

Formulating an Effective EEO Policy

It generally is necessary for employers to establish, publicize, and enforce anti-discrimination and anti-harassment policies and complaint procedures. As the Supreme Court stated, "Title VII is designed to encourage the creation of anti-harassment policies and effective grievance mechanisms" (Ellerth, 118 S. Ct. at 2270). While the Court noted that this "is not necessary in every instance as a matter of law," failure to do so will make it difficult for an employer to prove that it exercised reasonable care to prevent and correct harassment.

An employer should provide every employee with a copy of the policy and complaint procedure, and redistribute it periodically. The policy and complaint procedure should be written in a way that will be understood by all employees in the employer's workforce. Other measures to ensure effective dissemination of the policy and complaint procedure include posting them in central locations and incorporating them into employee handbooks. If feasible, the employer should provide training to all employees to ensure that they understand their rights and responsibilities.

An anti-discrimination, anti-harassment policy and complaint procedure should contain, at a minimum, the following elements:

- A clear explanation of prohibited conduct;

- Assurance that employees who make complaints of discrimination/harassment or provide information related to such complaints will be protected against retaliation;

- A clearly described complaint process that provides accessible avenues of complaint;

- Assurance that the employer will protect the confidentiality of discrimination/harassment complaints to the extent possible;

- A complaint process that provides a prompt, thorough, and impartial investigation; and

- Assurance that the employer will take immediate and appropriate corrective action when it determines that discrimination/harassment has occurred.

The following pages include examples of EEO policies that companies have implemented.

Example 1

This company is committed to ensuring equal employment opportunity (EEO) and promoting workforce diversity to maintain a strong, effective, high-performing public service organization. We support and vigorously enforce all applicable Federal EEO laws, regulations, Executive Orders, and management directives to ensure that all individuals are afforded an equal opportunity for success. The relevant laws include Title VII of the Civil Rights Act of 1964; the Rehabilitation Act of 1973, as amended; the Age Discrimination in Employment Act of 1975; and the Equal Pay Act of 1963. This company will not tolerate discrimination or harassment on the basis of race, color, religion, national origin, sex, sexual orientation, age, genetic information or disability; or retaliation for opposing discriminatory practices or participating in discrimination complaint proceedings. This applies to all personnel practices and terms and conditions of employment, including recruitment, hiring, promotions, transfers, reassignments, training, career development, benefits, and separation. In addition, this company will provide reasonable accommodation to qualified individuals with disabilities and for religious practices, as provided by the applicable laws and procedures.

To enforce this policy, this company is empowered to administer an impartial and effective complaint management process to address and resolve complaints of discrimination at the earliest possible stage. Employees may report allegations of discrimination to their immediate supervisor, another management official, their collective bargaining unit or Human Resources, as appropriate. Please note that employees must report such allegations within 45 calendar days of the date of the alleged incident in order for a complaint to be investigated. Allegations of discrimination and harassment will be immediately addressed and appropriate corrective action, up to and including termination, will be taken if allegations are substantiated.

This company is firmly committed to ensuring that all its employees, applicants, contract employees, clients, customers, and anyone doing business with this company is not subjected to discrimination. Harassment is a form of prohibited discrimination and will not be tolerated. The following defines what constitutes harassment:

Harassment is any unwelcome, hostile, or offensive conduct taken on the basis of race, color, religion, national origin, sex, sexual orientation, age, genetic information or disability that interferes with an individual's performance or creates an intimidating, hostile or offensive environment.

Sexual harassment is a form of sex discrimination that involves unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when: (1) submission to or rejection of such conduct is made either explicitly or implicitly a term or condition of one's employment, or (2) submission to or rejection of such conduct by a person is used as a basis for career or employment decisions affecting that person, or (3) such conduct interferes with an individual's performance or creates an intimidating, hostile or offensive environment.

Retaliation against individuals for opposition to discrimination or participation in the discrimination complaint process is unlawful and will not be tolerated. This company supports the rights of all employees to engage in protected activity under civil rights statutes, Executive Orders, and whistleblower protection laws. We will work aggressively to protect employees from

reprisal for participation in such protected activity. Information and training is available to all employees.

