

AFFIRMATIVE ACTION PLAN



Oregon Board of Examiners of Nursing Home Administrators

2009-2011

"We hold these truths to be self-evident, that all People are created equal,
that they are endowed by their Creator with certain unalienable Rights,
that among these are Life, Liberty, and the Pursuit of Happiness."*

-- U.S. Declaration of Independence

BOARD OF EXAMINERS OF NURSING HOME ADMINISTRATORS

AFFIRMATIVE ACTION PLAN 2009-2011

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I. COVER LETTER/STATEMENT

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

Dear Ms. Ross:

As the Executive Director of the Board of Examiners of Nursing Home Administrators (Board), I recognize and appreciate the benefit of Affirmative Action and I pledge my commitment to promote best practices in support of equal employment opportunity and to achieve the full and fair contribution of minorities, women, people with disabilities, older persons, and all protected classes found to be underutilized in the workforce.

To meet the objectives of our Affirmative Action and Equal Employment Opportunity initiative, the Board has prepared an Affirmative Action Plan and policy statement that will serve to eliminate and prevent discrimination of all protected classes.

I pledge to uphold and support compliance with the Board's Affirmative Action Plan and Policy, to ensure equality and avoid discrimination and to promote a workforce that is representative of the population as a whole.

Thank you for your continued direction and support.

Regards,

Janet Bartel, Executive Director

Date

II. DESCRIPTION OF AGENCY AND ORGANIZATIONAL CHART

Mission

The Board is comprised of one program with a mission to protect the public by developing, imposing and enforcing standards that shall be met by individuals in order to receive and retain a license as a nursing home administrator.

Historical Perspective

The Board of Examiners of Nursing Home Administrators (Board) was created in 1971 and authorized by ORS 678.710 to license and regulate nursing home administrators. Prior to that time, administrators were required to be licensed under the Social Security Act when Medicare/Medicaid was created.

Board Composition and FTE

The Board is comprised of nine members who are appointed by the Governor and subject to confirmation by the Senate:

- Three Nursing Home Administrator Members
- Three Public Members
- One Nurse Member
- One Pharmacist Member
- One Physician Member

The Board employs one part-time (0.92) FTE, the Executive Director, who provides administrative, executive, and operational support for the program.

What We Do

The Board licenses individuals responsible for directing and overseeing nursing home facilities, either freestanding or part of a hospital. There are approximately 375 licensed nursing home administrators in Oregon. The delivery of program services include but are not limited to the following:

- The program establishes education, training, examination, licensing, and renewal requirements.
- The program develops and administers the State Nursing Home Administrator's Examination and processes report scores for the national examination.
- The program reviews and approves or denies candidates for the Administrator-in-Training program and facilitates the training, examination, and licensing process.
- The program reviews and approves or denies applications for endorsement and provisional licenses.
- The program reviews and may investigate complaints, which could result in disciplinary action ranging from a civil penalty to revocation of a nursing home administrator's license.
- The program drafts and adopts administrative rules.
- The program reviews and approves or denies provider requests for professional continuing education activities that are required for biennial license renewal.

Overall Affirmative Action Goals

- Seek out qualified staff and provide training and special opportunities for advancing to their fullest potential;
- Post position openings and exam announcements so that existing staff may be informed of such openings;

- Recruit, hire, and train persons at all job levels on the basis of merit and consistent with the principles of affirmative action.
- Evaluate tests and job requirements in terms of entry-level responsibilities to provide opportunity to those whose experience may have been limited due to discriminatory practices;
- Ensure that personnel actions such as compensation, benefits, transfers, layoffs, training and educational opportunities, tuition assistance, or any other benefits are administered to all persons equally and aligned with the principles of affirmative action.
- Require supervisory personnel to fulfill their obligations under the Affirmative Action Plan and ensure that evaluations of their performance with respect to personnel decisions and actions reflect the fulfillment of their affirmative action obligations.
- Provide services and programs in a fair and impartial manner.

Contact Information

Executive Director

Janet Bartel
Oregon Board of Examiners of Nursing Home Administrators
800 NE Oregon Street, Suite 407
Portland, OR 97232

