on Education's website, "A Guide to Educational Experiences in the Military," at <<http://militaryguides.acenet.edu/CourseSearch.asp>>.

Stat. Auth.: ORS 659A.805

Stats. Implemented: ORS 408.230, 408.235, **OL 2011 Ch 484**

839-006-0455

Employment Preference for Promotions

(1) A public employer will grant a preference to a person seeking promotion **to a civil service position with a higher maximum salary rate** and who is employed by the public employer in a permanent civil service position only if the person:

(a) Was granted military leave by the public employer to serve in the Armed Forces of the United States;

(b) Returned from the military leave to the civil service position;

(c) Qualified as a veteran or disabled veteran, as defined in OAR 839-006-0440(5) and (9), by reason of the person's service during the military leave or otherwise;

(d) Successfully completed a test or examination for the promotional position; and

(e) Meets the minimum qualifications and any special qualifications for the promotional position.

(3) If a person meets the criteria for a promotional preference under subsection (1) of this rule, the public employer will add five preference points to a veteran's score and ten preference points to a disabled veteran's score.

(4) For the purposes of a promotional preference under subsection (1) of the rule, if a public employer uses an application examination that consists of an evaluation method of ranking an applicant that does not result in a score, the public employer will devise and apply methods by which the public employer gives special consideration in the public employer's hiring decision to veterans and disabled veterans.

Stat. Auth.: ORS 659A.805

Stats. Implemented: ORS 408.225, 408.230, 408.235, **OL 2011 Ch 82**

839-006-0460

Appointment to a Position

(1) A public employer will appoint an otherwise qualified veteran or disabled veteran to a vacant civil service position if the results of a veteran's or disabled veteran's application examination, when combined with the veteran's or disabled veteran's preference, are equal to or higher than the results of an application examination for an applicant who is not a veteran or disabled veteran.

(2) Preferences of the type described in OAR 839-006-0450 and 839-006-0455 are not a requirement that a public employer appoint a veteran or disabled veteran to a civil service position.

(3) A public employer may base a decision not to appoint the veteran or disabled veteran solely on the veteran's or disabled veteran's merits or qualifications with respect to the vacant civil service position.

(4) If a public employer does not appoint a veteran or disabled veteran to a vacant civil service position, upon written request of the veteran or disabled veteran, the public employer, will provide the public employer's reasons for the decision not to appoint the veteran or disabled veteran to the position.

Stat. Auth.: ORS 659A.805

Stats. Implemented: ORS 408.230, 408.235

839-006-0465

Certification

(1) A public employer may require an applicant to provide certification that the person is an eligible veteran or disabled veteran under OAR 839-006-0440(5) and (9).

(2) An applicant for a position with a public employer claiming veteran's or disabled veteran's preference points may submit as certification of eligibility under OAR 839-006-0440(5) and (9) a copy of the Certificate of Release or Discharge from Active Duty (a federal DD Form 214 or 215) with the application for employment.

(3) Disabled veterans may also submit a copy of their veteran's disability preference letter from the U.S. Department of Veterans Affairs, unless the information is included in the federal DD Form 214/215.

(4) If a person's record appears to show service qualifying for the preference the public employer may provisionally designate an applicant as an eligible veteran or disabled veteran. However, before the person can be appointed, the person must submit proof of the entitlement to the preference.

Stat. Auth.: ORS 659A.805

Stats. Implemented: ORS 408.225, 408.230, 408.235

839-006-0470

Enforcement

The Civil Rights Division of the Bureau of Labor and Industries enforces the provisions of ORS 408.230. A person claiming a violation of ORS 408.230 may file

a verified written complaint with the Civil Rights Division in accordance with ORS 659A.820.

Stat. Auth.: ORS 659A.805

Stats. Implemented: ORS 408.230, 408.235, 659A.820, OL 2011 Ch 484

839-006-0480

Discrimination Based on Uniformed Service

(1) For purposes of this rule:

(a) "Service" means the performance of duty on a voluntary or involuntary basis in a uniformed service that may involve active duty, active duty for training, initial active duty for training, inactive duty for training, full time duty in the National Guard, funeral honors duty or an examination to determine fitness for service in a uniformed service; and

(b) "Uniformed service" means the Armed Forces of the United States, the Army National Guard and the Air National Guard when engaged in active duty for training, inactive duty training or full-time National Guard duty, the commissioned corps of the United States Public Health Service and any other category of persons designated by the President of the United States in a time of war or national emergency [*Army, Navy, Air Force, Marine Corps, Coast Guard, National Guard or military reserve forces*].

