



Oregon

John A. Kitzhaber, MD, Governor

Teacher Standards and Practices Commission

465 Commercial St NE

Salem, OR 97301-3414

(503) 378-3586, (503) 378-4448 FAX

September 1, 2011

Frank Garcia, Director
Governor's Diversity and Inclusion Office
255 Capitol Street, NE ~ Suite 126
Salem, OR 97301

RE: Teacher Standards and Practices Commission Affirmative Action Report

Dear Mr. Garcia:

You will find enclosed it the revised Affirmative Action report for the Oregon Teacher Standards and Practices Commission.

Please let me know if you have any questions about the report.

Sincerely,

Victoria Chamberlain
Executive Director

Cc: file



TEACHER STANDARDS AND PRACTICES COMMISSION

Victoria Chamberlain, Executive Director
465 Commercial Street NE
Salem, Oregon 97301
503-373-1260

AFFIRMATIVE ACTION PLAN
2011-2013 Biennium
(Revised September 1, 2011)

Teacher Standards and Practices Commission

Affirmative Action Plan 2011-2013 Biennium

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OREGON TEACHER STANDARDS AND PRACTICES COMMISSION

I. DESCRIPTION OF AGENCY

A. Mission and Objectives

Mission: To establish, uphold and enforce professional standards of excellence and communicate those standards to the public and educators for the benefit of Oregon's students.

Objectives (Goals):

1. Establish high standards for educator preparation excellence and regularly review approved programs for delivery of adopted licensure standards.
2. Provide leadership for professional licensure standards including standards for: cultural inclusion; educator dispositions; subject-matter competency.
3. To provide timely high quality services to licensees, higher education, and the public.
4. Maintain and develop clear, concise and easy to understand administrative rules.
5. Establish high standards for educator professional conduct and regularly communicate those standards to the field.

B. Name of Agency Director/Administrator (and address)

Victoria Bianes Chamberlain
465 Commercial St. NE
Salem, OR 97301

C. Name of Governor's Policy Advisor for your agency (and phone number)

Ben Cannon
(503) 378-3072

D. Name of Affirmative Action Representative (and phone number)

Keith Menk, Deputy Director
(503) 378-3757

E. Organizational Chart (attached in Appendix)

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II. AFFIRMATIVE ACTION PLAN

A. Agency EEO/AA Policy Statement

It is the policy of the Teacher Standards and Practices Commission that no person be subjected to discrimination on the basis of race, national origin, religion, sex, age, disability, familial status, marital status or sexual orientation in any program, service or activity for which the Commission is responsible. The Commission will comply with the requirements of state and federal law concerning nondiscrimination and will strive by its actions to enhance the dignity and worth of all persons.

1. Enforcement

The affirmative action plan is enforced by the Commission in the evaluation of the Executive Director and the Executive Director's evaluation of managers and key staff. The criteria for performance evaluation does include evaluation of support for affirmative action, results in achieving agency goals and promotion of harassment free work environment.

If a complaint is filed, the Deputy Director (Human Resource Manager, Affirmative Action Representative) is charged with investigation of complaints. The Deputy Director is responsible for adherence to acceptable, nondiscriminatory investigative procedures and practices to ensure fair and objective investigation of complaints.

The Executive Director has set clear expectations that all managers and employees are responsible for implementation of the Affirmative Action Plan. These expectations are communicated to managers and employees via staff meeting, instructions to selection teams and in performance evaluations.

The agency publishes the Affirmative Action Plan through the Commission meeting process and on the agency website. This distributes the report and plan to all stakeholders, employees, and the general public. All employees have access to email and the Affirmative Action report. The Executive Director establishes the Affirmative Action plan as an agenda item to be reviewed and discussed in an open public meeting. The agency EEO/AA Policy is posted on the staff bulletin board and in the employee breakroom

Managers and supervisors are held accountable for any claims of discrimination and harassment through the performance evaluation process. The Executive Director is held accountable by the Commission who annually requests survey input from employees on the performance of the Executive Director.



Victoria Chamberlain
Executive Director

2010-2013 AFFIRMATIVE ACTION PLAN

III. B. Training, Education and Development Plan and Schedule

i. **Staff:** TSPC routinely provides training to staff and Commission members. The TSPC safety and wellness committee plans quarterly training available to all employees. Recent trainings sponsored by the safety committee have included first aid and CPR and wellness. In addition, the agency has supported cross-training between employees at all levels, giving the agency the ability to respond to various demands upon the system. TSPC has supported employees to attend the Willamette University Diversity Conference and Conversations for Equity in Education (CFEE) workshops. TSPC has also supported supervisory training for managers. Annually, managers are encouraged to participate in the cultural competency training, conferences or planning meetings, often conducted in cooperation with stakeholders.

TSPS is an agency of only 24 staff members (2.0 FTE Limited Duration;), so no succession plan has been developed. In an agency this small, it is important not to establish a perception of favoritism and preferential treatment. This contributes to the desire not to establish a formal or informal succession plan. Likewise, with limited staffing, career ladders are difficult to establish. All employees have the opportunity to apply for any advancement in the organization. The limited number of positions and the limitations of the state classification system does not afford many opportunities. TSPC has a positive track record of hiring from within, developing staff for promotions, and recruiting and selecting a diverse workforce.