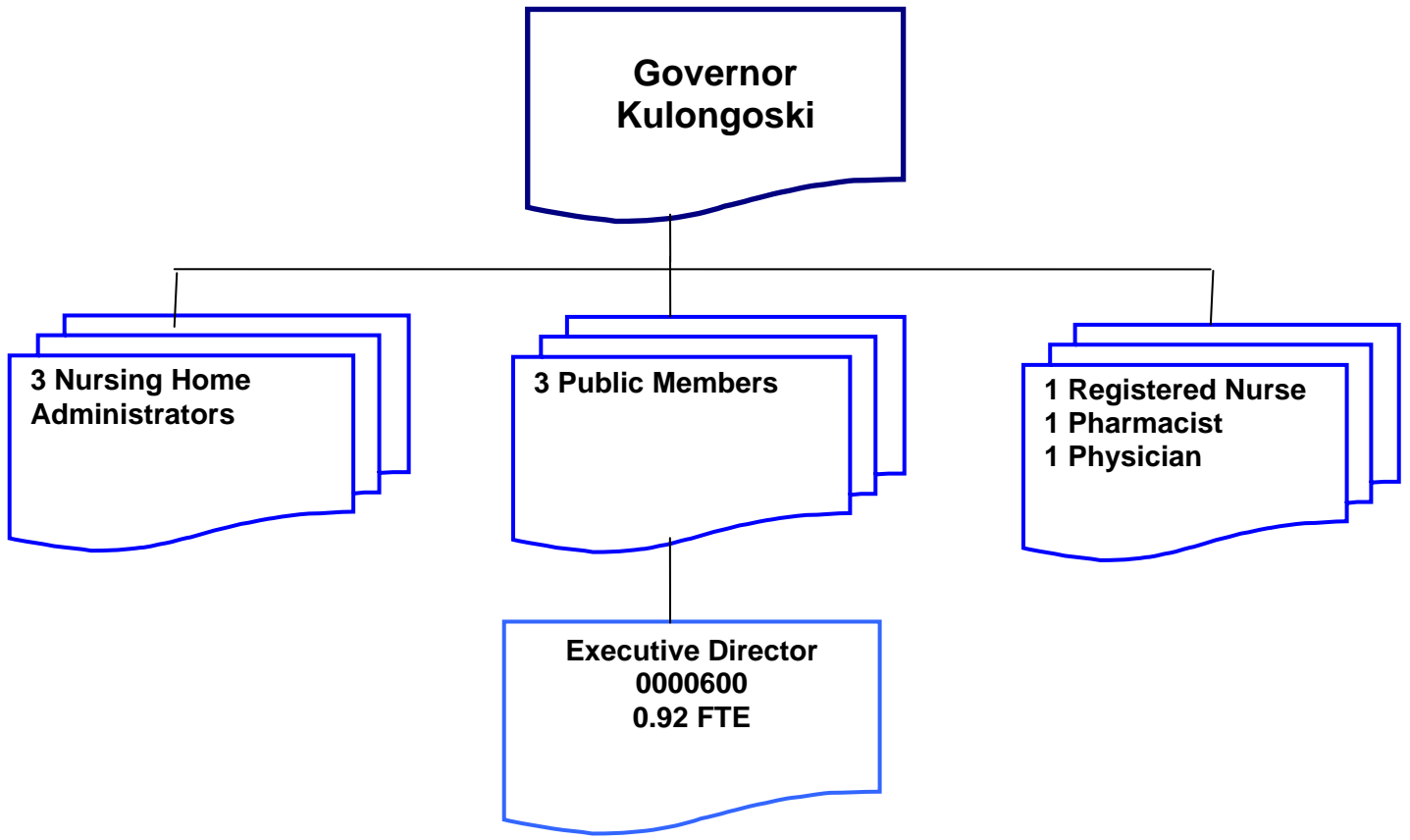
Governor's Policy Advisor

Claudia Black
Governor's Office
State Capitol Building
900 Court Street NE
Salem, OR 97301
Ph: 503-378-3111
Claudia.Black@state.or.us

Agency Affirmative Action Representative

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Organizational Chart



III. AFFIRMATIVE ACTION PLAN

AFFIRMATIVE ACTION AND EQUAL EMPLOYMENT OPPORTUNITY POLICY	
Approved by: <i>Board of Nursing Home Administrators</i>	Date: Jan 2007

Applicability

This policy applies to all employees, board members, and contractors of the Board of Examiners of Nursing Home Administrators (Board). This policy applies to all matters relating to hiring, firing, promotion, benefits, compensation, and other terms and conditions of employment, as well as delivery of Board services.

Affirmative Action Policy Statement

The Board of Nursing Home Administrators supports the spirit and letter of equal employment opportunity laws, rules and regulations, and affirmative action concepts and the right of all persons to work and advance on the basis of merit, ability, and potential.

The Board strives to achieve equal employment opportunity and affirmative action objectives through the recruitment, employment and advancement of a diverse workforce, including women, minorities and the disabled. The Board will not tolerate any form of discrimination or harassment and endeavors to maintain a tolerant and respectful work environment free of hostility or unwelcome behavior.

The Board is committed to providing citizens and employees, through a program of affirmative action, equal access to programs and services and fair and equal opportunities for employment. In administering its program, board members and employees will not discriminate against any person who is a current or potential user of its services on the basis of race, color, ancestry, gender, national origin, age, family or marital status, sexual orientation, political or religious affiliation, veteran status, physical or mental disability.

An individual who has interviewed for employment, who believes they were denied employment based on any of the aforementioned discriminatory factors, may review the employment decision with the Board. If the concern is not resolved to the satisfaction of the individual, they may contact the Equal Employment Opportunity Commission, Seattle District Office – 909 First Avenue, Ste 400, Seattle, WA 98104-1061

As part of the annual performance evaluation, the Board's Executive Director will be evaluated, in part, on efforts to promote the equal employment opportunity and affirmative action objectives of the agency. Contractors' and vendors' performance on affirmative action and non-discrimination will be considered when selecting business partners and suppliers.

The Board shall maintain a current copy of the Affirmative Action and Equal Employment Opportunity policy and plan on its web site. It will accompany all employment applications distributed to potential new employees and will be made available for review by agency employees and contractors, interested citizens, and organizations served by the Board.

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

The Board did not award construction, service, or personal service contracts to minority businesses during the 2007-09 biennium. The Board posts all competitive contracts on the state's ORPIN system to ensure that the pool of responders is as varied as possible and all qualified responders are given fair and equal consideration.

Training, Education and Development Plan and Schedule of Staff, Volunteers, Providers, Vendors.

The Board's Affirmative Action Plan is communicated to staff, volunteers, contractors and the public through a variety of methods.

1. Employees

- New employees are provided the Board's Affirmative Action and Equal Employment Opportunity policy and plan and encouraged to review and discuss questions or concerns with their supervisor.
- The Board posts a copy of the Affirmative Action and Equal Employment Opportunity policy and plan on its web site for easy access by employees.
- Board recruitment announcements and advertisements identify the Board as an Equal Opportunity/Affirmative Action employer and includes the statement, "The Board welcomes all forms of diversity--racial, ethnic, age, geographic, perspective, and gender--and the benefits that come with diversity: new thinking, stronger economy, greater social justice."