Both supervisors and employees bear responsibility to maintain a work environment free from discrimination and harassment. Employees must not engage in harassing conduct and should report such conduct to their supervisor, another management official, their collective bargaining unit, and/or Human Resources, as appropriate. If an employee brings an issue of harassment to a supervisor's attention, the supervisor must promptly investigate the matter and take appropriate and effective corrective action. Supervisors are encouraged to seek guidance from Human Resources when addressing issues of discrimination or harassment. Both employees and supervisors are encouraged to resolve such issues at the earliest stage and participate in the alternative dispute resolution. It is every supervisor's responsibility to inform his/her staff of this policy and to ensure that discrimination and workplace harassment of any type will not be tolerated.

Each of us bears the responsibility to ensure that discrimination in the workplace is not tolerated and that diversity is valued. Supervisors and managers serve as agents of this company and bear a special responsibility to ensure that the work environment is free from discrimination and harassment. Promoting the complementary principles of equity and diversity in the workplace is a pivotal element in *building a strong company*. We remain committed to these principles as it pursues its critical mission of *protecting and promoting America's health*.

Example 2

Discrimination is Unlawful

This company is an equal opportunity employer and we do not engage in practices that discriminate against any person employed or seeking employment based on race, color, gender, religion, sex, national origin, age, marital status, sexual orientation, genetic information, disability, veterans' status, or any other protected status.

Discrimination by executives, supervisors, employees, clients, vendors and/or contractors will not be tolerated. In addition, retaliation against any individual who has complained about unlawful discrimination, or retaliation against individuals for cooperating with an investigation of a complaint of unlawful discrimination, also will not be tolerated. Persons who violate this policy will be subject to disciplinary action up to and including termination of employment, and/or termination of the contractual relationship.

Discrimination Defined

Black's Law Dictionary defines discrimination as the failure to treat all persons equally where no reasonable distinction can be found between those favored and those who are not favored.

In other words, discrimination is the unfair treatment or denial of standard privileges of employment (such as benefits, working hours, pay increases, transfers, or promotions) based on one's race, age, sex, nationality, pregnancy, religion, genetic information, marital or veteran status, or handicap whether physical or mental.

Race or Color Discrimination - Equal employment opportunity cannot be denied any person because of their racial group or perceived racial group, their race-linked characteristics (e.g., hair texture, color, facial features), or because their marriage to or association with someone of a particular race or color. Employment decisions based on stereotypes and assumptions about abilities, traits, or the performance of individuals of certain racial groups is also prohibited.

National Origin Discrimination - It is illegal to discriminate against an individual because of birthplace, ancestry, culture, or linguistic characteristics common to a specific ethnic group.

A rule requiring that employees speak only English on the job may violate Title VII unless an employer shows that the requirement is necessary for conducting business. If the employer believes such a rule is necessary, employees must be informed when English is required and the consequences for violating the rule.

Sex Discrimination - 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 - Pregnancy, childbirth, and related medical conditions must be treated in the same way as other temporary illnesses or conditions.

Age Discrimination – Unlawful age discrimination is treating an employee or applicant who is 40 years of age or older differently than a person in a similar position who is substantially younger.

Statements or specifications in job notices or advertisements of age preference and limitations is prohibited. An age limit may only be specified in the rare circumstance where age has been proven to be a *bona fide* occupational qualification.

An employer also cannot deny benefits to older employees. Benefits may be reduced based on age only if the cost of providing the reduced benefits to older workers is the same as the cost of providing benefits to younger workers.

Disability Discrimination – Employers cannot discriminate against an individual who has a physical or mental impairment that substantially limits at least one major life activity, such as walking, seeing, hearing, speaking, learning, or working. It also includes people who have a record of or is believed to have such impairment.

A qualified employee or applicant with a disability is an individual who, with or without reasonable accommodation, can perform the essential functions of the job in question.

Religious Discrimination - Employers may not treat employees or applicants more or less favorably because of their 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.

Genetic Information Discrimination - Employers may not use genetic information for any decisions regarding terms of employment. Health Insurers and health plan administrators are prohibited from requesting or requiring genetic information of an individual or their family members, or using it for decisions regarding coverage, rates, or pre-existing conditions.

Equality is the Law

Title VII of the Civil Rights Act of 1964 protects all employees and applicants from employment discrimination based on **race, color, sex** (gender), **religion** and **national origin**.

The **Americans with Disabilities Act of 1990** (ADA) protects qualified individuals with disabilities from employment discrimination based on **disability**.

The **Age Discrimination in Employment Act** (ADEA) of 1967 protects employees and applicants who are 40 years of age or older from employment discrimination based on **age**.

The **Equal Pay Act** (EPA) of 1963 protects all employees and applicants from employment discrimination in wages based on **sex** (gender).

