Oregon Travel Information Council

2023-25 Affirmative Action Plan

Adopted December 12, 2022

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I. AGENCY OVERVIEW

The Council was originally created in 1971 to establish policies for the logo sign program, an alternative to billboards made possible by the federal Highway Beautification Act of 1965. In 1972, Oregon became one of the first states to offer interstate and logo signing on its freeways and expressways. Over time, the program expanded to include off-interstate, tourist oriented directional signs, and historical and museum signs on all Oregon secondary routes. In 1993, the Oregon Travel Information Council (OTIC) was converted to a semi-independent agency.

In 1991, the Oregon Department of Transportation (ODOT) transferred the Historical Marker Program to the OTIC. The Heritage Tree Program was created in 1995 and together, these two programs comprise the Heritage Programs. The OTIC receives no funding for the Heritage Programs and relies heavily on the participation of volunteers to staff committees, maintain historical markers, develop projects, and secure local community funding.

The Rest Area Program began in 2010 when the OTIC was given management responsibilities for five ODOT rest areas. Over time, the agency assumed responsibility for additional ODOT rest areas. In 2019, the TIC took over management of three rest areas from Oregon Parks and Recreation Department bringing the total to 25 rest areas now managed by the OTIC.

MISSION STATEMENT

The Oregon Travel Information's mission is to create a great visitor experience by providing direction to destinations, connecting travelers with Oregon's resources, and ensuring safe and convenient travel.

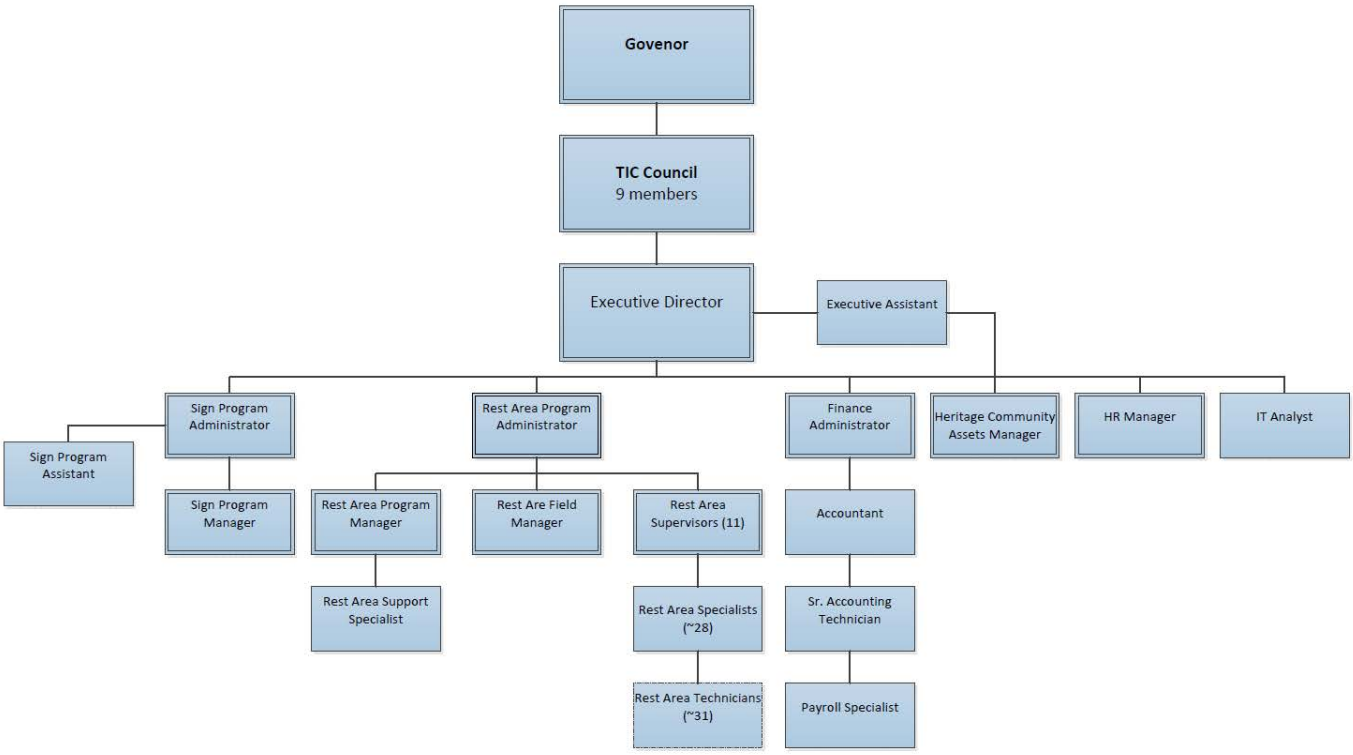
AGENCY DIRECTOR
Elizabeth Boxall, Executive Director
(503) 877-7955
elizabeth.boxall@tic.oregon.gov

GOVERNOR'S POLICY ADVISOR
Kelly Brooks
(971) 208-0684
kelly.s.brooks@oregon.gov

AFFIRMATIVE ACTION REPRESENTATIVE
Laura Medina Trevizo, HR Manager
(503) 373-1042
laura.medinatrevizo@oregon.gov

Contract Equity Lead
Heather Swanson, Rest Area Program Manager
(503) 378-2178
heather.swanson@tic.oregon.gov

ORGANIZATIONAL CHART
As of June 30, 2022



II. Affirmative Action Plan

AFFIRMATIVE ACTION STATEMENT

OTIC is committed to a discrimination- and harassment-free work environment. The agency has a complete Affirmative Action Plan as required of State of Oregon Executive Branch agencies. TIC is an equal opportunity employer that recruits candidates for employment without regard to race, color, national origin, sexual orientation, pregnancy, religion, age, disability, marital status, use of protected family medical or military leave, association with anyone in a protected class defined by applicable law or any other consideration than ability to perform the functions of the position. Women, minorities, disabled individuals, and veterans are encouraged to apply.

OTIC employment practices are consistent with Oregon's Affirmative Action Plan Guidelines and with state and federal laws, which preclude discrimination. OTIC will not discriminate, or tolerate discrimination, against any employee because they are a member of, apply to be a member of, performs, has performed, applies to perform, or has an obligation to perform service in a uniformed service.

Protected Class Under Federal Law: Race; color; national origin; sex (includes pregnancy-related conditions); religion; age (40 and older); disability; sexual orientation; use of FMLA; use of military leave; associating with a protected class; opposing unlawful employment practices; filing a complaint or testifying about violations or possible violations; and any other protected class as defined by federal law.

Protected Class Under Oregon Law: All federally protected classes, plus age (18 and older); physical or mental disability; injured worker; use of OFLA; marital status; family relationship; gender identify; whistleblower; expunged juvenile record; and any other protected class as defined by state law.

The OTIC will implement this 2023-2025 Affirmative Action Plan and make it widely known that equal employment opportunities are available on the basis of individual merit. The OTIC will also:

- Maintain a policy of equal treatment and equality of opportunity in employment for all applicants and employees in its employment decisions, which include, but are not limited to hiring, promotion, demotion, transfer, termination, layoff, training, compensation, benefits, and performance evaluations
- Adopt and disseminate the OTIC Affirmative Action Plan that describes the affirmative action being taken by the agency to ensure equity of employment in a work environment that is free from discrimination
- Create an environment that allows for open communication about differences and empowers all individuals to do their best work in serving agencies, businesses, and individuals;
- Monitor progress in recruitment, hiring, promotion, transfer, and retention of qualified members of protected groups in all job categories; and
- Ensure that OTIC staff are not discriminatory toward one another or to our public we serve.
- Continue to produce inclusive and publicly accessible historical interpretation that is consistent with our values of honesty, accuracy, and complexity.

DIVERSITY, EQUITY & INCLUSION STATEMENT

The OTIC declares its policy to foster fairness, equity, and inclusion, thereby creating a workplace environment where everyone is safe, treated with respect and dignity regardless of race, color, religion, gender, disability, physical stature, age, national origin, sexual orientation, marital status or political affiliation.

