



# Oregon State Board of Nursing

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## **AFFIRMATIVE ACTION PLAN 2009-2011 BIENNIUM**

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

# Oregon State Board of Nursing

## AFFIRMATIVE ACTION PLAN 2009-2011 BIENNIUM

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August 24, 2008

Katherine T. Manglona-Santos  
Program Manager  
Governor's Affirmative Action Office  
155 Cottage Street NE  
Salem, OR 97301

Subject: Board of Nursing Affirmative Action Plan

Ms. Manglona-Santos:

I'm please to submit our 2009-2011 Affirmative Action Plan to your office. This agency is committed to maintaining and strengthening the affirmative action standards already established as we move onto the goals outlined in this plan.

Our agency is setting goals for 2009-2011 that will help provide tools and support to make our staff more successful by developing skills and abilities in cultural competence. I am committed to leading our agency and undertaking the responsibilities in this plan and I look forward to the challenge of creating and maintaining a diverse workforce to serve the public in the state of Oregon.

Respectfully,

Holly Mercer, J.D.  
Executive Director  
Oregon State Board of Nursing

## 2. Agency Summary

### A. Mission Statement:

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

### B. Agency Overview:

The nine Board members are appointed by the Governor and include: two public members, four Registered Nurses, two Licensed Practical Nurses, and one Nurse Practitioner. The four RN members represent various areas of nursing practice as follows; one nurse educator, one nurse administrator, and two direct-care non-supervisory nurses. They also represent a variety of geographic locations. Board members may serve a maximum of two three-year terms.

The OSBN meets regularly throughout the year, holding five two-day, in-person meetings and six teleconferenced meetings. Special meetings are held as necessary. Board meetings are open to the public. The OSBN employs a staff of 42 who assist Board Members in carrying out the Board's mission and regulatory responsibilities.

The Board of Nursing, with the help of its staff, determines licensure and certification requirements; interprets the Oregon Nurse Practice Act; evaluates and approves nursing education programs and nursing assistant training programs; issues licenses and renewals; investigates complaints and takes disciplinary action against nurses and nursing assistants who violate the Oregon Nurse Practice Act; maintains the nursing assistant registry; and, administers nursing assistant competency evaluations.

There are approximately 69,000 licensees under the jurisdiction of the Board. The types of nursing occupations licensing/certified in Oregon are: Registered Nurse, Licensed Practical Nursing, Nurse Practitioners, Certified Nurse Anesthetists, Clinical Nurse Specialists, Certified Nursing Assistants and Certified Medication Aides. After initial licensure, licensees are required to renew their licenses every 2 years. The staff investigates more than 700 complaints about licensees each year. As the agency regulating Oregon nursing practice and standards, the Board takes disciplinary action to protect the public from unqualified persons or unprofessional conduct by persons licensed to practice nursing or carry out supporting nursing tasks in the state of Oregon.

### C. Executive Director for the Oregon State Board of Nursing:

Holly Mercer, J.D.  
17938 SW Upper Boones Ferry Road  
Portland OR 97224-7012  
(971) 673-0639

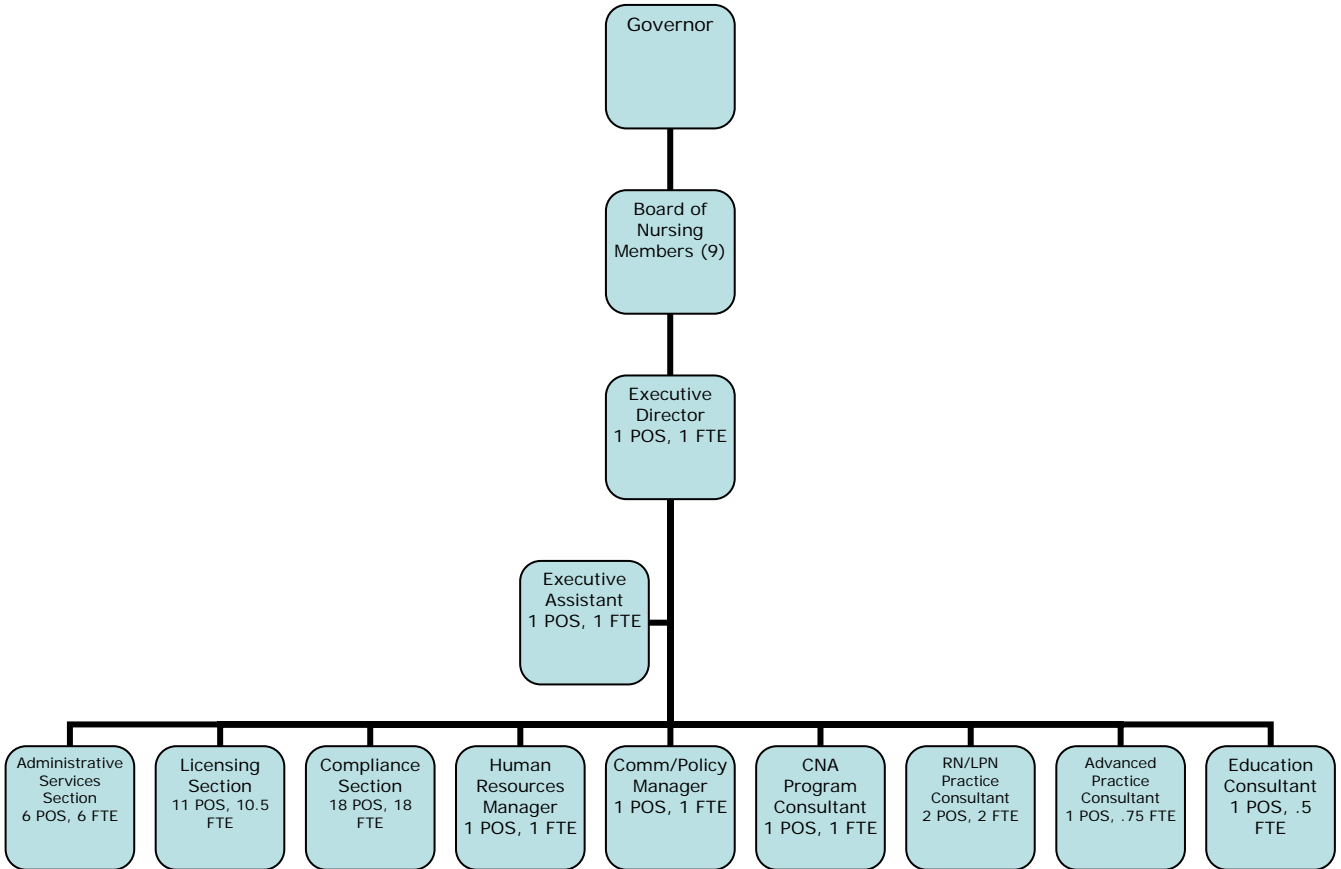
### D. Governor's Policy Advisory for the Oregon State Board of Nursing:

Claudia Black, (503) 378-6549

### E. Affirmative Action Representative for the Oregon State Board of Nursing:

Becky Hedges, Human Resources Manager, (971) 673-0641

F. Organizational Chart



### **3. Affirmative Action Plan**

#### **A. Affirmative Action Policy**

##### **Introduction**

The purpose of this plan is to update and maintain the previously initiated affirmative action plan for the Board of Nursing to comply with the directive of the Governor; state and federal laws and regulations; Executive Orders of the President of the United States of America concerning affirmative action; discrimination/non-discrimination guidelines appropriate under the Civil Rights Act; Equal Employment Opportunity (EEO) policies; and the American with Disabilities Act by which our good faith efforts must be directed.

##### **Affirmative Action Plan Statement**

It is the policy of the Board of Nursing that no person shall be discriminated against or harassed on the basis of race, color, national origin, religion, gender, age, marital status, sexual preference, disability or any reason prohibited by state or federal law. Nor shall the Board do business with any vendor/provider who discriminates or harasses on the basis previously described. All personnel actions concerning agency employees, or potential employees, and all business actions, specifically licensing and disciplinary actions concerning licensees, shall be administered according to this policy.

The Affirmative Action Policy shall be adhered to by all staff of the Board of Nursing. Supervisory and management staff, in particular, shall assure that the intent, as well as the stated requirements, is implemented in all employee relationships and personnel practices. In addition, it is the duty of every employee of the Board to create a job environment which is free of any form of discrimination and discriminatory harassment. The application of this policy, and maintenance of current EEO/AA law, is the individual responsibility of all supervisory and management staff, and each shall be evaluated on his/her performance in applying and achieving this affirmative action plan.

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

The Board shall maintain this plan of affirmative action to provide for a method of eliminating any effects of past or present discrimination, intended or unintended, which are indicated or may be indicated by analysis of present employment patterns, practices, and policies.

The Board of Nursing's affirmative action plan, effective since 1993, shall be evaluated annually or as needed when federal or state law changes or executive orders are issued.

B. Contracts to Minority Businesses (ORS 659A.015)

The Board of Nursing does not have any contracts that exceed \$5,000 with minority businesses. Our contracts are with subject matter experts for testimony or defined technology projects.

C. Training, Education and Development and Schedule of:

1. Staff and Board Members

New employees receive orientation upon hire as to their rights and responsibilities under State and Agency policies on affirmative action, harassment, discrimination, reasonable accommodation, workplace violence and smoke free environment policies. All employees may access the affirmative action and agency policies on the agency's intranet, through human resources and through agency management.

Additional training is provided from Human Resources to managers who are interviewing, hiring and supervising employees. The Human Resources manager coordinates recruitment processes and participates in all agency interviews to ensure equal opportunity and non-discrimination.

As a result of the agency's re-organization in 2007 and into 2008, new executive management is committed to provide all staff annual training in the areas of affirmative action, equal opportunity, diversity and harassment. Training may include speakers at staff meetings, formal classes offered within the State, outside sources, and individual training within the agency by human resources.

Implementation of annual performance evaluations in 2008 for management added accountability and performance expectations in affirmative action. Orientation for new Board members in 2008 will include review of the agency's Affirmative Action Plan and policies and information on the availability of the agency's plan for public access. Board members will receive periodic reports from the Executive Director on AA progress, activities and training.