Different units with the agency have regular staff meetings, varying from weekly to as needed. The management team meets biweekly. The agency generally conducts an all staff meeting and retreat annually, focusing on some particular training topic.

The Commission also has an annual professional development meeting. This is in addition to the training and orientation provided to new commissioners.

Employees' performance is reviewed annually. Information from commission meetings are posted on the agency website available to employees and the general public. Minutes from the safety and wellness committee are distributed agency wide to individual email accounts.

The Commission does review the agencies affirmative action report.

ii. **Volunteers:** The agency does not utilize volunteers as employees. The Commissioners, by appointment, are considered volunteers. As described above, the Commission is an important partner in the implementation, accountability and evaluation of the Affirmative Action Plan. The plan is discussed annually with the Commission and the Executive Director briefs the Executive Board of the Commission quarterly or as needed bases on employee issues. We conduct annual professional development training for commissions and the general public

iii. **Providers/ Vendors:** TSPC does not contract with outside vendors for services. Outside public and private entities can access the Affirmative Action via the agency's website.

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III. C. Programs: TSPC has no internship programs. The agency does not have a Community Outreach program either. TSPC does not have a specific diversity initiative program, with the exception of program and licensure activities. TSPC has been reviewing administrative rules establishing standards for cultural competency for educators and program requirements. The focus has been on creating a culturally competent workforce to ensure equity in the educational setting.

The Affirmative Action Plan is provided to all stakeholders, including higher education institutions, professional associations and the general public and license holders via the agency's website and the annual report to the Commission. The Commission works extensively with stakeholders on issues of diversity, affirmative action and cultural competency in the course of approving programs, establishing standards for educator licensure and in professional standards.

TSPC does not have an Internship program and does not plan to implement one at this point due to workload and staffing issues.

TSPC staff does attend several job fairs for educators annually. Staff also attends stakeholder conferences related to diversity and legal issues. TSPC also has a permanent representative on the Government to Government Education cluster working group with the nine recognized tribes of Oregon.

TSPC does not have a Diversity Initiative for employees. TSPC has been providing statewide leadership on establishing standards and assessments for licensed educators on civil rights laws and cultural competency.

III. D.

1. **Status of Cultural Competency Assessment/Implementation:** TSPC has not participated in the Statewide Cultural Competency Assessment and Implementation Services. The agency has no plans at this point to participate in the assessment because the limited number of employees in the agency.
2. **Statewide Exit Interview Survey:** TSPC has not participated in the Statewide Exit Interview Survey and has no plans at this point to participate in the survey because of the limited number of employees and low turnover rate.
3. **Performance Evaluations of all Management Personnel:** All TSPC managers are evaluated annually by the Executive Director. The Executive Director is evaluated annually by the commission. Affirmative action, diversity and inclusion are elements in all the evaluations.

III.E Status of Contracts to Minority Businesses (ORS 659A.015): TSPC has not participated in the Statewide Cultural Assessment and Implementation Service. The agency has no plans at this point to participate in the assessment.

IV. Roles for Implementing Affirmative Action Plan: Agency's Organization Structure and Responsibilities for Implementation:

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Commissioners: The Commission will assist the Governor in identifying qualified educators and public members who represent the geographic and ethnic diversity of the state and to meet the criteria for appointment established by statute.

Currently, of the seventeen (17) appointed Commissioners, the diversity is: 29% under-represented persons (5); 71% Anglo-European (12); 59% male (10); and 41% female (7). This compares to 2009-2010 as follows: 29% under-represented persons (3); 65% Anglo-European (11); 59% male (10); and 41% female (7).

Executive Director: The Executive Director is responsible for implementation of the Equal Employment Opportunity policies and the oversight of adherence to Affirmative Action principles. The Executive Director also oversees the implementation of agency policies which reflect best practices with regard to hiring and workplace cultural inclusion. The Executive Director is a Latina. The Commission establishes the performance expectations for the Executive Director. It is expected the Executive Director make progress on meeting the goals of the Affirmative Action Plan and work with stakeholders in creating standards and practices that support equitable treatment in pre-service programs and equitable education for Oregon students.

Agency Staff: The Commission employs a staff of 24 FTE (2.0 FTE are limited duration) in accordance with the Department of Administrative Service's Human Resource Services Division. The agency interviews qualified applicants who are identified by TSPC recruitment procedures as belonging to an under-represented group. The agency consists of 31% (8) males and 69% (18) females.

Demographically, the staff is 7.7% African American; 4% Pacific Islander; 8% PWD; 4% Native American; 11.5% Latino and 84% white. The agency has five management service staff members who are 33% male and 20% being Latina (the female Executive Director). Two persons on staff have an identified disability. Because of the agency's small size, opportunities arise with each vacancy to make a difference. The agency will continue to work toward a more diverse workforce by more active recruitment in the event of staff vacancies.