2. Volunteers

- All volunteers are encouraged to review and discuss the Affirmative Action policy, workplace expectations, and complaint procedures.

3. Providers

- The Board uses contract service providers infrequently and does not provide Affirmative Action training for those providers. It should be noted, however, the Board's Affirmative Action Policy statement includes contractors and the expectation they will advance the spirit and letter of equal employment opportunity laws, rules and regulations and affirmative action concepts and the right of all persons to work and advance on the basis of merit, ability, and potential.

4. Vendors

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

Cultural Competency Assessment/Implementation

Given its small staff (0.92 FTE), the Board has not requested or received a Cultural Competency Assessment during the current biennium.

Programs

The Board has no specific Affirmative Action programs in place; however, the Board appreciates the hiring difficulties experienced by minorities, people with disabilities and by many older persons; and where appropriate, will set program goals to achieve the full and fair utilization of these persons in the work force.

IV. ROLES FOR IMPLEMENTATION OF AFFIRMATIVE ACTION PLAN

The Board provides overall direction and resources to support the Affirmative Action Plan. The Board will foster and promote to employees the importance of a diverse workplace free from discrimination and harassment.

The Board is committed to the use of Affirmative Action precepts in hiring employees and in making appointments to its membership. The Board will continue its implementation of the Affirmative Action Plan by exercising impartial and unbiased evaluations of future applications and interviews for employment.

Responsibilities and Accountabilities

The Board entrusts and delegates to the Executive Director the responsibility for implementation and adherence to the Affirmative Action goals to which the Board is committed.

1. **Director** – The Board’s Executive Director has overall responsibility for compliance with policy and achievement of the Affirmative Action goals to which the Board is committed and will provide leadership and monitor progress toward meeting goals and objectives of the “Diversity Plan” and ensure compliance with applicable federal and state laws, rules, regulations and executive orders. The annual performance evaluation for the Executive Director will include evaluation of affirmative action efforts and accomplishments.
2. **Managers and Supervisors** – Not applicable to agency due to the limited number of FTE.
3. **Affirmative Action Representative** – The Board’s Executive Director serves as the Affirmative Action Officer and is responsible for:
 - a. Developing and communicating agency policies and procedures related to AA/EEO and preparing and disseminating affirmative action information;
 - b. Coordinating activities in concert with the Affirmative Action Plan and monitoring progress toward affirmative action goals;
 - c. Identifying solutions to barriers preventing achievement of the Board’s affirmative action goals;
 - d. Assuring that agency recruitments are conducted in compliance with AA/EEO goals;
 - e. Applying the precepts of affirmative action in day-to-day work and in relations with fellow employees, job applicants, and the general public;
 - f. Receiving and investigating or referring to the Board discrimination complaints;
 - g. Attending equal opportunity, affirmative action, and diversity training in order to be informed of current affirmative action laws and issues and develop knowledge and skill for working with a diverse workforce.

Board of Examiners of Nursing Home Administrators Management Staff

- Executive Director: Janet Bartel
- AA/EEO/ADA Officer: Janet Bartel

V. 2007-09 BIENNIUM

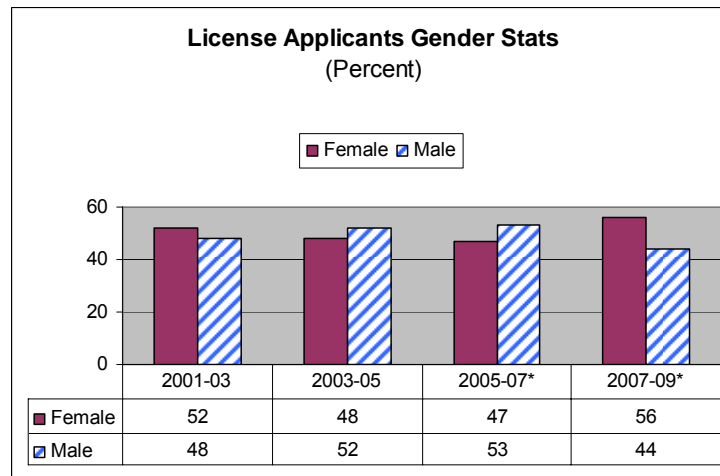
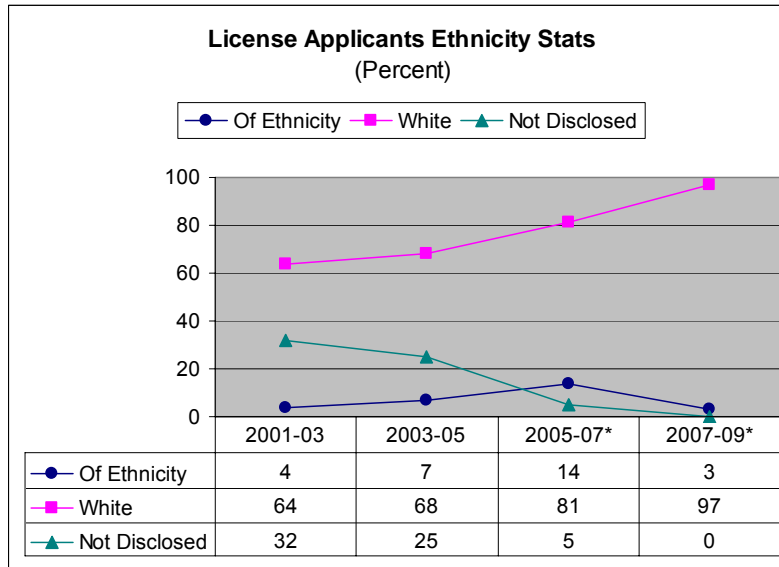
Accomplishments