Genetic Information Non discrimination Act (GINA) of 2008 protects employees from being treated unfairly because of differences in their DNA that may affect their health.

Discrimination in the Workplace

It is illegal to discriminate in any aspect of employment including:

- hiring and firing;
- compensation, assignment, or classification of employees;
- transfer, promotion, layoff, or recall;
- job advertisements;

recruitment;
testing;
use of company facilities;
training and apprenticeship programs;
fringe benefits;
pay, retirement plans, and disability leave; or
other terms and conditions of employment.

Examples of Discrimination

Harassment on the basis of race, color, religion, sex, national origin, genetic information, disability, or age;

Retaliation against an individual for filing a charge of discrimination, participating in an investigation, or opposing discriminatory practices;

Employment decisions based on stereotypes or assumptions about the abilities, traits, or performance of individuals of a certain sex, race, age, religion, genetic information, or ethnic group, or individuals with disabilities;

Denying employment opportunities to a person because of marriage to, or association with, an individual of a particular race, religion, national origin, or an individual with a disability. Title VII also prohibits discrimination because of participation in schools or places of worship associated with a particular racial, ethnic, or religious group;

Verbal abuse, offensive innuendo or derogatory words, concerning a person's race, color, gender, age, sexual orientation, religion, ethnic or national origin, disability, veterans' status, or any other protected status;

Intentionally treating employees or applicants differently than others who hold or are applying for similar jobs. Disparate or unequal treatment can occur in any area of employment, including hiring, discipline, performance appraisal, termination, working conditions, and benefits. Harassment is a form of disparate treatment;

Having employer policies or procedures that appear neutral but have a particularly negative effect on a group with a common race, color, sex, national origin, religion, age, or disability status. This is known as disparate impact and its effect does not have to be intended.

Filing a Complaint

If you feel that you have been subjected to discrimination or harassment, by any person employed by or doing business with this company, or you have witnessed such activity, please report the incident immediately to your supervisor. If reporting the incident to your supervisor is inappropriate because your complaint involves your supervisor or you fear reprisal, then please report the incident to:

Name, Title and Phone Number

Anyone that receives a complaint of discrimination or harassment must treat the matter seriously and conduct a prompt, impartial and thorough investigation and report it to:

Name, Title and Phone Number

Investigations and resolutions will be handled with as much privacy, discretion and confidentiality as possible without compromising diligence and fairness. Everyone involved in the investigation process shall conduct themselves with professionalism and respect.

If after investigation, it is found that inappropriate conduct occurred, immediate action will be taken, which may include but is not limited to reprimand, suspension, change in assignments, mandatory training, loss of privileges and/or termination. Retaliation against the person filing the complaint is unlawful and will be subject to disciplinary action which may include termination.

In addition, a complaint of discrimination or harassment may be filed with either the appropriate state or federal agency listed below. Failure to first utilize the internal company complaint process available to you may result in an unfavorable ruling.

U.S. Equal Employment Opportunity Commission

P.O. Box 7033

Lawrence, Kansas 66044

800-669-4000

TTY 800-669-6820

www.eeoc.gov

State Office _____

Phone: _____

Example 3

TITLE

This policy and procedure shall be known as the (insert company name) Equal Employment Opportunity Policy and Procedure. It may be referred to as the EEO Policy.

PURPOSE

The purpose of this EEO Policy is to ensure full realization of non-discrimination and equal employment opportunity by selecting, training, and promoting employees based on their ability and job performance and to provide equal opportunities in all aspects of employment without regard to sex, race, color, ethnicity, national origin, ancestry, religion, pregnancy, age, sexual-orientation, sexual identity, genetic information, physical or mental disability, medical condition, marital status, veterans status, citizenship, or any other protected group status ("protected classification"). Unlawful discrimination, harassment and retaliation in any form will not be tolerated.

SCOPE

This EEO Policy is applicable to all company Agencies and Departments, and to the heads of company Agencies and Departments, their managers, supervisors and employees.

POLICY

A. Agencies, Departments, and their managers, supervisors and employees are responsible for full support and commitment to a policy of non-discrimination and equal employment opportunity.

B. Agencies and Departments are responsible for preparing and submitting to the Human Resources Department an Equal Employment Opportunity Plan.