Managers and Supervisors are held responsible for the implementation of the Affirmative Action Plan and compliance with policies and procedures. The Deputy Director is held responsible for the recruitment and selection process. As the Affirmative Action representative, he is responsible for conducting the selection process for new hires. Just in time training is provided to supervisors and staff members involved in the hiring process. This training includes discussion of agency goals related to creating a diverse workforce. All managers and a significant number of employees have been involved in recent selection processes and have actively participated in the maintenance of the plan. The Executive Director holds all managers and supervisors accountable through the performance evaluation process on achievement of the goals of the Affirmative Action plan.

Affirmative Action Representative: The Deputy Director (Human Resource Manager, Affirmative Action Representative) plays a key role in the development, implementation and maintenance of the plan. He is involved in all selection processes, including developing selection criteria, training of staff and managers in recruitment and selection of staff, conducting

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reference checks, investigation of any complaints, and recruitment outreach. The Deputy Director is also responsible for overseeing and assisting the Executive Director in the effective retention practices using the affirmative action policies. As stated previously, the Deputy Director is responsible for conducting affirmative action training and information sessions for management and staff. He is also responsible for investigating, addressing and resolving complaints. Since the agency is small, the Executive Director, Deputy Director and the Leadership team all accept responsibility for creating a welcoming environment for all employees. The management team, along with the Affirmative Action Representative, coordinates an annual staff retreat where goals are decisions for creating a positive work environment for all employees. The Deputy Director (Affirmative Action Representative) is considered top management because of the size of the agency. He is held accountable for affirmative action results by the Executive Director in on-going discussions and during the annual performance evaluation.

TSPC has two Spanish-bilingual individuals as a way to better serve the public. These individuals have been an enormous help recently with new educators seeking information from the Commission. The Deputy Director is an expert in cultural competency and civil rights training. We believe that we also must develop the cultural competency skills of the existing staff. Training in this area is an agency commitment over the next biennium.

Workplace: The agency is committed to maintaining a workplace that is harassment free and culturally inclusive.

V. Accomplishments for the 2009-2011 Biennium

The agency's Employee Handbook which addresses affirmative action and equal employment opportunity issues was updated. The agency encourages employees to attend professional development related to cultural inclusion. At least three employees participated in workshops or other training opportunities. One recent commission staff member is a faculty member in the Oregon CFEE (Center for Equitable and Effective Leadership) which delivers a week long seminar to educators (administrators, teachers and higher education faculty) on issues of white privilege and cultural competency. [See: http://www.lclark.edu/graduate/community_engagement/school_transformation/equitable_and_effective_leadership/]

Beginning September 1, 2009, the commission requires a "*Protecting Student and Civil Rights in the Educational Environment*" test for all new licensees. This test covers: state and federal civil rights; equity in the educational environment; and professional standards of conducts (ethics). It is the first of its kind in the nation.

Additionally, we continue to be active in working with local Oregon Indian Tribes on issues related to education, licensure and language saving measures through participate in the Government-to-Government education cluster meetings.

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TSPC also works closely with the Oregon Association of Latino Administrators (OALA) and the Oregon Leadership Network (OLN). The agency executive director is active with the OLN's equity leadership development activities and we are working actively with ODE to create culturally inclusive evaluation tools for school district and school building administrative leadership.

TSPC continues to work closely with higher education to increase the culturally inclusive standards for both educators and teachers being prepared for education licensure in Oregon (teachers, administrators, school counselors and school psychologists).

The agency has the only adopted "Alternative Assessment" system in the nation. We have developed a process of review that allows candidates who have failed the licensure examination to demonstrate subject-matter competency through demonstrated high quality of academic coursework in the area. Candidates must submit a "B" average or better in the content area in which they are seeking licensure. This allows second-language candidates who suffer from adverse impacts on licensure testing to seek an alternative method of becoming licensed in a valid and credible manner.

Progress: The agency has made progress in the hiring of a diverse workforce. During the past year the agency reemployed two individuals of color and promoted a person into a leadership role in the agency. The agency does not have a written retention strategy, but attempt to retain all employees because of the cost of training and commitment to quality customer service. The management team continually discusses the most important aspect of retention of employees is creating a positive work environment, through good training programs, transparency on management decisions, focus on quality customer service and a supportive structure. This approach is becoming one of the strengths of the agency. Another strength is the commitment to quality equitable education for all students and what that means for the agency.

VI. Program Analysis: Goals and Action Plan for the 2011-2013 Biennium

Goals for the 2011-2013 biennium:

1. Complete the work on developing and implementing cultural competency and cultural inclusion standards for all educators;
2. Review programs for implementation of cultural competency standards into all education preparation areas: teaching; administration; school counseling and school psychology;
3. Continue to recruit diverse staff into agency vacancies, including promotion of diverse staff;
4. Examine whether the ethics standards adequately address issues arising out of racism, harassment and discrimination;
5. Continue work with higher education to implement cultural competency standards into educator preparation programs; and
6. Continue work on agency staff cultural awareness.
7. Continue the evaluation of management on the achievement of affirmative action goals established by the agency.