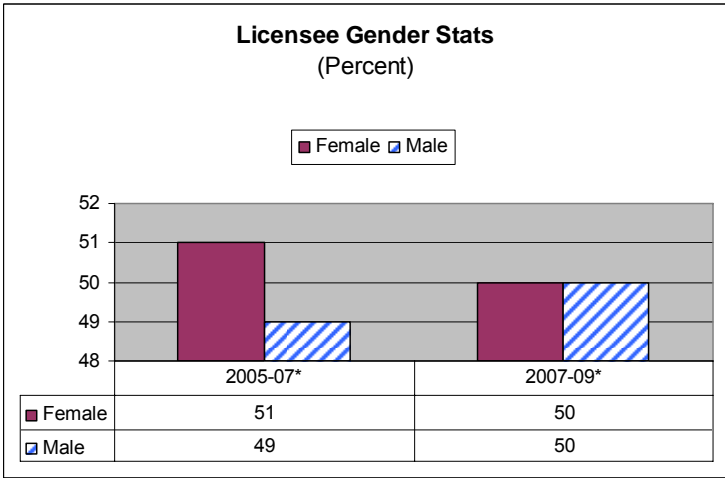
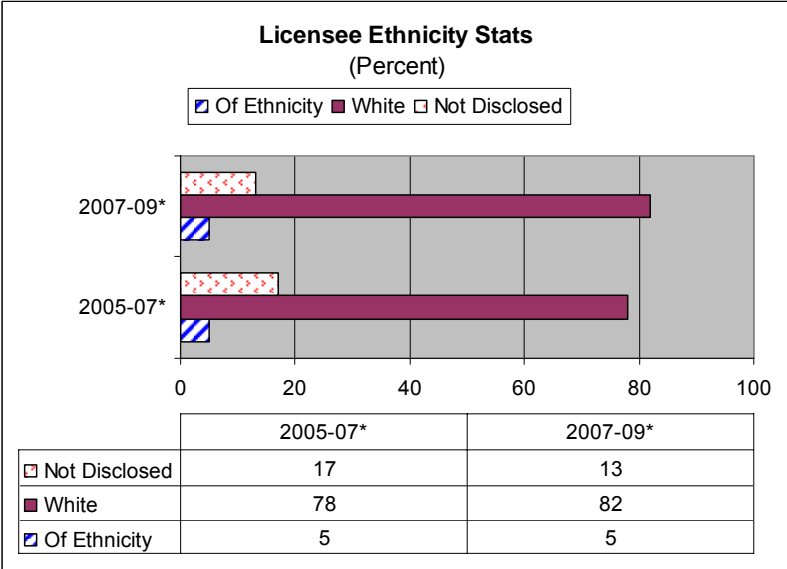
- The Board's budget constraints limit training opportunities for its Executive Director, however, she attends the monthly Affirmative Action Meetings in Salem as her work schedule allows and other related learning opportunities.
- The Board recruited one new female board member. Forty-four percent of the board members/employees are female. The Board has advertised and is currently seeking nominations of women, minorities, and the disabled to fill two Public Member vacancies.
- During preceptor training workshops (preceptors train Administrator-in-Training candidates) the Board encouraged preceptors to consider candidates of ethnicity and to promote increased ethnicity within the profession.
- The Board approves continuing education activities required for license renewal. Renewing licensees are required to complete a specified amount of ethics hours. The Board grants ethics credit to Affirmative Action and cultural competency activities in order to promote increased attendance by licensees.
- The Board has continued to work toward meeting its affirmative action/diversity and ADA goals. To its credit, the Board has continued to make reasonable accommodations to retain an employee within the disabled classification.
- The Board continues to post advertisements in its quarterly newsletter to promote minority Administrator-in-Training candidates.

Progress Made or Lost Since the Last Biennium

- **Staff and Board Membership** – The Board has not realized any staff changes since the last biennium. The Board's membership has likewise remained consistent in terms of gender ratios. The Board has strived to ensure recruitment information includes outreach to sources representing minorities, women, and persons with disabilities.
- **License Base** – The percentage of the Board's licensees (nursing home administrators) reporting ethnicity has remained consistent at 5 percent in the 2005-07 and 2007-09 biennia (as of June 2008). The percentage of female licensees has decreased from 51 percent in the 2005-07 biennium to 50 percent in the 2007-09 biennium.
- **License Applicants** – The percentage of applicants reporting ethnicity has decreased 11 percent, from 14 percent in the 2005-07 biennium to 3 percent in the 2007-09 biennium (as of June 2008). The percentage of female license applicants has increased from 47 percent in the 2005-07 biennium to 56 percent in the 2007-09 biennium.

STATISTICAL CHARTS





VI. 2009-2011 BIENNIUM

Goals and Strategies

In the 2009-2011 biennium, the Board will pursue the following goals and strategies:

1. Maintain the Board's commitment to affirmative action through the continued development and adherence to its Affirmative Action Plan.
Strategy
 - Evaluate and revise policies and procedures as needed to promote the Board's commitment to affirmative action and equal employment opportunity.
 - Assertively recruit qualified persons with disabilities, minorities, women, and other protected classes for position/volunteer vacancies.**Timeline**
 - Ongoing

2. Continue dialogue among staff and board members to foster understanding and support for the Board's commitment to affirmative action.
Strategy
 - Increase staff and board member knowledge and awareness of affirmative action through review and discussion of the Affirmative Action Plan.
 - Train and inform managers and employees as to their rights and responsibilities under the Board's Affirmative Action policy.
 - Make the complete Affirmative Action Plan available and accessible to all board members, employees, and contractors.**Timeline**
 - Ongoing