The OTIC is fully committed to a policy of diversity and inclusion, and our policy of equity applies to every aspect of our employment practices, including recruitment, hiring, retention, promotion, and training.

TRAINING, EDUCATION & DEVELOPMENT PLAN

Employees

OTIC recognizes that its employees are its greatest resource. Investing in employee development and enhancing employee knowledge, skills, and abilities is one of the OTIC's highest priorities. Continued professional development and training opportunities ensure that employees are provided with the skills needed to excel in their work and therefore be retained in the agency. OTIC uses a variety of approaches to establish a climate that supports continuous learning and development through the following:

- Establishing clear paths for acquiring the knowledge and skills that employees need for their continuing learning and career development.
- Using a variety of ways to provide training and developmental experience for employees such as:
  - Using webinars and other interactive and on-line/on-demand training technologies;
  - Using internal and external training courses; and
  - Establishing individual needs and training requests during annual evaluations.

Volunteers

OTIC embraces supporting volunteers in training and professional development. Many of the above-mentioned training opportunities are available for volunteers.

PROGRAMS

Diversity Awareness

OTIC is developing and promoting diversity awareness through information given to new-hires and regular training given to staff. This is achieved using Workday trainings, trainings available through the Employee Assistance Program, and HR presentations and outreach.

Leadership Development/Training

Training opportunities are provided to all employees. When funding allows, continuing education reimbursement is available for employees to obtain, maintain, or improve their professional capabilities through participation in courses of study at accredited colleges and universities, or accredited organizations specializing in job and career related training.

EXECUTIVE ORDER 22-11 UPDATES

As part of EO 22-11, agency leadership met with representatives from the Office of Cultural Change (OCC) to discuss the status of the current plan and ideas for future plans. Agency representatives attend bi-monthly affirmative action meetings conducted by the OCC.

In 2022, the agency worked with the OCC to learn about additional options focused on diversifying TIC's workforce and began efforts to further diversify and expand candidate pools. One effort includes posting job announcements on the Partners in Diversity (PiD) website and obtaining membership to PiD to access diversity recruitment trainings and workshops.

Respectful Leadership Training & Sexual Harassment

The agency is continuing a proactive management strategy designed to identify best practices and reduce any discriminatory behaviors that may exist within the agency. The agency continues to make progress and is providing training to:

- create a climate of increased awareness;
- identify and respond to cultural and language barriers for OTIC employees and the public; and
- attain a common understanding of how all members of the organization should be valued and respected.

Statewide Exit Interview Survey

OTIC provides exiting employees an exit interview survey and will periodically review the results of the survey made available to us to assess any deficiencies in the workplace, enhance the workplace, improve employee retention, improve negative feedback from the survey, and achieve a diverse workforce through workforce planning.

Performance Evaluation of Management Personnel

In accordance with ORS 659A.012 OTIC incorporates the following performance expectations for all agency management personnel. Expectations include:

- Understanding Equal Employment Opportunity (EEO), Affirmative Action (AA), and Diversity and Inclusion (DI) principles.
- Reviewing employment decisions (e.g., hire, promotion) to ensure they are meeting agency EEO, AA, and DI objectives.
- Promoting and fostering a positive work environment.
- Ensuring appropriate display of EEO, AA, and Americans with Disabilities Act (ADA) information at worksites.

The Council evaluates the Executive Director each year which includes evaluating the effectiveness of agency achievements for goals identified in the biennial affirmative action plan.

STATUS OF CONTRACTS TO MINORITY BUSINESSES

Continued efforts will be made to diversify contracts who are minority, women, and/or businesses certified with the Certification Office for Business Inclusion and Diversity (COBID). Reporting information for minority owned, women owned, and COBID businesses is attached to this report as Appendix A.

III. Roles for Implementation of Affirmative Action Plan

Responsibilities and Accountability

Executive Director

- Makes recommendations to the Council who set policy.
- Establishes agency expectations for equal employment opportunity (EEO), affirmative action (AA), and diversity, equity, and inclusion (DEI).

Managers and Supervisors

- Review the OTIC affirmative action plan.
- Make employment decisions (e.g., hire, transfer, promotion) decisions based on EEO and, especially where underrepresentation exists, consider affirmative action goals.
- Ensure facilities provide access for people with disabilities.

Affirmative Action Representative (HR Manager)

- Represent the agency at the Governor's DI/AA/EEO meetings and share information at HR and other agency staff meetings.
- Assist in recruitment or outreach strategies to attract and retain a diverse workforce.
- Analyze employment data, identify problem areas, and develop implementation strategies.
- Prepare the agency's Affirmative Action Plan.
- Inform management of law and rule changes related to EEO and AA.

IV. Accomplishments (July 1, 2021 – June 30, 2023)

Performance Evaluations of Management Personnel

The 2022 Supervisor/Managers performance evaluation included that they comply with the State of Oregon's Equal Employment Opportunity (EEO), Affirmative Action (AA), and Diversity, Equity, and Inclusion (DEI) principles, promoting and fostering a positive work environment.

DEI Awareness

Employees are welcome to include pronouns after their signature line. The HR Manager has their pronouns in their signature line on all internal/external emails.

The Oregon Historical Marker Committee conducted an internal process and adopted a Value Statement to guide their interpretive work (that recognizes the dominant culture has long silenced diverse viewpoints and prioritizes sharing historically marginalized perspectives and histories).

Training

- OTIC has been working to identify training for staff to promote diversity awareness, respect for all in the workplace, and each employee's role in fostering a respectful and inclusive work environment.
    - All staff and Councilors completed annual training for Prevention of Discrimination and Workplace Harassment.
    - Encouraged staff to attend the 2019 and 2020 Statewide Diversity, Equity and Inclusion Conference.
    - Leveraged Employee Assistance Program resources to provide recorded and custom trainings, and one-on-one advisement for supervisors and staff.

Recruitment and Selection

- OTIC implemented strategies to diversify candidate as follows:
    - Partnered with the CCO to post job announcements to diversity-focused job boards and posted job announcements on college boards, TIC website, LinkedIn, Indeed, Employment Department (Work Source), DAS Partners in Diversity, DAS hard to fill list serve to all agencies and DAS's Workday system to cast a wider net. TIC career flyers were posted at all rest areas (QR code included).
    - Shortened job announcements for easier readability and streamlined aspects of the application process for improved accessibility. This included posting our TIC Rest Area Technician positions on Indeed, previously posted on Craigslist, and acceptance of a resume vs. application only option available for all applicants.
    - Created a tracking spreadsheet to begin tracking the source of applications (Indeed, DAS' Workday, TIC website) and days to hire.

Outreach

- OTIC presented to the Legislative Council on Indian Services and performed direct outreach to each of the nine tribes.
- OTIC's Historical Marker and Heritage Tree Programs brought untold stories of Oregon's past into the public domain:
    - TIC partnered with Oregon Black Pioneers, the Bahai Faith of Linn & Benton Counties, and the City of Philomath to install and dedicate a historical marker about Ruben and Mary Shipley, former slaves who donated two acres of their land for a cemetery where Blacks could be buried as well as Whites.
    - TIC partnered with Coos Historical Society and Oregon Black Pioneers, to tell the story of Beaver Hill Mine, a coal mine outside of Coquille with a diverse labor force that included around 100 Black miners at a time there were only 1,000 Black people living in the state.

    - TIC consulted with the Confederated Tribes of the Umatilla Indian Reservation and the Confederated Tribes of the Warm Springs Reservation to include native place names and diacritics on multiple historical markers.
- OTIC surveyed its employees and various interested partners during the strategic planning process to learn more about perspectives on needed improvements and desired changes/goals.

Progress Made or Lost

During 2021-22, OTIC underwent several staffing changes, including most of its leadership team. New leadership is working on identifying new ways to maintain and enhance progress on agency goals.