Action Plan:

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1. The agency is meeting regularly with higher education and redrafting administrative rules to accommodate the new preparation standards;
2. The agency is vigorously pursuing equal opportunities for vacancy candidates;
3. The agency is reviewing its content standards tests that appear to have a visible adverse impact on under-represented education candidates and contracting with a testing company that creates test with a significantly lower adverse impact;
4. Continue the promotion of cultural competency development of staff through professional development;
5. Continue to involve staff in the achievement of goals by inclusion in the selection process for vacancies;
6. Continue to involve staff in the development of staff activities in the creating a “positive work environment” through team work and trainings.

Discussion of Current vs. Baseline Analysis for Parity

The G52E306U.CSV report indicates that TSPC is under-represented in the administrative support area by 1.3% with POC, and 1.4% with women in the investigative and compliance category. While TSPC has diverse representation in the administrative support and investigative employment categories, it is recognized emphasis will be placed on unrepresented areas as vacancies arise. In all other areas we meet the required goals.

VII. Appendix A.

A. Agency’s Policy Documentation

1. Agency Reasonable Accommodation Policy and Complaint Procedure Statement

Policy: The TSPC identified the following goals to develop and maintain a representative workforce:

1. Include appropriate representation of females, under-represented populations, and persons with disabilities in all job classifications. Make modifications and accommodations that enable employees with disabilities to receive equal benefits and privileges afforded other employees.
2. Provide equal employment opportunity for all applicants.
3. Represent the ethnic and geographic diversity of the state as well as the educational positions and publics which have an interest in the Commission’s actions.

Procedure:

Step 1: Any person who requires a reasonable accommodation and believes they have been unfairly denied such accommodation may submit a complaint to the supervisor of the person making the decision to deny or to the Executive Director. This complaint must be submitted in writing and contain the name and address of the person filing the complaint and briefly describe the event.

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Step 2: The supervisor along with the Deputy Director will review the complaint, request for accommodation, reason for denial and will make a decision to uphold or overturn the decision. The supervisor will make a decision within five working days of receiving the complaint.

Step 3: If the person filing the complaint is not satisfied with the decision of the supervisor, the person filing the complaint may submit their complaint to the Executive Director who will make a decision to uphold or overturn the decision. The Executive Director may elect to delegate this responsibility to the Deputy Director. The Executive Director or designee will make a decision within five working days of receiving the complaint.

Step 4: If the person filing the complaint is not satisfied with the decision of the Executive Director, the person may submit his or her complaint to the Bureau of Labor and Industries or the US Equal Employment Opportunity Commission. Contact information will be provided by the Executive Director.

Retaliation-Absolutely no retaliation or adverse action in any form shall be taken against a client or applicant for employment because he/she has filed a complaint alleging unfair denial of reasonable accommodation. It is unacceptable and unlawful conduct for an agency employee to retaliate against a complainant in any manner because he/she had filed a complaint, testified, assisted, or participated in any manner in an investigation, proceeding or hearing conducted in accordance with these procedures.

2. Agency Harassment Policy and Complaint Procedure

Policy: Harassment or discrimination of any employee, visitor, vendor, or customer of TSPC, will not be tolerated. Workplace harassment is a form of offensive treatment or behavior, which to a reasonable person creates an intimidating, hostile or abusive work environment. It may be sexual, racial, religious or based on a person's age, disability, national origin or status as a member of any protected class.

You should immediately notify your supervisor if you believe you have been harassed. If you are uncomfortable speaking to your supervisor about the harassment you may notify any manager with whom you feel comfortable speaking.

- ◆ Sexual harassment includes any sexual advances, request for sexual favors, and other unwelcome verbal, or physical conduct of a sexual nature.
- ◆ Sexual harassment, and any other type of harassment includes:
 - (A) Submission to such conduct is made either explicitly, or implicitly a term or condition of an individual's employment; or
 - (B) Submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting working environment.
- ◆ Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance, or creating an intimidating, hostile, or offensive working environment

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TSPC will not tolerate retaliation of any kind against employees, based upon their allegations regarding discrimination or harassment. If employees or supervisors engage in harassment or discrimination, they may be subject to immediate discipline, including possible termination.

Sexual harassment complaints should be made with accuracy and veracity.

Procedure:

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 the Executive Director. 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.

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 the Executive Director. All supervisors and managers will report complaints and incidents immediately to the Executive Director.

Investigation: The recipient of a discrimination or harassment complaint shall promptly forward it to the Executive Director, who will coordinate, or delegate responsibility for coordinating, the department's investigation in consultation with the affected employees' supervisor, 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 the Bureau of Labor and Industries (BOLI) or the Equal Employment Opportunity Commission (EEOC).¹ 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.

3. Employee and Training Policy

¹ TSPC employees are unrepresented and therefore do not have a subject collective bargaining agreement.

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TSPC does not have an established training policy, but does budget for staff development during each budget cycle. TSPC does promote staff training and development and provides support to employee by flexing time, reimbursement for coursework directly related to their current assignment, and sponsorship at conference and trainings events.

4. Veterans Preference in Employment

TSPC supports employment of veterans. TSPC is a small agency and currently has no employees in active or reserved military status.

5. Other documentation in support of its affirmative action plan

TSPC has no other documentation to provide in support of its affirmative action plan.