3. Support and promote diversity within the profession of nursing home administrators.
Strategy
 - Increase awareness within the profession of the Board's commitment to affirmative action and equal employment opportunities.
 - Promote minority Administrator-in-Training candidates and encourage companies and preceptors to consider these candidates for training opportunities.
 - Engage in outreach efforts to recruit persons with disabilities, minorities, women, and other protected classes.**Timeline**
 - Ongoing

4. Improve recruitment methods in order to increase ethnic diversity among board members.
Strategy
 - Apply recruitment methods that include outreach to sources representing persons with disabilities, minorities, women, and other protected classes.
 - Insure that advertisements and employment/volunteer recruitment announcements contain the statement "Equal Opportunity/Affirmative Action Employer".
 - Recommend qualified women, minority, and disabled candidates to the Governor's Office for board member vacancies.**Timeline**
 - Ongoing

5. Increase knowledge and skills of the Board's management staff in applying Affirmative Action and EEO principles and in promoting a diverse workforce environment.

Strategy

- Ensure that managers understand the Board's affirmative action goals and responsibilities and assert their role in achieving these goals.
- Support managers' attendance at equal opportunity, affirmative action, and other diversity-related activities or training activities.
- Maintain management performance appraisal reviews used to evaluate managers on their effectiveness in achieving affirmative action objectives.

Timeline

- Ongoing

VII. APPENDIX A

ADA AND REASONABLE ACCOMODATION POLICY

Approved by: *Board of Nursing Home Administrators*

Date: Jan 2007

Applicability

This policy applies to all applicants, board members, employees, and contractors of the Board of Examiners of Nursing Home Administrators (Board).

Definitions

Reasonable Accommodation

Is "any modification or adjustment to a job or the work environment that will enable a qualified applicant or employee with a disability to perform essential job functions. Reasonable accommodation also includes adjustments to assure that a qualified individual with a disability has the same rights and privileges in employment as non-disabled employees."

Person With a Disability

A person who has a physical or mental impairment which substantially limits one or more major life activities, has a record of such impairment or is regarded as having such an impairment.

Undue Hardship

Significant difficulty, expense, or impact on the agency when considered in light of a number of factors that include the nature and cost of the accommodation in relation to the size, resources, and structure of the agency.

ADA Coordinator

The Board Executive Director is designated as the ADA Coordinator pursuant to part 35.107 of the American's with Disabilities Act.

Policy

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

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

In compliance with ADA guidelines, the Board will provide special materials, services or assistance to individuals with a disability upon sufficient notice to the board office. The Oregon

Relay Service – 711 – is available to assist individuals with speech or hearing disabilities. In addition, the Speech to Speech Relay Service supplies Oregon with a toll-free number (1-877-735-7525) to assist individuals whose speech may be difficult to understand. If an individual does not request an accommodation, the Board is not obligated to provide one.

No employee of the Board nor any entity contracting with it may coerce, intimidate, threaten, or interfere with any individual who has opposed any act or practice prohibited by the ADA; participated in any investigation; or aided or encouraged others to assert rights granted under the ADA.

An individual who believes they have been discriminated due to their disability should contact the ADA Coordinator, Board Chairperson, or other board member(s). If the issue is not resolved to the individual’s satisfaction, they may file a grievance with the:

- U.S. Dept of Justice Civil Rights Division – PO Box 6618, Washington, D.C., 20530
- Equal Employment Opportunity Commission – 1801 L. St. NW #9024, Washington, D.C. 20507

Discrimination and Harassment Free Workplace	
Statewide Policy 50.010.01	Date: Jan 2008

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

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%

EMPLOYEE TRAINING AND EDUCATION POLICY	
Approved by: <i>Board of Nursing Home Administrators</i>	Date: Jan 2007

Applicability

This policy applies to all employees of the Board of Examiners of Nursing Home Administrators (Board).

Definitions

- Elective Training* Means training an employee voluntarily takes to enhance or improve the effectiveness of employee performance in the current position.
- Mandated Training* Means training required by law, regulation, or to maintain a license or certificate required by the position.
- Required Training* Means training required by the Board, such as new employee orientation, or to update or to add skills as the job evolves, or to increase employee awareness of legal or policy issues (e.g., ADA, sexual harassment, etc.)

Policy

It is the policy of the Board to provide resources for employees to encourage their career development in state service, as is reasonably practicable to do. The Board remains committed to maintaining a team-based organization with a positive work environment through equitable employee training and development opportunities. To accomplish this mission, the Board may provide opportunities for training to employees for developing proficiency, enhancing skills and encouraging development in areas for potential advancement.

All staff shall be eligible for mandated and required training. Only permanent staff shall be eligible for elective training. The selection of an employee to attend training shall follow equal opportunity guidelines. Any employee may request training and be considered for approval with determinations made on a case-by-case basis. Approval for training and partial or full support of training is a management decision that may be delegated to the Board.

Approval Criteria for Training and Education requests:

- Availability of budgeted funds;

- Alignment with agency and position priorities and goals;
- Ability to meet operating requirements while employee attends training;
- Training is needed to improve effectiveness in the employee's present job;
- Training is needed because of changes and/or additions to the employees job duties;
- Training is part of established career development goals that will benefit the agency.