C. Equal employment opportunity will be achieved through leadership and aggressive implementation of a program of equal employment opportunity. The program will include the periodic and systematic review of recruitment, selection and promotional practices, attention to upward mobility, periodic training and educational opportunities, audits of progress through a review of statistics, and annual Certificates of Compliance and/or Equal Employment Opportunity Plans.

D. Any person who believes he or she has been the victim of unlawful discrimination, harassment or retaliation should report the incident immediately to his or her supervisor, manager, Agency or Department Human Resources staff, or the Human Resources Department. All allegations will be investigated promptly.

Complaints will be kept as confidential as possible. If the allegation is sustained, prompt, appropriate remedial action shall be taken.

E. The Human Resources Department is charged with the responsibility for administering this Policy.

COMPLIANCE PROCEDURES

- A. The Human Resources Department is responsible for overseeing the administration of the company's EEO Policy and may act as necessary to carry out this Policy.
- B. Agencies and Departments are responsible for ensuring that they do not discriminate, harass or retaliate in any policy, practice, or procedure on the basis of any protected classification.
- C. The Human Resources Department will gather and provide to Agencies and Departments workforce statistics for their particular Agency or Department. This information may be used to insure that employment related decisions are made in compliance with federal and state non-discrimination law and this Policy.
- D. Each Agency and Department will appoint an EEO Coordinator who is responsible for administering this Policy within his or her respective Agency or Department.
- E. All Agency and Department Heads and EEO Coordinators shall on an annual basis timely submit a Certificate of Compliance to Equal Employment Opportunity. Those Agencies and Departments required under the provisions of state or federal contracts or grants to prepare Equal Employment Opportunity Plans must do so by timely preparing and updating their existing plans and contacting the EEO Access Office for assistance as needed.
- F. Unlawful discrimination based on a person's protected status or classification will not be tolerated. Discrimination includes any employment related policy, practice, procedure or decision based upon a person's status, such as sex, race, color, national origin, ancestry, ethnicity, religion, pregnancy, age, sexual-orientation, sexual identity, genetic information, physical or mental disability, medical condition, marital status, veteran status, citizenship status, or other protected group status rather than merit.
- G. Harassment based on a person's protected status or classification will not be tolerated. Harassment consists of unwelcome conduct, whether verbal, physical, or visual, that is based upon a person's actual or perceived status, such as sex, race, color, national origin, ancestry, ethnicity, religion, pregnancy, age, sexual-orientation, sexual identity, genetic information, physical or mental disability, medical condition, marital status, veteran status, citizenship status, or other protected group status. Harassment in the form of retaliation for complaints of discrimination will likewise not be tolerated. This company will not tolerate harassing conduct that affects tangible job benefits, that interferes unreasonably with an individual's work performance, or that creates an intimidating, hostile, or offensive work environment. Whenever an employee alleges harassment, or at any time where it is believed that harassment is taking place, this company will act promptly to investigate and take swift and appropriate remedial action in dealing with those found in violation of the company's EEO Policy.
- H. Harassment based on a person's sex includes, but is not limited to: unwelcome sexual advances, requests for sexual favors, any physical, verbal, or visual conduct based on sex where such conduct is an explicit or implicit term or condition of employment or where harassment is so severe or pervasive that a reasonable person would conclude the conduct creates a hostile or abusive work environment or the conduct involves a concerted pattern of harassment of a repeated, routine or generalized nature. Sexual harassment may include same sex as well as opposite sex misconduct where it is based on the person's gender.

Occasional, isolated, sporadic, or trivial acts that are simply annoying in nature may not constitute harassment. Nonetheless, Agencies and Departments are expected to investigate and remedy promptly any seemingly minor acts of harassment to avoid the development of a hostile work environment.

Examples of sexual harassment include, but are not limited to the following, when such acts or behavior come within the above:

- explicitly or implicitly conditioning any term of employment (e.g. continued employment, wages, evaluation, advancement, assigned duties or shifts) on the provision of sexual favors;
- participating in conduct the purpose or effect of which is to unreasonably interfere with an individual's work performance or create an intimidating, hostile, or offensive working environment;
- unwelcome touching or grabbing any part of an employee's body;
- continuing to ask an employee to socialize on or off-duty when that person has indicated she or he is not interested;
- displaying or transmitting in person or through any media sexually suggestive pictures, objects, cartoons, or posters if it is known or should be known that the behavior is unwelcome;
- continuing to send sexually suggestive notes or letters if it is known or should be known that the person does not welcome such behavior;
- regularly telling sexual jokes or using sexually vulgar or explicit language in the presence of another person;
- using foul language or gestures;
- harassing acts or behavior directed against a person on the basis of his or her sex;
- derogatory or provocative remarks about or relating to an employee's sex or appearance;
- off-duty conduct which falls within any of the above and affects the work environment; and
- making unwelcome, inappropriate inquiries about a person's private or personal behavior.