(2) It is an unlawful employment practice for an employer to discriminate against a person because of the person's service in a uniformed service by:

(a) Denying a public officer or public employee the status or rights provided by ORS 408.240 to 408.240 and 408.290, if the employer is a public body.

(b) Discharging, expelling, disciplining, threatening or otherwise retaliating against the person for exercising or attempting to exercise the status or rights provided by this section.

(c) Denying any of the following because a person is a member of, applies to be a member of, performs, has performed, applies to perform or has an obligation to perform service in a uniformed service:

(A) Initial employment;

(B) Reemployment following a leave from employment taken by reason of service in a uniformed service;

(C) Retention in employment;

(D) Promotion; or

(E) Any other term, condition or privilege of employment, including but not limited to compensation.

(3) An employer does not commit an unlawful employment practice under this rule if the employer acted based on a bona fide occupational requirement reasonably necessary to the normal operation of the employer's business and the employer's actions could not be avoided by making a reasonable accommodation of the person's service in a uniformed service.

(4) The federal Uniformed Services Employment and Reemployment Act, 38 USC 43 (USERRA) provides that an employee reemployed following a period of uniformed service is entitled to the seniority and seniority-based rights and benefits that the employee had on the date the uniformed service began, plus any seniority and seniority-based rights and benefits that the employee would have attained if the employee had remained continuously employed. Federal Department of Labor regulation 20 CFR 1002.210 provides that in determining entitlement to seniority and seniority-based rights and benefits, the period of absence from employment due to or necessitated by uniformed service is not considered a break in employment. The rights and benefits protected by USERRA upon reemployment include those provided by the employer and those required by statute.

(5) To the extent possible, this rule shall be construed in a manner that is consistent with similar provisions of the federal Uniformed Services Employment and Reemployment Rights Act of 1994, 38 USC 43.

(6) Protections for spouses and domestic partners of uniformed service members may be found under the Oregon Family Military Leave Act, ORS 659A.090 to 659A.099 and OAR 839-009-0370 - 839-009-0460.

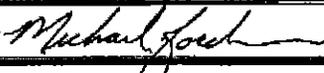
Stat. Auth.: ORS 659A.805

Stats. Implemented: ORS 659A.082, **OL 2011 Ch 18**

5. Maintaining a Professional Workplace (No.50.010.03)



Statewide Policy

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

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

AUTHORITY: ORS 240.145 and ORS 240.250

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

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

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

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

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

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

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

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

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

POLICY

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

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

(5) Consequences

- (a) Any employee found to have engaged in inappropriate workplace behavior, will be counseled, or, depending on the severity of the behavior, may be subject to discipline, up to and including dismissal.
 - (b) An employee in trial service found to have engaged in inappropriate workplace behavior may be removed from trial service.
 - (c) A temporary employee or volunteer found to have engaged in inappropriate workplace behavior will be counseled or, depending on the severity of the behavior, may have his or her service terminated.
 - (d) A supervisor who fails to address inappropriate behavior, will be counseled, or, depending on the severity of the behavior, may be subject to disciplinary action, up to and including dismissal.
- (6) Retaliation** Retaliating against someone for reporting or addressing inappropriate workplace behavior is prohibited. An employee who believes he or she is experiencing retaliation as a result of reporting inappropriate behavior should report this to his or her immediate supervisor as soon as practical³. The agency will investigate reports of retaliation. Any employee found to have engaged in retaliation may be subject to discipline, up to and including dismissal. An employee in trial service found to have engaged in retaliation may be removed from trial service. A temporary employee or volunteer found to have engaged in retaliation may have his or her service terminated.
- (7) Policy Notification.** All employees including temporary employees and volunteers will:
- (a) Be given a copy or told the location of State HR Policy 50.010.03 Maintaining a Professional Workplace by the agency
 - (b) Be given directions to read the policy
 - (c) Be provided an opportunity to ask questions and have their questions answered
 - (d) Acknowledge he or she read the policy and had the opportunity to ask questions
 - (A) The agency decides the form of the acknowledgement, such as electronic, signed, or other documented acknowledgment
 - (B) The agency may create and offer training as it deems necessary.

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

C. Appendix B

A. Federal Policy Documentation

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

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.

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

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

Apprenticeship Programs

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

Job Notices and Advertisements

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

Pre-Employment Inquiries

The ADEA does not specifically prohibit an employer from asking an applicant's age or date of birth. However, because such inquiries may deter

older workers from applying for employment or may otherwise indicate possible intent to discriminate based on age, requests for age information will be closely scrutinized to make sure that the inquiry was made for a lawful purpose, rather than for a purpose prohibited by the ADEA.