2. Volunteers

Volunteers serve at the Board of Nursing in rare occasions, generally for a short-term project-based assignment, such as an internship. The agency policy on volunteers includes a State agreement that must be signed to mitigate liability, primarily related to physical injury. The agency will modify this agreement in 2008 by adding a statement informing volunteers of affirmative action policies and provide affirmative action information at volunteer orientation through the agency manager at the time the volunteer initially reports for their volunteer assignment.

### 3. Providers

The Board of Nursing does not have any direct providers.

### 4. Vendors

Any contractual agreements awarded through the RFP process include requirements to adhere to State and agency non-discrimination policies.

## D. Status of Cultural Competency Assessment/Implementation

As part of the 2009-2011 Affirmative Action Plan, the agency will research and evaluate resources needed to develop a manager's reference tool for cultural competency and diversity. This tool will promote self-awareness, cross-cultural knowledge and skills, advocacy and leadership to facilitate a more diverse workforce.

As budget and time allows, the agency will actively promote and educate management on cultural competency supported by accountability measures through annual performance reviews. During the 2009-2011 biennium, the agency goal is to complete cultural competency self-assessments, provide resources to develop skills and practices that integrate cultural competency where the agency leadership responds respectfully and effectively to people of all cultures, languages, classes, races, ethnic backgrounds, disabilities, religions, genders, sexual orientation and other diversity factors in a manner that reaffirms and values individual worth and preserves the dignity of all.

The agency will continue to practice good faith efforts to reach affirmative action goals and carry out the agency's plan by ensuring accessibility to written policies/plans and that resources are available to all employees, board members, potential employees, the public and vendors; resolve potential or perceived discrimination issues; identify and provide training when possible; take steps to diversify the agency's workforce through recruitment efforts; and foster an environment that encourages sharing cultural differences.

## E. Programs

In the course of doing business, the agency has the opportunity to promote an environment and concepts that encompasses acceptance and respect through daily business activities in licensing, customer service, administration, policy and investigations and compliance by:

- Create a welcoming environment, in person or by telephone, by fostering an acceptance of people's differences and treating everyone with respect and professionalism whether they are a co-worker, licensee, an employer, a state agency/official or the general public.

- Seek to remove any cultural barriers and be open to recommendations both from internal and external sources.
- Conduct outreach and educational efforts about the Board within government and the healthcare community that promotes the agency as a respectful organization charged with ensuring public safety that is consistent and fair in the application of all regulations and actions.
- Communicate the agency’s commitment to Affirmative Action by publicly posting the AA plan on the agency website, offering accommodation as appropriate, and throughout recruitment activities.

#### **4. Roles for Implementation of Affirmative Action Plan**

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

###### **1. Executive Director**

- Foster and promote the importance of a diverse and discrimination/ harassment free workplace.
- Meet annually with Human Resources Manager to review affirmative action plan goals and strategize on meeting goals.
- Ensure Board Members understand they are responsible for participating in and promoting affirmative action activities and for evaluation of the effectiveness of the Executive Director’s role in affirmative action through the annual performance evaluation process.
- Ensure managers understand they are responsible for participating and promoting affirmative action activities and for communicating this same responsibility to subordinates. Evaluate the effectiveness of each manager in promoting affirmative action through the annual performance evaluation process as stated in 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, handicap or age, every state agency shall be required to include in the evaluation of all management personnel the manager's or supervisor's effectiveness in achieving affirmative action objectives as a key consideration of the manager's or supervisor's performance."*
- Act in a timely manner if aware of any Board employee engaging in any type of harassment or discrimination.

###### **2. Executive Assistant**

Include contact information for accommodations in all communications for public meetings.

### 3. Communications and Policy Manager

- Promote diversity and affirmative action wherever possible in agency publications and websites.
- Ensure newsletter content about employees is non-discriminatory in their portrayal of employees' gender, ethnic heritage, disability, or other non job-related characteristics.

### 4. Program Executives, Managers and Nurse Consultants

- Foster and promote the importance of a diverse, and discrimination/ harassment free workplace.
- Keep abreast of policies and attend training related to affirmative action.
- Provide or encourage educational opportunities to all staff.
- Make the agency's affirmative action plan and policies available to staff, employment applicants and vendors.
- Utilize vendors who meet the affirmative action requirements, generally vendors who have secured a state contract to provide services to state agencies. For periodic contractual services, ensure contractors are aware of and carry out agency affirmative action policies.
- Act responsibly and timely once aware of **any** employee engaging in any type of harassment or discrimination. Work with Human Resources to resolve issues.
- Ensure actions and behaviors are non-discriminatory during the employment selection process.

### 5. Human Resources Manager/Affirmative Action Representative

- Work with the Executive Director and managers to ensure they understand their responsibilities for promoting a diverse workforce environment that is harassment and discrimination free and develop tools and orientation for staff and board members.
- Emphasize the Board's equal opportunity, affirmative action, and diversity policies; communicate such in job announcements, advertisements and other recruitment communications.
- Identify and provide training and resources for managers on affirmative action, discrimination/harassment and reasonable accommodation.
- Support agency efforts to provide upward mobility opportunities, career development and recruitment of minorities.
- Ensure affirmative action plan and related policies are current and accessible to all employees and included in new hire orientation.
- Review and investigate any complaint related to affirmative action in a timely manner and take appropriate action.
- Facilitate reasonable accommodation efforts and provide resources as needed.