V. Goals (July 1, 2023 – June 30, 2025)

Training

- Provide access to an employee learning system (Workday) that for easy access to required and optional trainings and better tracking of employee training.
- Continue to educate and remind OTIC staff about the importance of diversity awareness, inclusion, respect for all in the workplace, and their individual roles in achieving agency affirmative action plan goals.
- Seek training opportunities specific to learning how to enhance employee diversity, equity, inclusion and belonging.
- TIC will ensure that the TIC Affirmative Action Plan is posted to its website for staff and the general public.
- All staff and Councilors to complete the annual training for Prevention of Discrimination and Workplace Harassment.
- Leverage Employee Assistance Program resources to provide recorded and custom trainings, and one-on-one advisement for supervisors and staff.

Recruitment and Selection

- Modernize systems and technology and services to maximize and improve productivity to improve tracking of pre-employment and employment related data.
- Continue to seek strategies to diversify TIC's applicant pool. This includes attending a career fair, networking opportunities, posting TIC jobs on job boards and utilization of social media.
- Continue to improve accessibility through the employment application process.
- Annually review hiring and promotion patterns.

Outreach

- Continue to share Oregon's diverse history. These stories will be shared at historical marker events and TIC website.
    - Continue to partner with local cultural groups and Tribes to accurately interpret the complex history of our state.
    - Distribute an annual heritage publication to share our work broadly.
    - Ensure that our programs are accessible to our community and the public.
- Budget dollars to provide stipends to content contributors to ensure participation is accessible to everyone and to respect the value of traditional and cultural knowledge.
- Participate in community programs designed to promote equal employment opportunity.

In addition, TIC will survey and analyze its workforce on an annual basis to determine what steps, if any, are needed to conform effectively with its Affirmative Action Plan.

Strategies and Timelines for Achieving Goals

Over the course of the 2023-25 biennium, the agency will continue to research and present appropriate training for employees and management to further the agency affirmative action goals, and foster diversity awareness.

TIC will also continue to explore ways to diversify contracting. As an example, TIC recently contracted with a new women-owned business and two native tribes for updates to Oregon Trail Kiosks along I-84 that will begin in 2023.

Appendix A

COBID Report

(showing all classes in date range)

1/1/2000 - 10/21/2022

Friday, October 21, 2022

Vendor ID	Vendor Name	COBID ID	Dollars	MBE	WBE	SDVBE	ESB	DBE
V10251	Sea Reach Ltd	1271	($101,105.89)	☐	☑	☐	☐	☑
V10841	INACTIVE - HR Answers, Inc.	1653	($4,446.00)	☐	☑	☐	☐	☐
V10838	INACTIVE - Gageit Construction, LLC	2463	($7,700.00)	☐	☑	☐	☐	☑
V11156	IT Connection	4300	($390.00)	☑	☐	☐	☐	☑
V10828	Angell Flight Asphalt & Seal Coating, Inc	5208	($23,357.00)	☐	☑	☐	☑	☐
V10779	INACTIVE - Elk Mountain Construction, Inc	5614	($25,385.00)	☐	☐	☐	☑	☐
V10802	INACTIVE - Professional Security Alarm Co.	6230	($1,606.00)	☐	☐	☐	☐	☐
V11102	We Cut Concrete Inc	7062	($1,155.00)	☐	☑	☐	☑	☑
V10642	Oberon3, Inc	7210	($87,008.87)	☐	☐	☐	☑	☐
V10946	INACTIVE - Wet-N-Wild Sprinklers, Inc.	7653	($587.70)	☐	☐	☐	☑	☐
V10443	CK3, LLC	8157	($171,668.10)	☐	☐	☐	☑	☐
V10548	American Leak Detection	8184	($3,548.75)	☐	☐	☐	☑	☐
V11034	Brothers Plumbing Inc.	8552	($16,905.00)	☐	☐	☐	☑	☐
V10555	Freedom Builders LLC	8708	($47,138.61)	☐	☐	☐	☑	☐
V10877	INACTIVE - America Cleaning Solutions Inc.	10029	($237,330.30)	☑	☐	☐	☐	☐
V10117	Grants Pass Water Laboratory, Inc	10514	($11,337.00)	☐	☑	☐	☑	☐
V10851	WHO Ltd	11038	($12,705.00)	☐	☐	☐	☑	☐
V11016	Basin Family Tree Care, LLC	11537	($9,275.00)	☐	☐	☐	☑	☐
V10987	Historical Research Associates, Inc.	11632	($62,539.30)	☐	☑	☐	☐	☐
V11062	SAFI Commercial Cleaning Services, LLC	12390	($177,509.50)	☑	☑	☐	☑	☐
V11134	Outini Collective LLC	12451	($385.44)	☐	☐	☐	☑	☐

Report Total: **($1,003,083.46)** **Vendor Count:** 21

Totals by COBID Class: *(the same dollars and vendors can be in several classes)*

(MBE) Minority Business Enterprise:	($415,229.80)	Count:	3
(WBE) Women Business Enterprise:	($389,149.69)	Count:	8
(SDVBE) Service-Disabled Veteran Business Enterprise:	$0.00	Count:	0
(ESB) Emerging Small Business:	($587,965.97)	Count:	14
(DBE) Disadvantaged Business Enterprise:	($110,350.89)	Count:	4

Appendix B

DAS DEPARTMENT OF ADMINISTRATIVE SERVICES

STATE HR POLICY

SUBJECT:	ADA and Reasonable Accommodation in Employment	**NUMBER:**	50.020.10
DIVISION:	Chief Human Resources Office	**EFFECTIVE DATE:**	11/05/2019

APPROVED: Signature on file with the Chief Human Resources Office

POLICY STATEMENT:

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

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

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

AUTHORITY:

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

APPLICABILITY:

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

ATTACHMENTS:

ADA Accommodation Tool Kit

DEFINITIONS:

Also refer to State HR Policy 10.000.01, Definitions.

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

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

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

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

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

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

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

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

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

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

“Qualified person” does not include people who currently engage in illegal drug use. However, persons who are currently enrolled in, or who have completed a rehabilitation program, and who continue to abstain from illegal drug use may qualify.

Reasonable Accommodation: This term means change or adjustment to a job or work environment that enables a qualified employee with a disability to perform the essential functions of a job, or to enjoy the benefits and privileges of employment equal to those enjoyed by employees without disabilities.

"Reasonable accommodation" does not include modifications or adjustments that cause an undue hardship to the agency.

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

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

Accommodations for Pregnancy, Childbirth or a Related Medical Condition

"Reasonable accommodation" includes accommodations or adjustments made for pregnancy, childbirth, or a related medical condition including, but not limited to, lactation. Reasonable accommodations for purposes of pregnancy, childbirth or a related medical condition may include, but are not limited to:
(1) Acquisition or modification of equipment or devices.
(2) More frequent or longer break periods or periodic rest.
(3) Assistance with manual labor.
(4) Modification of work schedules or job assignments.

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

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

POLICY:

(1) Each state agency director or authorized designee administers State HR Policy 50.020.10 as the agency's policy. Compliance with the ADA is mandatory.

(a) Each agency identifies an ADA coordinator to coordinate ADA accommodation requests and function as an agency resource on ADA matters.

(b) Each agency develops and follows its own procedures for receiving, processing and documenting accommodation requests under this policy. The attached tool kit will assist in this process.

(2) An employee may request an accommodation under this policy by following agency procedures.

(3) The agency must review and respond in a timely manner to each request for accommodation. The agency must engage in an interactive dialogue with the employee to determine whether the accommodation is necessary and will be effective. Agencies will acknowledge in writing all written requests for accommodations within seven calendar days from the date of receipt.

(4) Each accommodation is unique to the person, the disability and the nature of the job. No specific form of accommodation can guarantee success for all people in any particular job. The agency must give primary consideration to the specific accommodation requested by the employee. Through the interactive process the agency may identify and provide an alternative accommodation. With regard to pregnancy, childbirth or a related medical condition, the agency must not require an employee to accept a reasonable accommodation that is unnecessary for the employee to perform the essential duties of the job or to accept a reasonable accommodation if the employee does not have a known limitation.