Benefits

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

Waivers of ADEA Rights

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

ADEA waiver must:

1. be in writing and be understandable;
2. specifically refer to ADEA rights or claims;
3. not waive rights or claims that may arise in the future;
4. be in exchange for valuable consideration;
5. advise the individual in writing to consult an attorney before signing the waiver; and
6. provide the individual at least 21 days to consider the agreement and at least seven days to revoke the agreement after signing it.

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

2. Disability Discrimination Title 1 of the Americans with Disability Act of 1990

Disability Discrimination

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 or treating unfairly, 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 impairment.

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

Making existing facilities used by employees readily accessible to and usable by persons with disabilities.

Job restructuring, modifying work schedules, reassignment to a vacant position;

Acquiring or modifying equipment or devices, adjusting or modifying examinations, training materials, or policies, and providing qualified readers or interpreters.

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

nature and structure of its operation.

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

Title I of the ADA also covers:

Medical Examinations and Inquiries

Employers may not ask job applicants or employees about the existence, nature, or severity of a disability. Applicants may be asked about their ability to perform specific job functions with or without an accommodation. 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.

All medical records or any information obtained must be kept confidential. This includes information that may or may not indicate a diagnosis, treatment course or may not have been 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.

The law also protects people from discriminating 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 or child has a disability.

It is 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.

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

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

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

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

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

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

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

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

ESTABLISHMENT - The prohibition against compensation discrimination under the EPA applies only to jobs within an establishment. An establishment is a distinct physical place of business rather than an entire business or enterprise consisting of several places of business.

However, in some circumstances, physically separate places of business should be treated as one establishment. For example, if a central administrative unit hires employees, sets their compensation, and assigns them to work locations, the separate work sites can be considered part of one establishment.

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

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

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 under Title VII, the ADEA, or the ADA 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.

A discriminatory compensation system has been discontinued, but still has lingering discriminatory effects on present salaries. For example, if an employer has a compensation policy or practice that pays Hispanics lower salaries than other employees, the employer must not only adopt a new non-discriminatory compensation policy, it also must affirmatively eradicate salary disparities that began prior to the adoption of the new policy and make the victims whole.

An employer sets the compensation for jobs predominately held by, for example, women or African-Americans below that suggested by the employer's job evaluation study, while the pay for jobs predominately held by men or whites is consistent with the level suggested by the job evaluation study.

An employer maintains a neutral compensation policy or practice that has an adverse impact on employees in a protected class and cannot be justified as job-related and consistent with business necessity. For example, if an employer provides extra compensation to employees who are the "head of household," i.e., married with dependents and the primary financial contributor to the household, the practice may have an unlawful disparate impact on women.

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

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

Genetic Information Discrimination

Title II of the Genetic Information Nondiscrimination Act of 2008 (GINA) prohibits the use of genetic information to discriminate against employees or applicants. The law forbids discrimination under any aspect of employment including hiring, firing, pay, job assignments, promotions, layoffs, training, benefits and/or any other terms/conditions of employment. In addition, the Department of Labor, Health and Human Services strictly restricts the acquisition of genetic information and the disclosure of genetic information.

Definition

Genetic Information includes an individual's genetic test and /or the tests of an individual's family members. It also includes any information about disease, disorder or condition including a family member's known condition. Family medical history is included in the definition of genetic information because it is often misused to determine increased risk of disease, disorder or condition in the future.

Harassment

Under GINA, it is illegal to harass a person based on their genetic information or genetic information of their relative. Harassing actions include offensive or derogatory remarks, which rise to a level to create a hostile work environment.

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.

Retaliation

It is unlawful to retaliate against an employee who has filed a discrimination charge based on genetic information; testified on genetic information; or participated in an investigation, proceeding or litigation based on genetic information. It is also unlawful to retaliate against an individual for opposing employment practices that discriminate based on genetic information.

Exceptions

There are very limited exceptions to an employer obtaining genetic information that do not violate the GINA as follows:

Inadvertent knowledge of genetic information by overhearing an employee's conversation about a family member's conditions/illnesses.

Obtaining genetic information or family medical history through health services, including wellness programs that are offered on a voluntary basis.

Information obtained as part of the certification process for FMLA/OFLA leave for the employee's own serious health condition or the serious health condition of the employee's family member.

Gaining knowledge through commercially or publicly available documents like newspapers is permitted, as long as the employer is not searching those resources with the intent of finding genetic information.