- Ensure recruitment processes are fair and free from discrimination, fostering a welcoming environment to attract a diverse workforce.
- Serve as agency liaison between the state and federal agencies that protect civil rights.

6. All Agency Employees

- Attend affirmative action and other diversity related training to stay informed of current issues.
- Ensure actions and behaviors during any contact with co-workers and the public are non-discriminatory.
- Report any harassment or discrimination immediately.

**5. 2007 – 2009 Accomplishments, Progress Made/Lost**

A. Accomplishments

- Reviewed and revised Affirmative Action plan and policies.
- Utilized state employment opportunity methods to recruit on the web and in diversity newspapers as resources allowed.
- Since June 2004, staff representation increased by 2 in people of color and by 2% for men.
- No discrimination or harassment complaints received 2005-2007.
- Continued to publicize affirmative action plan/policies; orient new staff to responsibilities and policies; and include contact information for accommodation on public notices for Board meetings.
- New management with less than 4 years of management experience attended State management training that includes diversity and affirmative action components.
- Increased visibility of diversity calendar for all staff.
- Used qualified rehabilitation facilities for temporary workers when possible.
- Introduced alternate work schedules for staff early in 2008.
- All qualified prospective employees were treated equally in recruitments; additional time to respond or read materials was given as requested/needed to candidates during interviews.

B. Progress made or lost since previous biennium

- Advertising in local diversity papers was limited due to budget.
- Education, training and increased relationship building with State Affirmative Action office and other agencies was limited due to available fiscal and human resources.
- Analysis and recommendations to increase awareness, research of affordable training and resources was limited due to agency business changes and fiscal resources.

- During the 2005-07 biennium, a higher number of qualified minority applicants were interviewed (19 out of 90 applicants, approximately 20%); of the 15 recruitments, 2 minorities were hired.
- Since the agency move in July 2007, initial analysis indicates a more diverse applicant pool.
- Two board positions remain filled by minorities.

**Staff Data**

Category	June 30, 2006	January 31, 2007	December 30, 2007	Comments
People of Color	4	5	6	Turnover & office relocation resulted in a more diverse applicant pool
Women	37	37	38	The majority of candidates were female
Accommodation	1	0	0	No applicant disclosure

**Recruitment Data** (based on applicant disclosure)

Biennium	Number of Recruitments	Total Applicants	Number of POC Applicants	Number of POC Hired
2005-2007	15	90	19 (Interviewed)	2
7/1/2007-6/30/08	11	124	17	1

**6. 2009 – 2011 Goals and Strategies for Implementation**

A. Goals

- Educate, support and foster cultural competency among agency management. Research and evaluate resources needed to develop a manager’s reference tool for cultural competency and diversity. Develop a management tool to promote self-awareness, cross-cultural knowledge and skills and leadership to facilitate a more diverse workforce.
- As budget and time allows, ensure management completes cultural competency self assessments and provide resources to develop skills and practices that integrate cultural competency where the agency leadership responds respectfully and effectively to people of all cultures, languages, classes, races, ethnic backgrounds, disabilities, religions, genders, sexual

orientation and other diversity factors in a manner that reaffirms and values individual worth and preserves the dignity of all.

- Actively promote and educate management on cultural competency supported by accountability measures through annual performance reviews.
- Continue to practice good faith efforts to reach affirmative action goals and carry out the agency's plan by ensuring accessibility to written policies, plans and resources are available to all employees, board members, potential employees, the public and vendors; resolve potential or perceived discrimination issues; identify and provide training when possible; take steps to diversify the agency's workforce through recruitment efforts; and foster an environment that encourages sharing cultural differences.
- Use daily opportunities to promote an environment and concepts that encompass acceptance and respect in business activities in licensing, customer service, administration, policy and investigations and compliance by:
  - Create a welcoming environment, in person or by telephone, by fostering an acceptance of people's differences and treating everyone with respect and professionalism whether they a co-worker, licensee, an employer, other state agency/official or the general public.
  - Seek to identify and remove any cultural barriers in agency business practices, including employment, and be open to recommendations both from internal and external sources.
  - Analyze processes and data to make effective changes in agency's affirmative action strategies.
- Facilitate outreach and educational efforts about the Board within government and the healthcare community that promotes the agency as a respectful organization charged with ensuring public safety that is consistent and fair in the application of regulations and actions.
- Continue to evaluate accommodations for employees, licensees and visitors and facilitate those that are reasonable.
- Revise and strengthen staff and Board member orientation in Affirmative Action.
- Review and revise policies related to workforce development and performance evaluation tools.

## B. Strategies and Timelines for Implementation

**August 2008:** Executive Director to present 2009-2011 Affirmative Action Plan to all employees and Management Assistant sends Plan via email to Board members.

**December 2008:** Human Resources Manager and Executive Director to refine performance evaluation tools, including affirmative action expectations.

**February 2009:** Human Resource Manager, in conjunction with DAS resources and Affirmative Action Office, to identify, research and recommend training for management staff and the Board.