(5) The duty to provide reasonable accommodation is ongoing. The agency and the employee must engage in the interactive process again if an accommodation proves ineffective.

(6) The agency may deny an accommodation if it is not effective, if it will cause undue hardship to the agency, or if the agency identifies imminent physical harm or risk. The undue hardship exception is available only after careful consideration. The agency must consider alternative accommodations, should a requested accommodation pose undue hardship.

(7) Federal and state law prohibit retaliation against an employee with respect to hiring or any other term or condition of employment because the employee asked about, requested or was previously accommodated under the ADA.

(8) **Policy Notification.**

(A) Agencies will ensure information regarding ADA and agency-specific procedures for requesting an accommodation are readily accessible to employees via bulletin boards and/or a public website or intranet.

(B) Agencies shall post signs that inform employees of the employment protections under ORS 659A, including the right to be free from discrimination because of pregnancy, childbirth and related medical conditions, and the right to reasonable accommodation. Agencies shall post the signs in a conspicuous and accessible location in or about the premises where employees work.

(i) In addition to posting signs, agencies shall provide a written copy of the notice to:

(1) New employees, at the time of hire.
(2) Existing employees, within 180 days after the effective date of this policy.
(3) Any employee who informs the agency of the employee's pregnancy, within 10 days after the employer receives the information.

SUBJECT:	Discrimination and Harassment Free Workplace	**NUMBER:**	50.010.01
DIVISION:	Chief Human Resources Office	**EFFECTIVE DATE:**	01/01/2022

APPROVED: Signature on file with the Chief Human Resources Office

POLICY STATEMENT: Oregon state government as an employer 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; SB 726 (2019; to be added to ORS 659A), SB 479 (2019; to be added to ORS 243); 659A.029; 659A.030, 659A.082 and 659A.112; 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, including limited duration and temporary employees, board and commission members, elected officials, volunteers, interns, others working in an agency, and prospective employees unless this policy conflicts with an applicable collective bargaining agreement.

ATTACHMENTS: None

DEFINITIONS: Also refer to State HR Policy 10.000.01, Definitions

Collective Bargaining Agreement (CBA): A written agreement between Oregon state government (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, or who witnessed or observed discrimination, workplace harassment or sexual harassment and who files a complaint with their immediate supervisor, another manager, or the agency, board, or commission human resources section, executive director, or chair, or the DAS Chief Human Resources Office.

Contractor: An individual or business with whom Oregon state government 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.

Designated individual: An individual designated by the agency who is responsible for receiving reports of discrimination, harassment or sexual assault.

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. *(See also Workplace Harassment.)*

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. This definition includes board and commission members, and individuals who volunteer their services to state government.

Higher Standard: Applies to managers and supervisors. Managers/supervisors are held to a higher standard and are expected to be proactive in creating and maintaining a discrimination and harassment free workplace. Managers/supervisors must exercise appropriate measures to prevent and promptly correct any discrimination, workplace harassment or sexual harassment they know about or should know about.

Non-disclosure agreement: An agreement between the employer and employee not to disclose information related to complaints or personnel actions related to violations of the Statewide Discrimination and Harassment Free Workplace policy.

Non-disparagement agreement: An agreement between the employer and employee not to make negative statements about the other related to complaints or personnel actions related to violations of State HR Policy 50.010.01 *(Discrimination and Harassment Free Workplace)*.

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

Protected Class Under Federal Law: Race; color; national origin; sex (includes pregnancy- related conditions); religion; age (40 and older); disability; sexual orientation; 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; gender identity, 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. *(See also Workplace Harassment.)*

Sexual assault: Unwanted conduct of a sexual nature that is inflicted upon a person or compelled through the use of physical force, manipulation, threat or intimidation; or a sexual offense has been threatened or committed as described in ORS 163.305 to 163.467 or 163.525. *(See also Workplace Harassment.)*

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: Conduct that constitutes discrimination prohibited by ORS 659A.030, including conduct that constitutes sexual assault or that is prohibited by ORS 659A.082 or 659A.112.

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

Workplace intimidation 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 intimidation include, but are not limited to, derogatory remarks, slurs and jokes about a person's protected class status.

Volunteer: Any individual who is performing work on behalf of Oregon state government or a state agency and is not paid for their service. This may include interns, externs and other categories of unpaid workers.

POLICY:

Oregon state government is committed to a discrimination, harassment, and intimidation free work environment. This policy outlines types of prohibited conduct and procedures for reporting and investigating prohibited conduct.

(1) **Workplace Harassment (Discrimination), Sexual Harassment, Sexual Assault, and Workplace Intimidation.** Oregon state government provides a work environment free from workplace harassment (unlawful discrimination) or workplace intimidation based on or because of an employee's protected class status. Additionally, Oregon state government 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, workplace intimidation, sexual assault, or sexual harassment.

(2) **Higher Standard.** Managers/supervisors are held to a higher standard and are expected to be proactive in creating and maintaining a discrimination and harassment free workplace. Managers/supervisors must exercise appropriate measures to prevent and promptly correct any discrimination, workplace harassment, workplace intimidation, sexual assault, or sexual harassment they know about or should know about..

(3) **Designated Individual**. Each agency shall designate an individual and an alternate who are responsible for receiving reports of prohibited conduct under this policy (discrimination, workplace harassment, sexual harassment, sexual assault, workplace intimidation or employment or settlement agreements containing prohibited provisions) occurring within the agency. Each agency must notify employees of who the agency designated individual and alternate are any time it is required to provide a copy of the Discrimination and Harassment Free Workplace policy to employees under this policy or whenever a new designated individual or alternate is selected. Agencies must inform the DAS Chief Human Resources Office (CHRO) who the agency has selected as the designated individual and alternate. CHRO will maintain a list of these individuals.

(4) **Reporting**. Anyone who is subject to or aware of what they believe to be discrimination, workplace harassment, workplace intimidation, sexual harassment, sexual assault, or related employment or settlement agreements containing prohibited provisions should report that behavior to the designated individual or alternate.

Those individuals making a report of what they believe to be discrimination, workplace harassment, workplace intimidation, sexual harassment or sexual assault may also report that behavior to their immediate supervisor, another manager, or the agency, board, or commission human resources section, executive director, chair, or DAS CHRO.

A report of discrimination, workplace harassment, sexual harassment, workplace intimidation, or sexual assault is considered a complaint. Any supervisor or manager, or the agency, board, or commission human resources section, executive director, or chair receiving a complaint should promptly notify the agency's designated individual or alternate.

Upon receipt of a report of prohibited discrimination, workplace harassment, sexual harassment, workplace intimidation, or sexual assault, the designated individual or alternate shall provide a copy of this policy to the employee. The designated individual and alternate shall maintain appropriate records of all complaints.

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

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

(A) The name of the complainant and the name of the person that was subjected to the discrimination, workplace harassment, sexual harassment, workplace intimidation, or sexual assault if they are not the same person.

(B) the names of all parties involved, including witnesses.

(C) A specific and detailed description of the conduct or action the employee believes constitutes discrimination, workplace harassment, sexual harassment, workplace intimidation or sexual assault;

(D) The date or time period in which the alleged conduct occurred.

(E) A description of the desired remedy.

(c) A report should be made to the designated individual within five (5) years of the occurrence; however, failure to report within five years does not remove the agency's responsibility for coordinating and conducting an investigation.

(5) **Other Reporting Options.**

(1) Nothing in this policy prevents any person from filing a formal grievance in accordance with a CBA; a formal complaint with the Bureau of Labor and Industries (BOLI) or the Equal Employment Opportunity Commission (EEOC); or if applicable, the U.S. 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.