Oregon

John A. Kitzhaber, MD, Governor

Teacher Standards and Practices Commission

465 Commercial St NE

Salem, OR 97301-3414

(503) 378-3586, (503) 378-4448 FAX

To: All TSPC Employees

From: Vickie Chamberlain, Executive Director 

Date: June 13, 2011

Subject: Equal Employment Opportunity / Affirmative Action Plan

It is the policy of the Teacher Standards and Practices Commission that no person be subjected to discrimination on the basis of race, national origin, religion, sex, age, disability, marital status or sexual orientation in any program, service or activity for which the Commission is responsible. The Commission will comply with the requirements of state and federal law concerning nondiscrimination and will strive by its actions to enhance the dignity and worth of all persons. Further, reasonable accommodation will be made for employees requiring such, upon request.

The Commission maintains a copy of the TSPC Affirmative Action Plan on the TSPC Web site, and will make it available for managers and employees to review, upon request to the TSPC Affirmative Action Officer, Keith Menk. Managers are expected to participate and encourage others to participate in the agency's activities designed to promote affirmative action.

All management staff are expected to actively support recruitment and career development programs to ensure equitable representation of under-represented populations, women and people with disabilities in all job classifications. It is also the responsibility of management staff to ensure the work environment is free from any form of discriminatory harassment and retaliation for filing a complaint related to workplace concerns. Each manager's annual performance appraisal will include an evaluation of their effectiveness in achieving action goals and objectives.

All employees have a responsibility to implement and adhere to the affirmative action plan. All managers have a responsibility to manage their respective programs, functions and work force in accordance with the principles, policies and procedures of this plan and will be held accountable for their performance. To help ensure organizational success, the TSPC Director and the Leadership Circle will make necessary decisions and monitor the accomplishment of this plan on an ongoing basis, and make plan adjustments as necessary.

Any individual who believes she or he has been discriminated against on the basis of a protected class (race, national origin, religious, sex, age, disability, marital status or sexual orientation) may file a complaint in accordance with the Oregon Department of Administrative Services statewide Discrimination and Harassment Free Workplace Policy 50.010.01.

June 13, 2011



All TSPC Employees
June 9, 2011
Page Two

TSPC will note on appropriate public notices that complaints pertaining to the Equal Employment Opportunity statutes are to be forwarded to:

Keith Menk
TSPC Affirmative Action/Equal Employment Opportunity Officer
465 Commercial Street NE
Salem, OR 97301
(503) 378-3757

Or to:

Oregon Bureau of Labor and Industries
800 Oregon St. Suite 1045
Portland, OR 97232
(971) 673-0761

For more information about the TSPC Employment Opportunity/Affirmative Action Plan, please contact Keith Menk at the above-noted address and telephone number.

June 13, 2011

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

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

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

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

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

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

ATTACHMENTS: ADA Accommodation Tool Kit

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

POLICY

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

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

DIVISION: Human Resource Services Division **EFFECTIVE DATE:** 01/25/08

APPROVED: Signature on file with Human Resource Services Division

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

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

APPLICABILITY: All employees, state temporary employees and volunteers.

ATTACHMENTS: None

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

POLICY

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

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

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

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

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

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

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

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

(ii) the name of the complainant;

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

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

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

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

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

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

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

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

of the problem behavior and require prompt, appropriate action.

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

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

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

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

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

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

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

(B) be given directions to read the policy;

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

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

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

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

Performance Standard: 100%

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

Performance Standard: 100%

SUBJECT: Maintaining a Professional Workplace **NUMBER:** 50.010.03

DIVISION: Human Resource Services Division **EFFECTIVE DATE:** 08/27/07

APPROVED: Signature on file with the Human Resource Services Division

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

AUTHORITY: ORS 240.145 and ORS 240.250

APPLICABILITY: All employees, including state temporary employees

ATTACHMENTS: N/A

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

Agency: Refers to state agencies, boards and commissions

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

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

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

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

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

Protected Class Under Federal Law: Race; color; national origin; sex (includes pregnancy-related conditions); religion; age (40 and older); disability; a person who uses leave covered by the Federal Family and Medical Leave Act; a person who uses

Military Leave; a person who associates with a protected class; a person who opposes unlawful employment practices, files a complaint or testifies about violations or possible violations; and any other protected class as defined by federal law.