**June 2009:** Human Resources Manager to review and revise applicable policies.

**September 2009:** Provide Affirmative Action training for management and staff based on available resources. Specific focus of training to be on workplace harassment and cultural diversity/competency.

**December 2009:** Human Resources Manager to research and evaluate resources needed to develop manager's reference tool for cultural competency and diversity. Make recommendation to Executive Director and develop tool.

**January 2010:** Communications & Policy Manager and Executive Director review and evaluate communications and implement actions to remove identified barriers. Update the Board on Affirmative Action plan progress.

**February 2010:** Human Resources Manager and Executive Director to distribute manager's reference tool, provide education and a timeline for self assessment completion.

**March 2010:** Human Resource Manager and Executive Director to review self assessments with managers; analyze processes and data to make effective changes in support of affirmative action.

**Ongoing:** Continue to practice good faith efforts to reach affirmative action goals and carry out the agency's plan by ensuring accessibility to written policies, plans and resources are available to all employees, board members, potential employees, the public and vendors; resolve potential or perceived discrimination issues; identify and provide training when possible; take steps to diversify the agency's workforce through recruitment efforts; and foster an environment that encourages sharing cultural differences. Refer to Goals under 6 A of this plan.

## 7. Appendix A – Agency’s Policy Documentation

### A. Reasonable Accommodation Policy

#### OREGON STATE BOARD OF NURSING ADMINISTRATIVE POLICIES

**Date:** October 1993  
**Title:** Reasonable Accommodation  
**Category:** Human Resources  
**Approval:** Signature on file in Human Resources

#### **Policy Statement:**

It is the policy of the Board of Nursing, to provide reasonable accommodation to persons with disabilities, as set forth in the American’s with Disabilities Act of 1990 and in State law. Reasonable accommodation will be made for employees or potential employees, in regard to all personnel related actions, unless it can be shown that to do so would create an undue hardship on the operations of the agency or pose a direct threat to the health or safety of other individuals. The Agency will provide necessary auxiliary aids to disabled recipients of services to enable them to full access to the services, programs and activities of the agency unless it can be shown to do so would create an undue hardship on the operations of the agency or pose a direct threat to the health or safety of other individuals.

These guidelines and procedures establish a collaborative process by which the Board of Nursing provides reasonable accommodation for people with disabilities. No specific form of accommodation is guaranteed for all individuals with a particular disability or for all individuals in a particular job. The process of identifying whether and to what extent reasonable accommodation is required should be made on a case by case basis and should involve both the agency and the requestor.

#### **Policy Clarification**

- Under the ADA, an accommodation is any change, modification or adjustment of the work environment which enables individuals with disabilities to enjoy equal employment opportunities. There are three categories of Reasonable accommodations:
  - a. modifications or adjustments to the job application process that enable qualified applicants with disabilities to be considered for the desired position;
  - b. modifications or adjustments to the work environment, or to the manner or circumstances under which the position held or desired is customarily

performed, that enable qualified individuals with disabilities to perform the essential functions of that position; and

- c. modifications or adjustments that enable individuals with disabilities to enjoy the benefits and privileges of employment that are enjoyed by employees without disabilities.

- For dealings with clients, applicants and the general public, including public hearings, Reasonable accommodation is defined as action, reasonable possible in circumstances, to make the regular services of a public place accommodation accessible to persons who otherwise could not use or fully enjoy the services because of the person's sensory, mental or physical limitation. When circumstances are such that Reasonable accommodation is not sufficient to allow the person of disability "full enjoyment of" the activity in question, the agency is required to provide an arranged service.
- Disability – a physical or mental impairment that substantially limits one or more major life activities
- Qualified Individual with a Disability – a person who meets legitimate skill, experience, education, or other requirements of an employment position that he or she holds or seeks, and who can perform the essential functions of the position with or without reasonable accommodation.
- Impairments that Limit Major Life Activities – includes seeing, hearing, speaking, walking, breathing, performing manual tasks, learning, caring for oneself and working.
- Arranged Service – making the services or goods of a place of public accommodation available to a disabled person at a place or in a way that is different from the place or way that the service is offered to the public in general, in order to serve the person.
- Auxiliary Aids – services or devices that enable persons with disabilities to have an equal opportunity to participate in, or enjoy the benefits of, programs or activities conducted by the agency. Auxiliary aids include readers, Braille material, audio recordings, sign language interpreters, or assistive listening devices.
- Undue Hardship – is an action requiring significant difficulty or expense by the employer. Factors to be considered in determining undue hardship include the nature and cost of the accommodation in relation to size, resources, type, and structure of the employer.
- Direct threat to safety – a significant risk to the health or safety of others that cannot be eliminated by reasonable accommodation.
- Essential job functions – those activities of a job that are the core to performing the job and those activities are the reason for the job's existence.

## Procedure

Applicant/Employee/Service Recipient:

It is the responsibility of the person seeking accommodation or auxiliary aids to inform the agency of the need for accommodation. The person with the disability must initiate the request for accommodation, and must cooperate in any ensuing discussion and evaluation. The person may use “plain English” and need not mention the ADA or use phrases like “with reasonable accommodation” in their request.