(2) A complaint filed with BOLI alleging an unlawful employment practice as described in ORS 659A.030, 659A.082 to 659A.865, 659A.112 or section 2 of SB726 (2019) must be filed no later than five years after the occurrence of the alleged unlawful employment practice.

(3) Nothing in this policy prevents any person from seeking remedy under any other available law, whether civil or criminal.

(4) An employee or claimant must provide advance notice of claim against the employer as required by ORS 30.275.

(6) **Filing a report with the U.S. Department of Labor (USDOL) Civil Rights Center.** An employee whose agency receives federal financial assistance from the U.S. Department of Labor under the Workforce Innovation and Opportunity Act, Mine Safety and Health Administration, Occupational Safety and Health Administration, or Veterans' Employment and Training Service, may file a complaint with the State of Oregon 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.

(7) **Investigation.** The agency designated individual or alternate will notify the agency, board, or commission human resources section, executive director, or chair, or the DAS Chief Human Resources Office as applicable, to 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) To the extent possible, the agency will handle complaints in a discreet and confidential manner.

(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, sexual harassment, workplace intimidation or sexual assault 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 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.

(j) Unless the victim has signed a waiver of the employer's responsibility to conduct follow up contacts with the victim, the employer shall follow up with the victim of the alleged workplace harassment once every three months for the 12 (twelve) calendar months following the date on which the employer received a report of workplace harassment to determine whether the alleged harassment has stopped or if the victim has experienced retaliation.

(8) **Documentation**.

(A) Any of the individuals or entities outlined in (1)(4) that receive reports of discrimination, workplace harassment, workplace intimidation, sexual harassment, sexual assault, or related employment or settlement agreements containing prohibited provisions must document such reports.

(B) Any supervisor, manager or employee who observes or experiences what they believe to be incidents of discrimination, workplace harassment, workplace intimidation, sexual harassment, or sexual assault should also document such incidents.

(C) Agencies must maintain records of workplace harassment including;

i. The date of the incident.
ii. The date the complaint was received by the designated individual or alternate.
iii. The dates the investigation was started and closed.
iv. The investigation report.
v. The outcome of the investigation and any actions taken by the agency.
vi. The dates the agency followed up with the victim, or a signed waiver of the employer's responsibility to conduct follow up contacts with the victim.

(9) **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 that violates 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 sexual harassment, workplace intimidation or sexual assault 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.

(10) **Prohibited employment or settlement agreements**.

(A) Agencies may not require, coerce, or enter into an agreement with an employee or prospective employee, as a condition of employment, continued employment, promotion, compensation or the receipt of benefits, that contains a nondisclosure provision, a non-disparagement provision or any other provision that has the purpose or effect of preventing the employee from disclosing or discussing conduct that:

i. Constitutes discrimination prohibited by ORS 659A.030, including conduct that constitutes sexual assault; or
ii. Constitutes discrimination prohibited by ORS 659A.082 or 659A.112; and(b)(A) that occurred between employees or between an employer and an employee in the workplace or at a work-related event that is off the employment premises and coordinated by or through the employer; or
iii. Occurred between an employer and an employee off the employment premises.

(B) **Exceptions**:

i. An agency may enter into a settlement, separation or severance agreement that includes one or more of the following, only when an employee claiming to be aggrieved by conduct described under section (10)(A) of this policy requests to enter into the agreement:
   1. A provision described in section (10)(A) of this policy,
   2. A provision that prevents the disclosure of factual information relating to a claim of discrimination or conduct that constitutes sexual assault; or
   3. A no-rehire provision that prohibits the employee from seeking re-employment with the employer as a term or condition of the agreement.
ii. An agreement entered into under subsection (i) of this section must provide the employee at least seven days after executing the agreement to revoke the agreement.
iii. The agreement may not become effective until after the revocation period has expired.
iv. If an employer makes a good faith determination that an employee has engaged in conduct prohibited by ORS 659A.030, including sexual assault, conduct prohibited by ORS659A.082 or 659A.112, or conduct prohibited by this section, the employer may enter into a settlement, separation or severance agreement that includes one or more of the following:
   1. A provision described in section (10)(A) of this policy;
   2. A provision that prevents the disclosure of factual information that relates to a claim of discrimination or conduct that conduct that constitutes sexual assault; or
   3. A no-rehire provision that prohibits the employee from seeking re-employment with the employer as a term or condition of the agreement.
v. For violations that occur after October 1, 2020, an employee may file a complaint under ORS 659A.820 for violations of this section and may bring a civil action under ORS 659A.885 and recover relief as provided by ORS 659A.885(1) to (3).
vi. This section does not apply to an employee who is tasked by law to receive confidential or privileged reports of discrimination, sexual assault or harassment

(11) A victim of workplace harassment may voluntarily disclose information regarding an incident of workplace harassment that involves the victim.

(12) **Resources.** Individuals who believe they are the victim of workplace harassment should contact their immediate supervisor, another manager, or the agency, board, or commission human resources section, executive director, or chair, or the DAS Chief Human Resources Office for information related to legal resources, counseling, and support services, including the employee assistance program.

(13) **Retaliation.** This policy prohibits retaliation against anyone who files a complaint, participates in an investigation, or reports observing discrimination, workplace harassment, workplace intimidation, sexual assault, or sexual harassment.

(a) Anyone who believes 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, or the agency, board, or commission human resources section, executive director, or chair, or the DAS Chief Human Resources Office 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

(14) **Policy Notification.**

(A) An employer shall:

(i) Make the policy available to employees within the workplace;

(ii) Provide a copy of the policy to each employee at the time of hire and in any orientation materials provided to the employee at the time of hire; and

(iii) Require any supervisor or individual who is designated by the employer to receive complaints to provide a copy of the policy to an employee at the time that the employee discloses information regarding prohibited discrimination, harassment, intimidation or sexual assault.

(B) All employees including board/commission members, state temporary employees, and volunteers shall:

i. Be required to complete harassment and discrimination training upon their initial hire or appointment, and annually thereafter.
ii. Be given directions to read the policy.
iii. Be provided an opportunity to ask questions and have their questions answered. Questions regarding this policy may be directed to the employee's immediate supervisor, another manager, or the agency, board, or commission human resources section, executive director, or chair, or the DAS Chief Human Resources Office as applicable.

Sign an acknowledgement indicating the employee has read the policy and had the opportunity to ask questions. The agency, board or commission must keep signed acknowledgements on file, or use an electronic acknowledgment system to comply with this requirement.

DAS DEPARTMENT OF ADMINISTRATIVE SERVICES

State HR Policy

SUBJECT:	Statewide Employee Training	**NUMBER:**	10.040.01
DIVISION:	Chief Human Resources Office	**EFFECTIVE DATE:**	2/01/2019

APPROVED: Signature on file with the Chief Human Resources Office

POLICY STATEMENT: Oregon state government recognizes its most important resource is its employees. It is committed to the training and development of its workforce so they gain the necessary skills to reach their full potential. By increasing employees' skills and knowledge, Oregon state government will retain highly qualified staff who work as an effective and efficient team.

AUTHORITY: ORS 184.370, 240.145(3) and (4); 240.160; 240.250; 240.435; 240.850(5); Executive Order 17-08

APPLICABILITY: All employees, board and commission members, including temporary employees and volunteers where noted

ATTACHMENTS: None.

DEFINITIONS: Refer to State HR Policy 10.000.01, Definitions; and Executive Order 17-08

POLICY:

(1) This policy requires specific trainings for all new employees. Employees hired on or after the effective date of this policy must complete all required trainings within one year of hire or where otherwise required by rule, policy, collective bargaining agreement or law.

(2) Training shall be developed in line with best practices and the following enterprise values and competencies:

(a) Values

(A) Integrity: Be honest and transparent regardless of the situation.

(B) Accountability: Own and take responsibility for the quality of outcomes for Oregonians.

(C) Excellence: Collaboratively manage the resources we are entrusted with to achieve the best possible outcomes for Oregonians.

(D) Equity: Create and foster an environment where everyone has access and opportunity to thrive.