VETERANS PREFERENCE IN EMPLOYMENT

Department of Administrative Services, Human Resource Services Division

Division 40

Filling Positions 105-040-0001

Equal Employment Opportunity and Affirmative Action

- (1) The State of Oregon is committed to achieving a workforce that represents the diversity of the Oregon community and being a leader in providing its citizens with fair and equal employment opportunities. Accordingly:
 - (a) State agency heads shall insure:
 - (A) Equal employment opportunities are afforded to all applicants and employees by making employment related decisions that are non-discriminatory;
 - (B) Employment practices are consistent with the state's Affirmative Action Plan and state and federal laws to:
 - (i) Promote good faith efforts to achieve established affirmative action goals, which include persons with disabilities; and
 - (ii) Take proactive steps to develop diverse applicant pools for position vacancies and assess the diversity of each applicant pool prior to closing a job announcement.
 - (b) The Department of Administrative Services shall:
 - (A) Maintain an automated affirmative action tracking system which uses a uniform methodology for communicating affirmative action goals for each state agency. The system shall also communicate goals for hiring persons with disabilities as required by state and federal law;
 - (B) Produce periodic reports showing hiring opportunities and each agency's progress toward achieving established affirmative action goals as identified in the state wide automated system.
 - (c) Persons, who believe they have been subjected to discrimination by an agency in violation of this rule, may file a complaint with the agency's designated office within 30 calendar days of the alleged act or upon knowledge of the occurrence.

- (2) Employment related decisions include, but are not limited to: hiring, promotion, demotion, transfer, termination, layoff, training, compensation, benefits, and performance evaluations;
- (3) Diverse applicant pools are developed by using proactive steps in outreach strategies which generally include targeted newspapers, professional organizations, employee networks, community organizations, and resume banks;
- (4) The statewide automated affirmative action system establishes goals for each equal employment opportunity category and ethnic group for each state agency;
- (5) Nothing in this rule precludes any person from filing a formal complaint in accordance with a collective bargaining agreement, or with appropriate state or federal agency under the applicable law.

Stat. Auth.: ORS 184.340, ORS 240.145 & ORS 240.250

Stats. Implemented: ORS 240.306 & ORS 243.305

Hist.: PD 2-1994, f. & cert. ef. 8-1-94; HRSD 11-2003, f. 7-15-03, cert. ef. 7-21-03

Other Agency Documentation in Support of its Affirmative Action Plan

Staff attendance records at related Affirmative Action activities.

Age Discrimination

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

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

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

- [Apprenticeship Programs](#)
It is generally unlawful for apprenticeship programs, including joint labor-management apprenticeship programs, to discriminate on the basis of an individual's age. Age limitations in apprenticeship programs are valid only if they fall within certain specific exceptions under the ADEA or if the EEOC grants a specific exemption.
- Job Notices and Advertisements
The ADEA generally makes it unlawful to include age preferences, limitations, or specifications in job notices or advertisements. A job notice or advertisement may specify an age limit only in the rare circumstances where age is shown to be a "bona fide occupational qualification" (BFOQ) reasonably necessary to the normal operation of the business.
- Pre-Employment Inquiries
The ADEA does not specifically prohibit an employer from asking an applicant's age or date of birth. However, because such inquiries may deter older workers from applying for employment or may otherwise indicate possible intent to discriminate based on age, requests for age information will be closely scrutinized to make sure that the inquiry was made for a lawful purpose, rather than for a purpose prohibited by the ADEA.
- Benefits
The Older Workers Benefit Protection Act of 1990 (OWBPA) amended the ADEA to specifically prohibit employers from denying benefits to older employees. Congress recognized that the cost of providing certain benefits to older workers is greater than the cost of providing those same benefits to younger workers, and that those greater costs would create a disincentive to hire older workers. Therefore, in limited circumstances, an employer may be permitted to reduce benefits based on age, as long as the cost of providing the reduced benefits to older workers is the same as the cost of providing benefits to younger workers.

- **Waivers of ADEA Rights**

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

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

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

Statistics

In Fiscal Year 2007, EEOC received 19,103 charges of age discrimination. EEOC resolved 16,134 age discrimination charges in FY 2007 and recovered \$66.8 million in monetary benefits for charging parties and other aggrieved individuals (not including monetary benefits obtained through litigation).

[Charge Statistics: Age Discrimination](#)

Disability Discrimination

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

An individual with a disability is a person who:

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

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

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

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

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

Title I of the ADA also covers:

- **Medical Examinations and Inquiries**
Employers may not ask job applicants about the existence, nature, or severity of a disability. Applicants may be asked about their ability to perform specific job functions. A job offer may be conditioned on the results of a medical examination, but only if the examination is required for all entering employees in similar jobs. Medical examinations of employees must be job related and consistent with the employer's business needs.
- **Drug and Alcohol Abuse**
Employees and applicants currently engaging in the illegal use of drugs are not covered by the ADA when an employer acts on the basis of such use. Tests for illegal drugs are not subject to the ADA's restrictions on medical examinations. Employers may hold illegal drug users and alcoholics to the same performance standards as other employees.

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

Statistics

In Fiscal Year 2007, EEOC received 17,734 charges of disability discrimination. EEOC resolved 15,708 disability discrimination charges in FY 2006 and recovered \$54.4 million in monetary

benefits for charging parties and other aggrieved individuals (not including monetary benefits obtained through litigation).