Human Resources or an appropriate management designee will:

1. Determine whether or not the person has a disability that qualifies under the ADA through interactive dialogue with the person, the supervisor, and other accommodation specialists as necessary.
2. For employees and potential employees: Ensure that the person is qualified to perform the essential functions of the job with or without reasonable accommodation. In some circumstances, medical documentation from the person’s healthcare provider may be needed for final determination.
3. Determine if a reasonable accommodation can be made so that the individual can perform the essential functions of the job or if alternative methods, services or devices will enable the person to perform essential functions of the job **or** receive agency services **or** participate in agency activities.
4. Through a collaborative process, explore and determine the most effective accommodation(s).
5. Determine if the reasonable accommodation is feasible or would pose an undue hardship or direct threat to safety.
6. Implement accommodation(s) and notify requestor of ability or inability to provide accommodation.
7. Ensure these processes are done within a reasonable time period and that the requestor is informed throughout the process of the status of their request.

### **Confidentiality**

Information obtained during the reasonable accommodation process regarding the medical condition or history of the person shall be held confidential as medical records, with these exceptions:

- Managers and supervisors may be informed regarding necessary accommodations.
- First aid and safety personnel may be informed, where appropriate, if the impairment might require emergency treatment, or if accommodations need to be made for the safe evacuation of the building.
- Government official investigation compliance with Section 504 of the Rehabilitation Act, or the Americans with Disabilities Act, shall be provided relevant information upon request. To ensure confidentiality, all information concerning persons will be maintained by Human Resources in confidential files separate from their personnel file.

### **Appeal Process**

Any person who believes they have been discriminated against because the Board of Nursing failed to provide reasonable accommodation may file a written complaint with the Agency Executive Director or the Human Resources Manager. All reported incidents will be investigated promptly, thoroughly, impartially, and discreetly. The outcome of the investigation will be sent to the complainant, in writing, within 30 days of receipt of the written complaint.

Formal appeals may also be filed with the state's Affirmative Action Office, the Bureau of Labor and Industries, the Equal Employment Opportunity Commission, or the United States Department of Labor, Office of Civil Rights.

### **Training and Technical Resources**

The agency will provide training to all management personnel and any personnel who may have contact with the public or contact with individuals who may need accommodation. Training will occur upon initial hire and when changes are made to this policy or to applicable laws. Personnel who work with 1) personnel actions and employees, or potential employees; 2) the public seeking services from the agency or participation in public activities; and 3) potential licensees who must take an examination to become licensed will receive training on a regular basis. This policy is accessible and kept current for employee and public access via the Web and in the agency's lobby in addition to statements encouraging contact for reasonable accommodation in appropriate agency communication (such as Board meeting notices).

Agency Human Resources will provide technical consultation and assistance that includes: 1) Language interpreters and /or alternative communication resources; 2) Referral, references or review by other appropriate accommodation specialists such as Office of Civil Rights, US Department of Labor; Oregon Commission for the Blind; Oregon Division of Vocational Rehabilitation; Oregon Disabilities Commission; Oregon Governor's Affirmative Action Office; State Labor Relations; Oregon Department of Justice; Oregon BOLI Technical Assistance and other appropriate resources as appropriate to individual cases.

**Policy History:** 1993, 1995, 1997, 2005

**Authority/References:** Rehabilitation Act of 1973; Civil Rights Act of 1991; ORS 182.100; 243.305; 243.315; 659.025; 240.379; 659.400, 405, 425, 433.045, 447.233; OSBN Affirmative Action Plan, The Americans with Disabilities Act (ADA) of 1990 and public sector provision (Title II) in 1992, and FED.42 U.S.C. 121S121.01

**Review by:** Annually or as needed when federal or state law changes.

**For more information contact:** Agency Human Resources Manager

B. Discrimination and Harassment Free Workplace

**OREGON STATE BOARD OF NURSING  
ADMINISTRATIVE POLICIES**

**Date:** March 2005

**Title:** Harassment in the Workplace

**Category:** Human Resources

**Approval:** Signature on file in Human Resources

**Purpose and Scope:**

To reaffirm that it is the policy of the Board of Nursing to prohibit discrimination and workplace harassment; to clarify conduct that constitutes workplace harassment; and to provide an effective complaint procedure for employees who believe they have been the victims of prohibited conduct. This policy is intended to protect employees of whatever stature, customers or clients of the agency, contractors and visitors to the work site.

**Policy Statement:**

(a) Discrimination. It is the policy of the Board of Nursing to provide a work environment free from unlawful discrimination on the basis of race, color, religion, gender, marital status, national origin, disability, age, union membership and activity, or any other factor that an employer is prohibited by law from considering when making employment decisions. For purposes of this policy, prohibited discrimination includes discrimination on the basis of sexual orientation. This policy applies to all matters relating to hiring, firing, transfer, promotion, benefits, compensation, and other terms and conditions of employment.

(b) Workplace Harassment. It is also the policy of the Board of Nursing that all employees, customers, clients, contractors and visitors to the work site enjoy a work environment that is free from harassing behavior. Employees at all levels of the organization are expected to conduct themselves in a business-like and professional manner at all times and refrain from sexual and other harassment.

(c) Penalties. Conduct in violation of this policy will not be tolerated, and may result in disciplinary action up to and including dismissal. 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, corrective action, are subject to disciplinary action up to and including dismissal.