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

POLICY

- (1) It is the policy of the State of Oregon to create and maintain a work environment that is respectful, professional and free from inappropriate workplace behavior.
- (a) **Conduct** Employees at every level of the agency should foster an environment that encourages professionalism and discourages disrespectful behavior. All employees are expected to behave respectfully and professionally and refrain from engaging in inappropriate workplace behavior.
- (b) **Addressing Inappropriate Workplace Behavior**
- (A) Supervisors must address inappropriate behavior that they observe or experience and should do so as close to the time of the occurrence as possible and appropriate.
- (B) If an employee observes or experiences inappropriate workplace behavior and the employee feels comfortable in doing so, they should:
- (i) redirect inappropriate conversations or behavior to workplace business; and/or
 - (ii) tell an offending employee his/her behavior is offensive and ask him/her to stop.
- (c) **Reporting Inappropriate Workplace Behavior**
- (A) An employee should report inappropriate workplace behavior he/she experiences or observes to his/her immediate supervisor as soon as practicable. If the employee's immediate supervisor is the one engaging in the inappropriate behavior, the employee should report the behavior to upper management, the agency head or Human Resource section, as soon as practicable. The report may be made orally or in writing.
- (B) If past practice exists in the agency, an employee who is represented by a labor union may have a union representative present during regular work hours, when reporting inappropriate workplace behavior and through the process set forth in this policy. The union representative must not be a witness or party to the investigation.
- (C) Reporting behavior or conduct directed toward an employee because of his/her protected class status is addressed in DAS Statewide Policy 50.010.01, Discrimination and Harassment Free Workplace.
- (d) **Responding to a Report of Inappropriate Workplace Behavior** Inappropriate workplace behavior must be addressed and corrected before it becomes pervasive, causes further workplace disruption or lowers employee morale. Unless the agency decides otherwise, the supervisor of the employee allegedly engaging in the inappropriate workplace behavior must investigate the report as soon as possible.

(e) Consequences

(A) Any employee found to have engaged in inappropriate workplace behavior, will be counseled, or, depending on the severity of the behavior, may be subject to discipline, up to and including dismissal.

(B) A supervisor who fails to address inappropriate behavior, will be counseled, or, depending on the severity of the behavior, may be subject to disciplinary action, up to and including dismissal.

(f) Retaliation Retaliating against someone for reporting or addressing inappropriate workplace behavior is prohibited. The agency will investigate reports of retaliation. Any employee found to have engaged in retaliation may be subject to discipline, up to and including dismissal.

105-040-0015

Veteran's Preference in Employment

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Stat. Auth: ORS 240.145(3) & 240.250

Stats. Implemented: ORS 408.225, 408.230 & 408.235

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

Prohibited Employment Policies/Practices

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

The law forbids discrimination in every aspect of employment.

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

Job Advertisements

It is illegal for an employer to publish a job advertisement that shows a preference for or discourages someone from applying for a job because of his or her race, color, religion, sex (including pregnancy), national origin, age (40 or older), disability or genetic information.

For example, a help-wanted ad that seeks "females" or "recent college graduates" may discourage men and people over 40 from applying and may violate the law.

Recruitment

It is also illegal for an employer to recruit new employees in a way that discriminates against them because of their race, color, religion, sex (including pregnancy), national origin, age (40 or older), disability or genetic information.

For example, an employer's reliance on word-of-mouth recruitment by its mostly Hispanic work force may violate the law if the result is that almost all new hires are Hispanic.

Application & Hiring

It is illegal for an employer to discriminate against a job applicant because of his or her race, color, religion, sex (including pregnancy), national origin, age (40 or older), disability or genetic information. For example, an employer may not refuse to give employment applications to people of a certain race.

An employer may not base hiring decisions on stereotypes and assumptions about a person's race, color, religion, sex (including pregnancy), national origin, age (40 or older), disability or genetic information.

If an employer requires job applicants to take a test, the test must be necessary and related to the job and the employer may not exclude people of a particular race, color, religion, sex (including pregnancy), national origin, or individuals with disabilities. In addition, the employer may not use a test that excludes applicants age 40 or older if the test is not based on a reasonable factor other than age.

If a job applicant with a disability needs an accommodation (such as a sign language interpreter) to apply for a job, the employer is required to provide the accommodation, so long as the accommodation does not cause the employer significant difficulty or expense.

Job Referrals

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

Job Assignments & Promotions

It is illegal for an employer to make decisions about job assignments and promotions based on an employee's race, color, religion, sex (including pregnancy), national origin, age (40 or older), disability or genetic information. For example, an employer may not give preference to employees of a certain race when making shift assignments and may not segregate employees of a particular national origin from other employees or from customers.

An employer may not base assignment and promotion decisions on stereotypes and assumptions about a person's race, color, religion, sex (including pregnancy), national origin, age (40 or older), disability or genetic information.

If an employer requires employees to take a test before making decisions about assignments or promotions, the test may not exclude people of a particular race, color, religion, sex (including pregnancy), or national origin, or individuals with disabilities, unless the employer can show that the test is necessary and related to the job. In addition, the employer may not use a test that excludes employees age 40 or older if the test is not based on a reasonable factor other than age.

Pay And Benefits

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

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

Discipline & Discharge

An employer may not take into account a person's race, color, religion, sex (including pregnancy), national origin, age (40 or older), disability or genetic information when making decisions about discipline or discharge. For example, if two employees commit a similar offense, an employer may not discipline them differently because of their race, color, religion, sex (including pregnancy), national origin, age (40 or older), disability or genetic information.

When deciding which employees will be laid off, an employer may not choose the oldest workers because of their age.

Employers also may not discriminate when deciding which workers to recall after a layoff.

Employment References

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

Reasonable Accommodation & Disability

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

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

Reasonable accommodation might include, for example, providing a ramp for a wheelchair user or providing a reader or interpreter for a blind or deaf employee or applicant.

Reasonable Accommodation & Religion

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

Training & Apprenticeship Programs

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

In some situations, an employer may be allowed to set age limits for participation in an apprenticeship program.