I. This company is dedicated to providing equal employment opportunities to persons with disabilities. Discrimination based on a person's disability will not be tolerated. A person with a disability is one who has a physical or mental impairment or medical condition that limits one or more major life activities, any person who has a past history of such an impairment, or any person who is treated as if he or she has such an impairment. To insure that persons protected by the American's with Disabilities Act are considered on the basis of merit, all employment related decisions will be based upon neutral criteria to determine each candidate's ability to perform a position's essential functions with or without reasonable accommodations.

· Qualified employees with disabilities shall have the same access to benefits as employees without a disability.

· An individual with a disability is responsible for making his or her supervisor or recruiter aware of his or her need for an accommodation. When the need for accommodation has been identified, or if the supervisor is aware of the disability, the supervisor or recruiter is responsible for entering into an "interactive process" with the individual and taking the following steps:

1. Identifying the essential functions of the job based upon the job description, job announcement, policies and procedures manuals;
 2. Consulting with the individual who requested the accommodation to identify which duties are affected by the individual's disability and what accommodations could enable the individual to perform those duties or the duties of another vacant position;
 3. Conferring with the Human Resources team, to evaluate the reasonableness of the requested accommodations and/or to identify alternate accommodations on a case-by-case basis;
 4. Giving a qualified applicant with a disability, who is able to perform the essential functions of the position, an equal opportunity to compete for the position; and
 5. Implementing those reasonable accommodations that allow an employee to perform the essential functions of his or her position.
- J. Discrimination or retaliation because of an employee's exercise of his or her rights to a leave of absence as provided for by law will not be tolerated.
- K. In all cases, the better qualified applicant or employee shall be selected for a position, promotion, assignment, training, or other employment action.

PROCESSING COMPLAINTS

A. Any employee or applicant for employment who believes he or she has been the victim of discrimination, harassment or retaliation in violation of this company's EEO Policy is encouraged to file a complaint. When this company receives a complaint of discrimination, harassment or retaliation or otherwise has reason to believe that discrimination, harassment or retaliation is occurring, it will take all necessary steps to ensure that the matter is promptly investigated and that prompt, appropriate remedial action is taken. This company is committed to take action if it learns of discrimination, harassment or retaliation in violation of this Policy whether or not the aggrieved employee files a complaint.

B. The complainant must be given the option to file a discrimination, harassment or retaliation complaint with his or her department manager/supervisor, Human Resources team, or with an outside compliance agency such as a State Agency or the United States Equal Employment Opportunity Commission (EEOC). The complainant and the accused are entitled to know and shall be promptly informed at the conclusion of the investigation whether allegations have been found to be founded, unsubstantiated or unfounded.

C. Where a complaint is filed against an employee with whom the company has a reporting relationship, the complaint will be directed to the CEO. The Human Resources team will not conduct the investigation. The CEO will appoint an independent investigator who will report to the CEO on the complaint.

D. All supervisory and management employees are responsible for promptly responding to, and/or reporting any suspected acts of discrimination, harassment, and retaliation. Supervisors and managers must immediately report suspected discrimination, harassment and retaliation to their Agency or Department Human Resources team. The Agency/Department Human Resources team shall report any suspected discrimination, harassment and retaliation to the

CEO. Failure by a manager/supervisor to appropriately report and address known or suspected incidents of discrimination, harassment or retaliation shall be considered to be a violation of this Policy and appropriate disciplinary action may be taken.

E. Although the company encourages an employee who believes he or she may be the victim of discrimination, harassment or discrimination to report such conduct, the company will not tolerate false accusations of discrimination, harassment or retaliation.

ADMINISTRATION OF EQUAL EMPLOYMENT OPPORTUNITY POLICY AND PROCEDURE

Human Resources is responsible for administering this EEO Policy. To ensure that this Policy is administered consistently on a companywide basis and to ensure accurate record-keeping, information regarding Agency or Departmental investigations, including the nature of the complaint or the suspected misconduct involved, the steps taken in the investigation, and the proposed disposition must be reported to Human Resources before any final action is taken. Human Resources will ensure that all employees are advised of this Policy and ensure uniform and effective implementation of this Policy.