(b) Competencies

(A) Stewardship: Making the most of the resources we are entrusted with.

(B) Innovation: Asking "why" and challenging ourselves to continually improve.

(C) Intentional Engagement: Fostering an environment where all voices are actively sought and valued.

(D) Communication: Successfully moving information up, down, across, in and out of our organizations.

(E) Mentoring and developing: Supporting employee growth and cultivating the next generation of leaders.

(F) Business acumen: Possessing foundational knowledge of Oregon state government core business practices.

(c) The agency director administers this policy as the agency's Employee Training policy.

(A) Agencies must provide notification and access to new employees for all required trainings and communicate completion expectations.

(B) An agency with required trainings in addition to the trainings listed in this policy may write an agency-specific policy to supplement this statewide policy or post agency-specific required trainings in a place accessible to all employees.

(C) An agency's training plan must include a timeline of trainings.

(d) The following subjects are required agency training content for all new employees:

(A) Acceptable Use of State Information Assets (agency-specific training or policy and signed acknowledgment) within the first thirty days of employment.

(B) Safety (to be defined by agency),

(C) OSCIO Security Awareness within the first thirty days of employment,

(D) Use of a State Vehicle Statewide Training (if driving state vehicles).

(E) DAS CHRO Preventing Discrimination, Harassment and Sexual Harassment in the Workplace (unless the agency prepared its own CHRO-approved training).

(F) DAS CHRO Weapons in the Workplace and Violence Free Workplace.

(G) DAS CHRO Drug-Free Workplace.

(e) The following trainings are required for the following people:

(A) Annually: All employees, including temporary employees, volunteers, and board and commission members must complete the DAS CHRO Preventing Discrimination, Harassment and Sexual Harassment in the Workplace training unless an agency receives an exception from the DAS Chief Human Resources Officer.

(B) Annually: All employees, including temporary employees, volunteers, and board and commission members must complete the OSCIO Security Awareness training unless an agency receives an exception from the DAS Enterprise Security Office.

(C) Within two years of initial appointment: All managers, supervisors and human resource staff must complete a Workplace Effects of Domestic Violence, Harassment, Sexual Assault and Stalking training.

(D) Within six months of appointment: All new board and commission members, and executive directors of a small entity with fewer than 50 FTE, must complete the DAS CHRO Overview of Boards and Commissions training.

Chapter 240 — State Personnel Relations

2021 EDITION

STATE PERSONNEL RELATIONS

PUBLIC OFFICERS AND EMPLOYEES

ADMINISTRATIVE PROVISIONS

ADMINISTRATIVE PROVISIONS

240.005 Short title. This chapter shall be known as the State Personnel Relations Law. [Amended by 1979 c.468 §2]

240.010 Purpose of chapter. The general purpose of this chapter is to establish for the state a system of personnel administration based on merit principles. [Amended by 1979 c.468 §3]

240.011 Policy on public service contracts; review. (1) The Legislative Assembly declares that the interests of the state are best served by a system that goes beyond consideration of mere short-term cost to encompass other benefits, such as efficiency, continuity of operations, public protection and avoidance of the spoils system. The state has a basic obligation to protect the public by attempting to assure the orderly and uninterrupted operations, services and functions of all public agencies.

(2) It is the policy of the state that contracts for public services entered into by any public agency be entered with full knowledge of costs and benefits to the public and that contracts be subject to ongoing review to insure accountability of the contractor for the quantity and quality of contracted services. [1989 c.862 §1(1),(2)]

Note: 240.011 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 240 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

240.012 Job sharing; policy statement. The Legislative Assembly finds that job sharing is an efficient and effective technique which should be used to improve management of state agencies. It further finds that job sharing offers employment opportunities to those who otherwise may be unable to participate in state employment and contribute to state operations. [1977 c.462 §1]

Note: 240.012 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 240 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

240.013 Job-sharing positions; adjustment of benefits and detriments. Insofar as reasonably possible, individuals who hold job-sharing positions shall be entitled to benefits and privileges and suffer detriments under this chapter in proportion to their seniority as adjusted in the proportion that their monthly time employed bears to the monthly time employed by individuals holding full-time positions. [1979 c.302 §7]

240.015 Definitions. As used in this chapter, unless the context clearly requires otherwise:

(1) "Administrator" means the Administrator of the Personnel Division.

(2) "Appointing authority" means an officer or agency having power to make appointments to positions in the state service.

(3) "Board" means the Employment Relations Board.

(4) "Class" or "classification" means a group of positions in the state classified service sufficiently alike in duties, authority and responsibilities that the same qualifications may reasonably be required for, and the same schedule of pay can be equitably applied to, all positions in the group.

(5) "Division" means, except in the phrase "division of the service," the Personnel Division referred to in ORS 240.055.

(6) "Division of the service" means a state department or any division or branch thereof, any agency of the state government, or any branch of the state service, all the positions in which are under the same appointing authority.

(7) "Job-sharing position" means a full-time position in the classified service that is classified as one that may be held by more than one individual on a shared time basis whereby the individuals holding the position work less than full-time.

(8) "Regular employee" means an employee who has been appointed to a position in the classified service in accordance with this chapter after completing the trial service period.

(9) "State service" means all offices and positions in the employ of the state other than those of commissioned, warrant and enlisted personnel in the military and naval services thereof. However, as provided in ORS 396.330, the term includes members of the Oregon National Guard or Oregon Civil Defense Force who are not serving pursuant to provisions of Title 10 or 32 of the United States Code and who are employed as state employees in the Oregon Military Department. [Amended by 1959 c.690 §1; 1969 c.80 §30; 1975 c.147 §9; 1979 c.302 §4; 1979 c.468 §4a; 1995 c.114 §1; 2005 c.22 §182; 2017 c.472 §2]

240.055 Personnel Division. The Department of Civil Service that has heretofore functioned under ORS chapter 240 is hereby renamed the Personnel Division and transferred into the Oregon Department of Administrative Services. [Amended by 1969 c.80 §31]

240.057 Administrator of Personnel Division; appointment. The Personnel Division shall be under the supervision and control of an administrator who shall be appointed by and hold office at the pleasure of the Director of the Oregon Department of Administrative Services. [1979 c.468 §7]

240.060 Employment Relations Board; qualification of members; outside activities. (1) The Civil Service Commission that has functioned under this chapter shall be continued as a board of three members to be known as the Employment Relations Board. Each member of the board shall be a citizen of the state known to be in sympathy with the application of merit principles to public employment and shall be of recognized standing and known interest in public administration and in the development of efficient methods of selecting and administering personnel. In the selection of the members of the Employment Relations Board, the Governor shall give due consideration to the interests of labor, management and the public. Each member of the board shall be trained or experienced in labor-management relations and labor law or the administration of the collective bargaining process. No member of the board shall hold, or be a candidate for, any public office.

(2) Except as provided in subsection (3) of this section, a member of the board shall not hold any other office or position of profit, pursue any other business or vocation, or serve on or under any committee of any political party, but shall devote the member's entire time to the duties of the office of the member.

(3) A member of the board may:

(a) Serve as an arbitrator, fact finder or mediator for parties located outside of the State of Oregon;

(b) Teach academic or professional classes for entities that are not subject to the board's jurisdiction;

(c) Have a financial interest but an inactive role in a business unrelated to the duties of the board; and

(d) Publish, and receive compensation or royalties for, books or other publications that are unrelated to

the member's duties, provided that activity does not interfere with the performance of the member's duties.

(4) A member of the board shall be on leave status or act outside of normal work hours when pursuing any activity described in subsection (3)(a) and (b) of this section. [Amended by 1969 c.80 §32; 1973 c.536 §26; 1975 c.147 §10; 1977 c.808 §1; 1999 c.248 §1]

240.065 Appointment; terms; vacancies. (1) The members of the Employment Relations Board shall be appointed by the Governor for a term of four years.