**Policy Clarification:**

(a) This policy prohibits discrimination or harassing behavior based on or because of a person's nation origin, age, gender, race color, disability, religion, a person's sexual orientation or protected activity.

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

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

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

c) The following are examples of prohibited behavior (it should be understood that the examples are not meant to be all-inclusive and even one instance of such conduct may constitute harassment):

(A) unwelcome touching or closeness of a personal nature, which can encompass leaning over, cornering or pinching;

(B) sexual innuendoes, teasing and other sexual talk such as jokes, intimate inquiries, persistent unwanted courting and put-downs or insults;

(C) derogatory remarks, slurs and jokes about a person's national origin, race, color, religion, language, accent, disability or sexual orientation.

(D) displays of explicit or offensive calendars, posters, pictures, drawings or cartoons which reflect disparagingly upon a class of persons or a particular person.

### **Nonretaliation**

This policy prohibits retaliation against employees who bring charges of conduct in violation of this policy or assist in investigating charges, or who report harassing behavior directed at persons other than the employee. Any employee found to have engaged in retaliatory action or behavior will be subject to discipline, up to and including dismissal.

### **Grievance/Complaint Procedure**

a) For discrimination. Anyone who is subject to, or aware of, what he or she believes to be employment-related discrimination may file a complaint with his or her

immediate supervisor, another manager, or with Human Resources. The complaint should be written unless the complainant, due to disability, is unable to file a written complaint. The complaint should be filed with the agency within 30 calendar days of the alleged act.

Complaints should include the name of the complainant, the name of the persons 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 remedy the employee desires.

b) For harassment. Anyone who is subject to or is aware of harassing behavior should report that information immediately to agency management. If at all possible, the report should be made before the behavior becomes severe. The report may be made orally or in writing to the employee's immediate supervisor or to any other management staff member. If the employee prefers, the report may be given to a manager outside that complainant's work unit or to Human Resources. All supervisors and managers will report complaints and incidents immediately to the appropriate officials.

c) Investigation. The recipient of a discrimination or harassment complaint shall promptly forward it to Human Resources, which will coordinate, or delegate responsibility for coordinating, the agency's investigation in consultation with the affected employees' supervisors, excluding any supervisor who is potentially part of the problem. The complaint will be given prompt and thorough attention with an impartial investigation. If the complaint is substantiated, immediate and appropriate corrective action will be taken. The affected parties shall be informed that the investigation has concluded and that immediate appropriate corrective action will be taken. All personnel can be assured that complaints will be taken seriously and will be investigated as necessary. They will be dealt with in a discrete and confidential manner to the extent possible.

Nothing in this process precludes any person from filing a formal grievance in accordance with a collective bargaining agreement or with the Bureau of Labor and Industries (BOLI) or the Equal Employment Opportunity Commission (EEOC). Timelines for filing complaints with BOLI and the EEOC are different from those established in this policy. Contact them directly for specific guidance on filing a formal grievance with them.

**Authority/References:** Executive Order 05-01; HRSD Policy 50.010.01; ORS: 240.086(1), 145(3), 250.306(1), 316(4), 321, 555,560, 243.305, 243.315, 659.030(1); Title VII, Civil Rights Act 1964; SEIU/OPEU Collective Bargaining Agreement Articles 20, 21, 22, 22T, 44, 45

**Review:** Annually or as needed when federal or state law changes or executive orders are issued.

**For more information contact:** Agency Human Resources Manager

C. Employee Training Policy

**OREGON STATE BOARD OF NURSING  
ADMINISTRATIVE POLICIES**

**Title:** Staff Development

**Category:** Human Resources

**Approval:** Signature On-File in Human Resources

**Policy Statement:**

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

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

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

Approval of training requests will be based upon the following:

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

**Policy Clarification**

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

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

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

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

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

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

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

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

3. Career Development: Training which provides employees with an opportunity for self-improvement/development and is not necessarily related to the employee's current job or agency but could be applied in another agency within the State (certificate and degree programs).

OSBN may pay a portion of the tuition for employee career development offerings that are consistent with agency workload requirements and fiscal restraints, however, the agency will not pay for materials or expenses. College courses are limited to regional accredited institutions.

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

Eligibility: All where not in conflict with the collective bargaining contract.

### **Procedure for implementation:**

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

1. Upon identification of a training opportunity, the employee completes a Training/Staff Development Request Form (Attachment A) and consults with their

manager to assure that their request is consistent with agency policy. Identification of training category (job-required vs. job-related vs. career development) should also be discussed. If policy and fiscal criteria met, manager takes request to weekly management meeting for review and approval. Employee should keep a copy of the request and training information (brochure, etc.). If disapproved, a copy of the request shall be placed in the supervisory folder for the employee.

2. If an out-of state request, refer to agency out-of-state Travel Policy and follow its guidelines. The out-of-state authorization is to be electronically transmitted.
3. If approved, the following will occur:
  - a. The manager will notify the employee by returning the approved Staff Development requested form to the employee.
  - b. The Training/Staff Development Request Form and Out-Of-State Travel Authorization Form will be forwarded to the Business Manager. The employee is responsible for making arrangements for employee registration in the program/course and will initiate payment procedures.