[Americans With Disabilities Act Charges](#)

Equal Pay and Compensation Discrimination

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

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

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

- Skill - Measured by factors such as the experience, ability, education, and training required to perform the job. The key issue is what skills are required for the job, not what skills the individual employees may have. For example, two bookkeeping jobs could be considered equal under the EPA even if one of the job holders has a master's degree in physics, since that degree would not be required for the job.
- Effort - The amount of physical or mental exertion needed to perform the job. For example, suppose that men and women work side by side on a line assembling machine parts. The person at the end of the line must also lift the assembled product as he or she completes the work and place it on a board. That job requires more effort than the other assembly line jobs if the extra effort of lifting the assembled product off the line is substantial and is a regular part of the job. As a result, it would not be a violation to pay that person more, regardless of whether the job is held by a man or a woman.
- Responsibility - The degree of accountability required in performing the job. For example, a salesperson who is delegated the duty of determining whether to accept customers' personal checks has more responsibility than other salespeople. On the other hand, a minor difference in responsibility, such as turning out the lights at the end of the day, would not justify a pay differential.
- Working Conditions - This encompasses two factors: (1) physical surroundings like temperature, fumes, and ventilation; and (2) hazards.

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

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

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

Title VII, ADEA, and ADA

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

Compensation discrimination under Title VII, the ADEA, or the ADA can occur in a variety of forms. For example:

- An employer pays an employee with a disability less than similarly situated employees without disabilities and the employer's explanation (if any) does not satisfactorily account for the differential.
- A discriminatory compensation system has been discontinued but still has lingering discriminatory effects on present salaries. For example, if an employer has a compensation policy or practice that pays Hispanics lower salaries than other employees, the employer must not only adopt a new non-discriminatory compensation policy, it also must affirmatively eradicate salary disparities that began prior to the adoption of the new policy and make the victims whole.
- An employer sets the compensation for jobs predominately held by, for example, women or African-Americans below that suggested by the employer's job evaluation study, while the pay for jobs predominately held by men or whites is consistent with the level suggested by the job evaluation study.
- An employer maintains a neutral compensation policy or practice that has an adverse impact on employees in a protected class and cannot be justified as job-related and consistent with business necessity. For example, if an employer provides extra compensation to employees who are the "head of household," i.e., married with dependents and the primary financial contributor to the household, the practice may have an unlawful disparate impact on women.

It is also unlawful to retaliate against an individual for opposing employment practices that discriminate based on compensation or for filing a discrimination charge, testifying, or

participating in any way in an investigation, proceeding, or litigation under Title VII, ADEA, ADA or the Equal Pay Act.

Statistics

In Fiscal Year 2007, EEOC received 818 charges of compensation discrimination. EEOC resolved 796 compensation discrimination charges in FY 2007 and recovered \$9.3 million in monetary benefits for charging parties and other aggrieved individuals (not including monetary benefits obtained through litigation).

- [Charge Statistics: Equal Pay Act](#)

Other Resources

Here are some links to other sources of information about compensation discrimination. Please be aware that, consistent with the EEOC's general [disclaimer](#) statement, the EEOC does not control or guarantee the accuracy or completeness of this outside information, and references to the sites below are not intended to reflect their importance or an endorsement of any views expressed or products or services offered.

Department of Labor's Office of Federal Contract Compliance Programs

- [Equal Pay and the Department of Labor](#)
- [Best Compensation Practices](#)
- [Analyzing Compensation Data: A Guide to Three Approaches](#)
- [Department of Labor's Wage and Hour Division](#)
- [Employment Litigation Section of the Civil Rights Division of the Department of Justice](#)

National Origin Discrimination

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

About National Origin Discrimination

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

- [Employment Decisions](#)
Title VII prohibits any employment decision, including recruitment, hiring, and firing or layoffs, based on national origin.
- [Harassment](#)
Title VII prohibits offensive conduct, such as ethnic slurs, that creates a hostile work environment based on national origin. Employers are required to take appropriate steps to prevent and correct unlawful harassment. Likewise, employees are responsible for reporting harassment at an early stage to prevent its escalation.
- [Language](#)
- [Accent discrimination](#)
An employer may not base a decision on an employee's foreign accent unless the accent materially interferes with job performance.
- [English fluency](#)
A fluency requirement is only permissible if required for the effective performance of the position for which it is imposed.
- [English-only rules](#)
English-only rules must be adopted for nondiscriminatory reasons. An English-only rule may be used if it is needed to promote the safe or efficient operation of the employer's business.

[Coverage of foreign nationals](#)

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

[Statistics](#)

In Fiscal Year 2007, EEOC received 9,396 charges of national origin discrimination. Including charges from previous years, 7,773 charges were resolved, and monetary benefits for charging parties totaled \$22.8 million (not including monetary benefits obtained through litigation).

- [Charge statistics](#)

Pregnancy Discrimination

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

Title VII's pregnancy-related protections include:

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

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

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

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

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

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

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

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

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

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

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

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

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

Statistics

In Fiscal Year 2007, EEOC received 5,587 charges of pregnancy-based discrimination. EEOC resolved 4,979 pregnancy discrimination charges in FY 2007 and recovered \$30.0 million in monetary benefits for charging parties and other aggrieved individuals (not including monetary benefits obtained through litigation).

[Charge Statistics: Pregnancy Discrimination](#)

Race/Color Discrimination

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

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

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

Title VII's protections include:

- Recruiting, Hiring, and Advancement
Job requirements must be uniformly and consistently applied to persons of all races and colors. Even if a job requirement is applied consistently, if it is not important for job performance or business needs, the requirement may be found unlawful if it excludes

persons of a certain racial group or color significantly more than others. Examples of potentially unlawful practices include: (1) soliciting applications only from sources in which all or most potential workers are of the same race or color; (2) requiring applicants to have a certain educational background that is not important for job performance or business needs; (3) testing applicants for knowledge, skills or abilities that are not important for job performance or business needs.