(2) Each member shall be appointed for a term ending four years from the date of the expiration of the term for which the predecessor of the member was appointed, except that a person appointed to fill a vacancy occurring prior to the expiration of such term shall be appointed for the remainder of the term. Appointments to the board by the Governor are subject to confirmation by the Senate in the manner provided in ORS 171.562 and 171.565. [Amended by 1969 c.80 §34; 1973 c.536 §27; 1973 c.792 §6a; 1977 c.808 §2; 1991 c.67 §59]

240.070 [Repealed by 1967 c.73 §3 (240.071 enacted in lieu of 240.070)]

240.071 Compensation and expenses of members. A member shall be paid in accordance with the provisions of ORS 240.240. However, the Personnel Division shall adopt a salary plan that requires the chairperson of the Employment Relations Board to receive a higher salary than the other members. In addition, subject to any other applicable law regulating travel and other expenses of state officers, a member shall receive the actual and necessary travel and other expenses incurred in the performance of official duties. [1967 c.73 §4 (enacted in lieu of 240.070); 1969 c.80 §34a; 1969 c.314 §16; 1975 c.518 §1; 1977 c.808 §3]

240.075 Removal of members. A member of the Employment Relations Board shall be removable by the Governor only for cause, after being given a copy of charges against the member and an opportunity to be heard publicly on such charges before the Governor. A copy of the charges and a transcript of the record of the hearing shall be filed with the Secretary of State.

240.080 Chairperson appointed by Governor; meetings; quorum; hearings. The Governor shall appoint one of the members of the Employment Relations Board as chairperson, who shall serve for a term not to exceed four years. The chairperson shall be the chief administrative officer of the board. The board shall meet at such times and places as are specified by call of the chairperson or a majority of the board. All hearings shall be open to the public. A majority of the members of the board constitutes a quorum for the transaction of business. Any agent designated by the board to make investigations and conduct hearings may administer oaths and affirmations, examine witnesses and receive evidence. [Amended by 1973 c.536 §29; 1977 c.808 §4]

240.085 [Repealed by 1969 c.80 §35 (240.086 enacted in lieu of 240.085)]

240.086 Duties of board; rules. The duties of the Employment Relations Board shall be to:

(1) Review any personnel action affecting an employee, who is not in a certified or recognized appropriate collective bargaining unit, that is alleged to be arbitrary or contrary to law or rule, or taken for political reason, and set aside such action if it finds these allegations to be correct.

(2) Review and enforce arbitration awards involving employees in certified or recognized appropriate collective bargaining units. The awards shall be enforced unless the party against whom the award is made files written exceptions thereto for any of the following causes:

(a) The award was procured by corruption, fraud or undue means.

(b) There was evident partiality or corruption on the part of the arbitrator.

(c) The arbitrators were guilty of misconduct in refusing to postpone the hearing, upon sufficient cause shown, or in refusing to hear evidence pertinent and material to the controversy; or of any other misbehavior by which the rights of any party were prejudiced.

(d) The arbitrators exceeded their powers, or so imperfectly executed them that a mutual, final and definite award upon the subject matter submitted was not made.

(e) There was an evident material miscalculation of figures or an evident material mistake in the description of any person, thing or property referred to in the award.

(f) The arbitrators awarded upon a matter not submitted to them, unless it was a matter not affecting the merits of the decision upon the matters submitted.

(g) The award is in violation of law.

(3) Adopt such rules or hold such hearings as it finds necessary to perform the duties, functions and powers imposed on or vested in it by law. [1969 c.80 §35a (enacted in lieu of 240.085); 1971 c.575 §5; 1975 c.605 §14; 1979 c.468 §5]

240.088 Review of arbitration awards after written exceptions filed. (1) If after a hearing on the exceptions filed as provided in ORS 240.086 (2), it appears to the Employment Relations Board that the award should be vacated or modified, the board may by order refer the award back to the arbitrator with proper instructions for correction or rehearing. Upon failure of the arbitrator to follow the instructions, the board shall have jurisdiction over the case and proceed to its final determination by order.

(2) Review of arbitration awards shall be limited exclusively to that provided under ORS 240.086 and this section, except for such judicial review as may be provided for under ORS 183.480. [1979 c.468 §6]

240.090 [Repealed by 1969 c.80 §92]
240.091 [Repealed by 1979 c.468 §1]

240.093 [1971 c.576 §3; repealed by 1979 c.468 §1]

240.095 [Amended by 1969 c.80 §37; 1969 c.489 §5; repealed by 1979 c.468 §1]

240.097 [1969 c.489 §2; repealed by 1979 c.468 §1]

240.099 [1969 c.658 §2; repealed by 1973 c.536 §39]

240.100 Administer oaths; subpoena witnesses; compel production of papers. Each member of the Employment Relations Board may administer oaths, subpoena witnesses, and compel the production of books and papers pertinent to any investigation or hearing authorized by this chapter. [Amended by 1969 c.80 §38]

240.105 Use of public facilities of state or municipalities. All officers and employees of the state and of municipalities and political subdivisions of the state shall allow the Personnel Division or Employment Relations Board the reasonable use of public buildings under their control, and furnish heat, light, and furniture, for any examination, hearing or investigation authorized by this chapter or ORS 243.005 to 243.215, 243.305, 243.315 and 243.401 to 243.945. The division or board shall pay to a municipality or political subdivision the reasonable cost of any such facilities furnished by it. [Amended by 1969 c.80 §38a]

240.110 [Amended by 1969 c.80 §39; repealed by 1973 c.794 §34]

240.115 Action to secure compliance with chapter. The Employment Relations Board may maintain such action or proceeding at law or in equity as it considers necessary or appropriate to secure compliance with this chapter and its rules and orders thereunder.

240.120 [Amended by 1969 c.80 §39a; repealed by 1973 c.794 §34]

240.123 Board personnel; counsel. (1) The Employment Relations Board shall employ such personnel as it considers necessary for the efficient administration of its vested duties, and fix the compensation of its

employees in accordance with the compensation plan for state employees.

(2) The board shall designate a member of the Oregon State Bar as counsel to assist it in the performance of its functions and duties. Notwithstanding ORS chapter 180 and independently of the Attorney General, the designated counsel may represent the board in any litigation or other matter pending in a court of law to which the board is a party or in which it is otherwise interested. The designated counsel may not appear before the board in any other capacity. [1969 c.80 §35e; 1973 c.536 §30; 1977 c.808 §5; 1979 c.468 §8; 2017 c.496 §1]

240.125 [Amended by 1969 c.80 §40; repealed by 1979 c.468 §1]

240.130 [Amended by 1969 c.80 §41; repealed by 1979 c.468 §1]

240.131 Employment Relations Board Administrative Account. The Employment Relations Board Administrative Account is established separate and distinct from the General Fund. The account consists of all moneys received by the Employment Relations Board, other than moneys appropriated to the board by the Legislative Assembly. All moneys in the account are continuously appropriated to the board for the payment of all expenses incurred by the board. Interest earned by the account shall be credited to the General Fund. [2007 c.296 §4]

Note: 240.131 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 240 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

240.135 [Amended by 1969 c.80 §42; repealed by 1979 c.468 §1]

240.140 [Amended by 1969 c.80 §42a; repealed by 1979 c.468 §1]

240.145 Duties of administrator; rules. The Administrator of the Personnel Division, subject to the approval of the Director of the Oregon Department of Administrative Services, shall direct and supervise all the administrative and technical activities of the Personnel Division. In addition to the duties imposed upon the administrator elsewhere in this chapter, the administrator shall:

(1) Establish and maintain a roster of all employees in state service, in which there shall be set forth, as to each employee, the class title of the position held, the salary or pay; any change in class title, pay, status or merit rating; and any other data about the employee that the division deems necessary.

(2) Select for appointment, under this chapter, such employees of the division and such experts and special assistants as are necessary to carry out effectively the provisions of this chapter.

(3) Prepare such rules, policies and procedures, tests and eligible lists as are necessary to carry out the duties, functions and powers of the Personnel Division under this chapter.