Methods of Payment:

When possible, employees are to use the agency credit card to pay for registration. If a credit card is not accepted by the training vendor, the employee will submit a request for payment with the registration form to the Business Manager. In either case, prior written approval must be obtained before funds are committed. If prior approval is not obtained prior to class enrollment, the employee may be obligated to pay for the training.

- c. The employee shall make final travel and lodging arrangements.
  - d. The employee shall ensure that the information is placed on the office calendar.
4. When training is completed, it is the employee's responsibility to give a copy of program completion or CEU certificate to the Personnel Officer for entry into the agency staff development database record.

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

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

**Review:** Annually

**For more information contact:** Management

## D. Veteran's Preference in Employment

### **105-040-0015**

#### **Veteran's Preference in Employment**

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

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

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

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

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

(2) Application of preference points upon Initial Application Screening: Qualifying Veterans whose discharge date is less than 15 years from the date of State employment application and Disabled Veterans are provided with preference points as follows;

(a) Five Veteran's Preference points are added upon Initial Application Screening when an applicant submits as verification of eligibility a copy of the Certificate of Release or Discharge from Active Duty (DD Form 214 or 215) with the State of Oregon Application; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Stat. Auth: ORS 240.145(3), 240.250 Stats. Implemented: ORS 408.225, 408.230, 408.235 Hist.: HRSD 3-2007(Temp), f. & cert ef. 9-5-07 thru 3-3-08; HRSD 1-2008, f. 2-27-08, cert. ef. 3-1-08

## **8. Appendix B**

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

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

It is also unlawful to retaliate against an individual for opposing employment practices that discriminate based on age or for filing an age discrimination charge, testifying, or participating in any way in an investigation, proceeding, or litigation under the ADEA. The ADEA applies to employers with 20 or more employees, including state and local governments. It also applies to employment agencies and labor organizations, as well as to the federal government. ADEA protections include:

#### **Apprenticeship Programs**

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

#### **Job Notices and Advertisements**

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

#### **Pre-Employment Inquiries**

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

### **Benefits**

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

### **Waivers of ADEA Rights**

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

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

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

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

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

An individual with a disability is a person who:

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

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

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

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

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

Title I of the ADA also covers:

### **Medical Examinations and Inquiries**

Employers may not ask job applicants about the existence, nature, or severity of a disability.

Applicants may be asked about their ability to perform specific job functions. A job offer may be conditioned on the results of a medical examination, but only if the examination is required for all

entering employees in similar jobs. Medical examinations of employees must be job related and consistent with the employer's business needs.

**Drug and Alcohol Abuse**

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

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

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

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

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

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

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

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

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

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

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

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

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

## **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.

## ***D. National Origin Discrimination Title VII of the Civil Rights Act of 1964***

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

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

## **About National Origin Discrimination**

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

### Employment Decisions

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

### Harassment

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

### Language

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

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

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

## Coverage of foreign nationals

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

### ***E. Pregnancy Discrimination Title VII of the Civil Rights Act of 1964***

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

Title VII's pregnancy-related protections include:

#### **Hiring**

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

#### **Pregnancy and Maternity Leave**

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

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

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

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

#### **Health Insurance**

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

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

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

## **Fringe Benefits**

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

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

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

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

## ***F. Race/Color Discrimination Title VII of the Civil Rights Act of 1964***

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

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

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

Title VII's protections include:

### **Recruiting, Hiring, and Advancement**

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

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

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

### **Harassment/Hostile Work Environment**

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

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

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

### **Segregation and Classification of Employees**

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

### **Retaliation**

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

## ***G. Religious Discrimination Title VII of the Civil Rights Act of 1964***

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

Under Title VII:

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

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

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

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

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

restrictions on religious expression than on other forms of expression that have a comparable effect on workplace efficiency.

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

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

## ***H. Retaliation Title VII of the Civil Agency Affirmative Action Policy***

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

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

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

### **Adverse Action**

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

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

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

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

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

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

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

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

### **Covered Individuals**

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

national origin, age, or disability. Individuals who have a close association with someone who has engaged in such protected activity also are covered individuals. For example, it is illegal to terminate an employee because his spouse participated in employment discrimination litigation.

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

### **Protected Activity**

Protected activity includes:

#### **Opposition to a practice believed to be unlawful discrimination**

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

Examples of protected opposition include:

Complaining to anyone about alleged discrimination against oneself or others;

Threatening to file a charge of discrimination;

Picketing in opposition to discrimination; or

Refusing to obey an order reasonably believed to be discriminatory.

Examples of activities that are NOT protected opposition include:

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

Unlawful activities such as acts or threats of violence.

#### **Participation in an employment discrimination proceeding.**

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

Examples of participation include:

Filing a charge of employment discrimination;

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

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

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

## ***I. Sex-Base Discrimination Title VII of the Civil Rights Act of 1964***

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

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

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

### **Sexual Harassment**

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

### **Pregnancy Based Discrimination**

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

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

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

## ***J. Sexual Harassment Title VII of the Civil Rights Act of 1964***

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

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

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

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

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

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

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

The harasser's conduct must be unwelcome.

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

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

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

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