Harassment

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

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

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

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

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

Read more about [harassment](#).

Terms & Conditions Of Employment

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

Pre-Employment Inquiries (General)

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

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

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

Therefore, inquiries about organizations, clubs, societies, and lodges of which an applicant may be a member or any other questions, which may indicate the applicant's race, sex, national origin, disability status, age, religion, color or ancestry if answered, should generally be avoided.

Similarly, employers should not ask for a photograph of an applicant. If needed for identification purposes, a photograph may be obtained after an offer of employment is made and accepted.

Pre-Employment Inquiries and:

Race

Height & Weight

Credit Rating Or Economic Status

Religious Affiliation Or Beliefs

Citizenship

Marital Status, Number Of Children

Gender

Arrest & Conviction

Security/Background Checks For Certain Religious Or Ethnic Groups

Disability

Medical Questions & Examinations

Dress Code

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

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

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

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

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

Constructive Discharge/Forced To Resign

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

Age Discrimination

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

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

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

Apprenticeship Programs

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

Job Notices and Advertisements

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

Pre-Employment Inquiries

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

Benefits

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

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

Waivers of ADEA Rights

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

be in writing and be understandable;

specifically refer to ADEA rights or claims;

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

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

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

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

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



U.S. Equal Employment Opportunity Commission FACT SHEET

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FIND THIS ARTICLE ON THE WEB AT:

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

SEE ALSO:

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

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

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

Disability Discrimination

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

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

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

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

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

Disability Discrimination & Work Situations

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

Disability Discrimination & Harassment

It is illegal to harass an applicant or employee because he has a disability, had a disability in the past, or is believed to have a physical or mental impairment that is not transitory (lasting or expected to last six months or less) and minor (even if he does not have such an impairment).

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

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

Disability Discrimination & Reasonable Accommodation

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

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

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

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

Disability Discrimination & Reasonable Accommodation & Undue Hardship

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

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

Definition Of Disability

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

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

A person may be disabled if he or she has a physical or mental condition that substantially limits a major life activity (such as walking, talking, seeing, hearing, or learning).

A person may be disabled if he or she has a history of a disability (such as cancer that is in remission).

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

Disability & Medical Exams During Employment Application & Interview Stage

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

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

Disability & Medical Exams After A Job Offer For Employment

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

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

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

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

Available Resources

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

[Your Employment Rights as an Individual With a Disability](#)

[Job Applicants and the ADA](#)

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

[Questions and Answers: Promoting Employment of Individuals with Disabilities in the Federal Workforce](#)

[The Family and Medical Leave Act, the ADA, and Title VII of the Civil Rights Act of 1964](#)

[The ADA: A Primer for Small Business](#)

[Your Responsibilities as an Employer](#)

[Small Employers and Reasonable Accommodation](#)

[Work At Home/Telework as a Reasonable Accommodation](#)

[Applying Performance And Conduct Standards To Employees With Disabilities](#)

[Obtaining and Using Employee Medical Information as Part of Emergency Evacuation Procedures](#)

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

[Pandemic Preparedness in the Workplace and the Americans with Disabilities Act](#)

[Employer Best Practices for Workers with Caregiving Responsibilities](#)

[Reasonable Accommodations for Attorneys with Disabilities](#)

[How to Comply with the Americans with Disabilities Act: A Guide for Restaurants and Other Food Service Employers](#)

[Final Report on Best Practices For the Employment of People with Disabilities In State Government](#)

[ABCs of Schedule A Documents](#)

The Questions and Answers Series

[Health Care Workers and the Americans with Disabilities Act](#)

[Deafness and Hearing Impairments in the Workplace and the Americans with Disabilities Act](#)

[Blindness and Vision Impairments in the Workplace and the ADA](#)

[The Americans with Disabilities Act's Association Provision](#)

[Diabetes in the Workplace and the ADA](#)

[Epilepsy in the Workplace and the ADA](#)

[Persons with Intellectual Disabilities in the Workplace and the ADA](#)

[Cancer in the Workplace and the ADA](#)

Mediation and the ADA

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

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

Facts About the Americans with Disabilities Act

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

An individual with a disability is a person who:

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

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

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

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

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

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

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

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

Title I of the ADA also covers:

Medical Examinations and Inquiries

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

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

Drug and Alcohol Abuse

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

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

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

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

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

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

Work Opportunity Tax Credit (Internal Revenue Code Section 51)

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

Architectural/Transportation Tax Deduction (Internal Revenue Code Section 190 Barrier Removal):

This annual deduction of up to \$15,000 is available to businesses of any size for the costs of removing barriers for people with disabilities, including the following: providing accessible parking spaces, ramps, and curb cuts; providing wheelchair-accessible telephones, water fountains, and restrooms; making walkways at least 48 inches wide; and making entrances accessible.

The Equal Pay Act of 1963

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

MINIMUM WAGE

SEC. 206. [Section 6]

(d) Prohibition of sex discrimination

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

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

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

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

ADDITIONAL PROVISIONS OF EQUAL PAY ACT OF 1963

An Act

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

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

DECLARATION OF PURPOSE

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

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

(1) depresses wages and living standards for employees necessary for their health and efficiency;

(2) prevents the maximum utilization of the available labor

resources;

(3) tends to cause labor disputes, thereby burdening, affecting, and obstructing commerce;

(4) burdens commerce and the free flow of goods in commerce; and

(5) constitutes an unfair method of competition.