Acquisition of genetic information through monitoring programs to test the effects of biological toxic substances in the workplace, where monitoring is required by law or the program) is voluntary.

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

Confidentiality

It is unlawful for employers to disclose genetic information about applicants or employees. Employers must keep genetic information confidential and in a file

separate from any personnel file. Genetic Information can be kept in the same file as other medical information in compliance with the Americans with Disabilities Act.

5. National Origin Discrimination Title VII of the Civil Rights Act of 1964 and The Immigration Reform and Control Act of 1986

The Immigration Reform and Control Act of 1986 (IRCA)

National Origin Discrimination

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

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

The Immigration Reform and Control Act of 1986 (IRCA) makes it illegal for an employer to discriminate with respect to hiring, firing, recruitment or referral for a fee, based upon an individual's citizenship or immigration status. 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.

About National Origin Discrimination

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

Examples of violations covered under Title VII include:

Employment Decisions

Title VII prohibits any employment decision, including recruitment, hiring, and firing, pay, training, promotions, benefits 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 or results in adverse employment decisions. Employers are required to take appropriate steps to prevent and correct unlawful harassment. Likewise, employees are responsible for reporting harassment at an early stage to prevent its escalation.

Language

Accent Discrimination

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

English Fluency

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

English-only rules

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

It is also unlawful to retaliate against an individual for imposing employment practices that discriminate based on the IRCA's nondiscrimination requirements or for filing a discrimination charge, testifying, or participating in any way in an investigation, proceedings or litigation under the IRCA.

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 legally required work authorization or documentation.

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

Pregnancy Discrimination

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

Title VII's pregnancy-related protections include:

Harassment

Prohibits of offensive conduct such as derogatory remarks that create a hostile work environment based on the condition or results in adverse employment decisions.

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.

Hiring

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

Pregnancy and Maternity Leave

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

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

employer also must allow an employee who is temporarily disabled due to pregnancy the same options or choices.

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

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

In addition, pregnant employees may have additional rights under the Family and Medical Leave Act (FMLA) and/or Oregon Family Medical Leave Act (OFLA).

Health Insurance

Any health insurance provided by an employer must cover expenses for pregnancy-related conditions on the same basis as costs for other medical conditions. Health insurance for expenses arising from abortion is not required, except where the life of the mother is endangered. Pregnancy-related expenses should be reimbursed exactly as those incurred for other medical conditions, whether payment is on a fixed basis or a percentage of reasonable-and-customary-charge basis.

The amounts payable by the insurance provider can be limited only to the same extent as amounts payable for other conditions. No additional, increased, or larger deductible can be imposed.

Employers must provide the same level of health benefits for spouses of male employees as they do for spouses of female employees.

Fringe Benefits

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

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

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

It is also unlawful to retaliate against an individual for opposing employment practices

that discriminate based on pregnancy or for filing a discrimination charge, testifying, or participating in any way in an investigation, proceeding, or litigation under Title VII.

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

Race/Color Discrimination

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

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

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

Title VII's protections include:

Recruiting, Hiring, and Advancement

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

abilities that are not important for job performance or business needs.

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

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

Harassment/Hostile Work Environment

Title VII prohibits of offensive conduct, such as racial or ethnic slurs, racial "jokes," derogatory comments, or other verbal or physical conduct based on an individual's race/color. The conduct has to be unwelcome and of offensive, and has to be severe or pervasive. 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.

Compensation and Other Employment Terms, Conditions, and Privileges

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

Segregation and Classification of Employees

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

Retaliation

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

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

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. Title VII covers employers with 15 or more employees, including state and local governments. It also applies to employment agencies and to labor organizations, as well as to the federal government.

Under Title VII:

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

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

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

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

Employers must permit employees to engage in religious expression, unless the religious expression would impose an undue hardship on the employer. Generally, an employer may not place more restrictions on religious expression than on other

forms of expression that have a comparable effect on workplace efficiency.

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

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

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

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.

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

Sex-Based Discrimination

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

It is unlawful to discriminate against any employee or applicant for employment because of his/her sex in regard to hiring, termination, promotion, compensation, job training, or any other term, condition, or privilege of employment. Title VII also prohibits employment decisions based on stereotypes and assumptions about abilities, traits, or the performance of individuals on the basis of sex. Title VII prohibits both intentional discrimination and neutral job policies that

disproportionately exclude individuals on the basis of sex and that are not job related.

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

Sexual Harassment

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

Pregnancy Based Discrimination

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

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

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

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

Sexual Harassment

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

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

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

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

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

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

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

The harasser's conduct must be unwelcome.

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

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

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

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