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

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

- **Harassment/Hostile Work Environment**
Title VII prohibits offensive conduct, such as racial or ethnic slurs, racial "jokes," derogatory comments, or other verbal or physical conduct based on an individual's race/color. The conduct has to be unwelcome and offensive, and has to be severe or pervasive. Employers are required to take appropriate steps to prevent and correct unlawful harassment. Likewise, employees are responsible for reporting harassment at an early stage to prevent its escalation.
- **Compensation and Other Employment Terms, Conditions, and Privileges**
Title VII prohibits discrimination in compensation and other terms, conditions, and privileges of employment. Thus, race or color discrimination may not be the basis for differences in pay or benefits, work assignments, performance evaluations, training, discipline or discharge, or any other area of employment.
- **Segregation and Classification of Employees**
Title VII is violated where employees who belong to a protected group are segregated by physically isolating them from other employees or from customer contact. In addition, employers may not assign employees according to race or color. For example, Title VII prohibits assigning primarily African-Americans to predominantly African-American establishments or geographic areas. It is also illegal to exclude members of one group from particular positions or to group or categorize employees or jobs so that certain jobs are generally held by members of a certain protected group. Coding applications/resumes to designate an applicant's race, by either an employer or employment agency, constitutes evidence of discrimination where people of a certain race or color are excluded from employment or from certain positions.
- **Retaliation**
Employees have a right to be free from retaliation for their opposition to discrimination or their participation in an EEOC proceeding by filing a charge, testifying, assisting, or otherwise participating in an agency proceeding.

Statistics

In fiscal year 2007, EEOC received 30,510 charges of race discrimination. EEOC resolved 25,882 race charges in FY 2007, and recovered \$67.7 million in monetary benefits for charging parties and other aggrieved individuals (not including monetary benefits obtained through litigation).

[Charge Statistics: Race Discrimination](#)

Religious Discrimination

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

Under Title VII:

- Employers may not treat employees or applicants more or less favorably because of their religious beliefs or practices - except to the extent a religious accommodation is warranted. For example, an employer may not refuse to hire individuals of a certain religion, may not impose stricter promotion requirements for persons of a certain religion, and may not impose more or different work requirements on an employee because of that employee's religious beliefs or practices.
- Employees cannot be forced to participate -- or not participate -- in a religious activity as a condition of employment.
- Employers must reasonably accommodate employees' sincerely held religious practices unless doing so would impose an undue hardship on the employer. A reasonable religious accommodation is any adjustment to the work environment that will allow the employee to practice his religion. An employer might accommodate an employee's religious beliefs or practices by allowing: flexible scheduling, voluntary substitutions or swaps, job reassignments and lateral transfers, modification of grooming requirements and other workplace practices, policies and/or procedures.
- An employer is not required to accommodate an employee's religious beliefs and practices if doing so would impose an undue hardship on the employers' legitimate business interests. An employer can show undue hardship if accommodating an employee's religious practices requires more than ordinary administrative costs, diminishes efficiency in other jobs, infringes on other employees' job rights or benefits, impairs workplace safety, causes co-workers to carry the accommodated employee's share of potentially hazardous or burdensome work, or if the proposed accommodation conflicts with another law or regulation.
- Employers must permit employees to engage in religious expression, unless the religious expression would impose an undue hardship on the employer. Generally, an employer may

not place more restrictions on religious expression than on other forms of expression that have a comparable effect on workplace efficiency.

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

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

Statistics

In Fiscal Year 2007, EEOC received 2,880 charges of religious discrimination. EEOC resolved 2,525 religious discrimination charges and recovered \$6.4 million in monetary benefits for charging parties and other aggrieved individuals (not including monetary benefits obtained through litigation).

[Charge Statistics: Religious Discrimination](#)

Retaliation

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

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

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

Adverse Action

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

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

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

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

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

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

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

Covered Individuals

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

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

Protected Activity

Protected activity includes:

- Opposition to a practice believed to be unlawful discrimination

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

Examples of protected opposition include:

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

Examples of activities that are NOT protected opposition include:

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

Participation in an employment discrimination proceeding.

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

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

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

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

Statistics

In Fiscal Year 2007, EEOC received 26,663 charges of retaliation discrimination based on all statutes enforced by EEOC. The EEOC resolved 22,265 retaliation charges in 2007, and recovered more than \$124 million in monetary benefits for charging parties and other aggrieved individuals (not including monetary benefits obtained through litigation).

Sex-Based Discrimination

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

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

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

- [Sexual Harassment](#)
This includes practices ranging from direct requests for sexual favors to workplace

conditions that create a hostile environment for persons of either gender, including same sex harassment.

- [Pregnancy Based Discrimination](#)

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

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

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

Statistics

In Fiscal Year 2007, EEOC received 24,826 charges of sex-based discrimination. EEOC resolved 21,982 sex discrimination charges in FY 2007 and recovered \$135.4 million in monetary benefits for charging parties and other aggrieved individuals (not including monetary benefits obtained through litigation).

[Charge Statistics: Sex-Based Discrimination](#)

Sexual Harassment

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

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

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

- The victim as well as the harasser may be a woman or a man. The victim does not have to be of the opposite sex.
- The harasser can be the victim's supervisor, an agent of the employer, a supervisor in another area, a co-worker, or a non-employee.

- The victim does not have to be the person harassed but could be anyone affected by the offensive conduct.
- Unlawful sexual harassment may occur without economic injury to or discharge of the victim.
- The harasser's conduct must be unwelcome.

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

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

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

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

Statistics

In Fiscal Year 2007, EEOC received 12,510 charges of sexual harassment. 16.0% of those charges were filed by males. EEOC resolved 11,592 sexual harassment charges in FY 2007 and recovered \$49.9 million in monetary benefits for charging parties and other aggrieved individuals (not including monetary benefits obtained through litigation).

[Charge Statistics: Sexual Harassment](#)