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

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

EFFECTIVE DATE

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

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

Approved June 10, 1963, 12 m.

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

ATTENDANCE OF WITNESSES

SEC. 209 *[Section 9]*

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

COLLECTION OF DATA

SEC. 211 *[Section 11]*

(a) Investigations and inspections

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

(b) State and local agencies and employees

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

(c) Records

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

(d) Homework regulations

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

EXEMPTIONS

SEC. 213 [Section 13]

(a) Minimum wage and maximum hour requirements

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

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

(2) [Repealed]

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

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

(4) [Repealed]

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

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

(6) any employee employed in agriculture (A) if such employee is employed by an employer who did not, during any calendar quarter during the preceding calendar year, use more than five hundred man-days of agricultural labor, (B)

if such employee is the parent, spouse, child, or other member of his employer's immediate family, (C) if such employee (i) is employed as a hand harvest laborer and is paid on a piece rate basis in an operation which has been, and is customarily and generally recognized as having been, paid on a piece rate basis in the region of employment, (ii) commutes daily from his permanent residence to the farm on which he is so employed, and (iii) has been employed in agriculture less than thirteen weeks during the preceding calendar year, (D) if such employee (other than an employee described in clause (C) of this subsection) (i) is sixteen years of age or under and is employed as a hand harvest laborer, is paid on a piece rate basis in an operation which has been, and is customarily and generally recognized as having been, paid on a piece rate basis in the region of employment, (ii) is employed on the same farm as his parent or person standing in the place of his parent, and (iii) is paid at the same piece rate as employees over age sixteen are paid on the same farm, or (E) if such employee is principally engaged in the range production of livestock; or

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

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

(9) [Repealed]

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

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

(11) [Repealed]

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

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

(13) [Repealed]

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

(14) [Repealed]

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

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

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

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

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

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

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

(D) a combination of duties described in subparagraphs (A), (B), and (C) the performance of which requires the same level of skills, and

who, in the case of an employee who is compensated on an hourly basis, is compensated at a rate of not less than \$27.63 an hour.

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

The exemption from section 206 [section 6] of this title provided by paragraph (6) of subsection (a) of this section shall not apply with respect to any employee employed by an establishment (1) which controls, is controlled by, or is under common control with, another establishment the activities of which are not related for a common business purpose to, but materially support the activities of the establishment employing such employee; and (2) whose annual gross volume of sales made or business done, when combined with the annual gross volume of sales made or business done by each establishment which controls, is controlled by, or is under common control with, the establishment employing such employee, exceeds \$10,000,000 (exclusive of excise taxes at the retail level which are separately stated).

PROHIBITED ACTS

SEC. 215 [Section 15]

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

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

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

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

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

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

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

PENALTIES

SEC. 216 [Section 16]

(a) Fines and imprisonment

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

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

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

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

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

(d) Savings provisions

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

possession named in section 206(a)(3) [section 6(a)(3)] of this title at any time prior to the establishment by the Secretary, as provided therein, of a minimum wage rate applicable to such work.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

INJUNCTION PROCEEDINGS

SEC. 217 [Section 17]

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

RELATION TO OTHER LAWS

SEC. 218 [Section 18]

(a) No provision of this chapter or of any order thereunder shall

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

SEPARABILITY OF PROVISIONS

SEC. 219 [Section 19]

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

Approved June 25, 1938.

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

PART IV - MISCELLANEOUS

STATUTE OF LIMITATIONS

SEC. 255 [Section 6]

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

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

DETERMINATION OF COMMENCEMENT OF FUTURE ACTIONS

SEC. 256 [Section 7]

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

(a) on the date when the complaint is filed, if he is specifically named as a party plaintiff in the complaint and his written consent to become a party plaintiff is filed on such date in the court in which the action is brought; or

(b) if such written consent was not so filed or if his name did not so appear—on the subsequent date on which such written consent is filed in the court in which the action was commenced.

RELIANCE IN FUTURE ON ADMINISTRATIVE RULINGS, ETC.

SEC. 259 [Section 10]

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

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

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

LIQUIDATED DAMAGES

SEC. 260 [Section 11]

In any action commenced prior to or on or after May 14, 1947 [the date of the enactment of this Act] to recover unpaid minimum wages, unpaid overtime compensation, or liquidated damages, under the Fair Labor Standards Act of 1938, as amended [29 U.S.C. 201 et seq.], if the employer shows to the satisfaction of the court that the act or omission giving rise to such action was in good faith and that he had reasonable grounds for believing that his act or omission was not a violation of the Fair Labor Standards Act of 1938, as amended [29 U.S.C. 201 et seq.], the court may, in its sound discretion, award no liquidated damages or award any amount thereof not to exceed the amount specified in section 216 [section 16] of this title.

DEFINITIONS

SEC. 262 [Section 13]

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

SEPARABILITY

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

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

SHORT TITLE

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

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

Approved May 14, 1947.