(4) Devise plans for and cooperate with appointing authorities and other supervisory officers in the conduct of employee training programs, to the end that the quality of service rendered by state personnel may be continually improved.

(5) Investigate from time to time the operation and effect of this chapter and the rules thereunder, and report findings and recommendations to the director of the department.

(6) Make annual reports to the director of the department regarding the work of the division, and such special reports as the director considers desirable. [Amended by 1969 c.80 §43; 1971 c.695 §1; 1979 c.468 §9]

240.150 [Amended by 1969 c.348 §1; repealed by 1979 c.468 §37]

240.155 [Amended by 1969 c.80 §44; repealed by 1979 c.468 §1]

240.160 Agency personnel officers. A division of the service may designate a staff employee to serve as personnel officer for that division of the service. Such a personnel officer shall administer, within the division of the service, training and educational programs developed by the administrative head thereof in cooperation with appointing authorities and others and shall have such other functions of the Personnel Division as are authorized by the Administrator of the Personnel Division. [Amended by 1969 c.80 §45]

240.165 Cost of operating Personnel Division divided among various agencies of state government. (1) The administrative expenses and costs of operating the Personnel Division shall be paid by the various divisions of the service in the state government. To establish an equitable division of the costs, the amount to be paid by each division of the service shall be determined in such proportion as the service rendered to each division of the service bears to the total service rendered by the Personnel Division.

(2) The Personnel Division, at such times as its administrator deems proper, shall estimate in advance the expenses that will be incurred during a given period of not to exceed six months and, upon approval by the Director of the Oregon Department of Administrative Services, the division shall render to each division of the service affected thereby an invoice for its pro rata share of such expenses. Each division of the service shall pay such invoice as an administrative expense of that division of the service from funds or appropriations available to that division of the service in the same manner as other claims against the state are paid. If the estimated expenses in the case of any division of the service are more or less than the actual expenses, the difference shall be reflected in the next following estimate of expenses and invoice for that division of the service. [Amended by 1969 c.80 §46; 1969 c.489 §6]

240.167 Cost of operating Employment Relations Board divided among various divisions of state government. (1) The administrative expenses and costs of operation of the Employment Relations Board in behalf of the state service shall be paid by the various divisions of the service in the state government. The board shall determine the amount of the expenses and costs to be paid by each division of the service on the basis of the proportion of employees of that division who have rights under the State Personnel Relations Law or ORS 243.650 to 243.809 to the total number of employees of all divisions of the service who have such rights. The Oregon Department of Administrative Services shall transfer the assessed money to the Employment Relations Board Administrative Account established under ORS 240.131.

(2) The board shall set standards for the assessment of administrative expenses and costs under subsection (1) of this section. The standards shall include the establishment of written policies and procedures the board must follow when determining the assessment. [1969 c.658 §4; 1979 c.66 §1; 2017 c.496 §2]

240.170 Oregon Department of Administrative Services Operating Fund. All moneys received by the Personnel Division pursuant to the state personnel management program shall be deposited in the State Treasury to the credit of the Oregon Department of Administrative Services Operating Fund and are appropriated continuously out of that fund for the payment of all expenses incurred by the division for administration of the state personnel management program. [Amended by 1957 c.437 §2; 1969 c.80 §47; 1969 c.489 §8; 1993 c.500 §8a; 2007 c.296 §6]

240.180 [1969 c.80 §36; 1971 c.734 §20; repealed by 1979 c.468 §1]

240.185 Maximum number of state employees; applicability; exceptions. (1) On and after January 1, 2018, the number of persons employed by the state may not exceed one percent of the state's population of the prior year.

(2) The population figure shall be that required by ORS 190.510 to 190.610.

(3) This section applies to all full-time equivalent budgeted positions.

(4) This section does not apply to the Governor, the Secretary of State, the State Treasurer, the Supreme Court or the Legislative Assembly in the conduct of duties vested in any of them by the Oregon Constitution. However, this exception applies only to the office of the Governor and not to the executive branch of government.

(5) This section does not apply to personnel who administer unemployment insurance benefits programs of the Employment Department, to personnel who administer programs required to be implemented as a condition for the continued certification of the Employment Division Law by the United States Secretary of Labor or to personnel who administer programs implemented by the United States Department of Labor under federal law if the state is required to enter into contracts to provide such programs.

(6) In order to assess the effect of subsection (1) of this section, the Oregon Department of Administrative Services by December 31 of each even-numbered year shall conduct a workload analysis of each state agency, regardless of whether the agency is exempt from the application of subsection (1) of this section. The workload analysis of each agency shall be submitted to the Legislative Assembly prior to its convening in the subsequent odd-numbered year regular session and shall accompany the agency's budget request before the Joint Ways and Means Committee. [1979 c.604 §1; 1983 c.340 §1; 1989 c.863 §1; 2009 c.762 §49; 2011 c.545 §17; 2015 c.767 §63; 2017 c.746 §4]

Note: 240.185 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 240 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

CATEGORIES OF SERVICE; CLASSIFICATION AND COMPENSATION PLANS

240.190 Policy on comparability of value of work and compensation and classification. (1) It is declared to be the public policy of the State of Oregon to attempt to achieve an equitable relationship between the comparability of the value of work, as defined in ORS 292.951, performed by persons in state service and the compensation and the classification structure within the state system. To further the effort to achieve and maintain equity for undervalued jobs and job classifications, the state shall employ a neutral and objective method of determining the comparability of the value of work. The first priority in attaining equitable relationships shall be achieving compensation equity for the most undervalued classes in the lowest salary ranges.

(2) State management, in each branch of government, shall, when establishing or modifying personnel plans and policies in compensation and classification matters, or in collective bargaining, arbitration and grievance procedures, hold equity in compensation and classification matters as an important consideration. Where applicable, an exclusive representative of a collective bargaining unit shall hold the same considerations to achieve consistency with the policies stated in this section and ORS 292.951 to 292.971.

(3) No employee shall have wages decreased in order to achieve the policy set forth in this section. [1983 c.814 §1; 1987 c.772 §2]

Note: 240.190 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 240 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

240.195 Categories of positions in state service. Positions in the service of the state are divided into the following categories:

(1) The classified service as provided in ORS 240.210.

(2) The unclassified service as provided in ORS 240.205.

(3) The exempt service as defined in ORS 240.200.

(4) The management service as provided in ORS 240.212. [1955 c.738 §1; 1981 c.409 §1]

240.200 Exempt service. The exempt service shall comprise:

(1) Officers elected by popular vote and persons appointed to fill vacancies in elective offices.

(2) Members of boards and commissions who serve on a part-time basis and who, if compensated, receive compensation on a per diem basis.

(3) Judges, referees, receivers, jurors and notaries public.

(4) Officers and employees of the Legislative Assembly.

(5) Persons employed in a professional or scientific capacity to make or conduct a temporary and special

inquiry, investigation or examination on behalf of the Legislative Assembly or a committee thereof, or by authority of the Governor.

(6) Any other position designated by law as exempt. [1955 c.738 §2; 1969 c.80 §48; 1969 c.199 §17; 1975 c.427 §1; 1983 c.763 §29]

240.205 Unclassified service. The unclassified service shall comprise:

(1) One executive officer and one secretary for each board or commission, the members of which are elected officers or are appointed by the Governor.

(2) The director of each department of state government, each full-time salaried head of a state agency required by law to be appointed by the Governor and each full-time salaried member of a board or commission required by law to be appointed by the Governor.

(3) The administrator of each division within a department of state government required by law to be appointed by the director of the department with the approval of the Governor.

(4) Principal assistants and deputies and one private secretary for each executive or administrative officer specified in ORS 240.200 (1) and in subsections (1) to (3) of this section. "Deputy" means the deputy or deputies to an executive or administrative officer listed in subsections (1) to (3) of this section who is authorized to exercise that officer's authority upon absence of the officer. "Principal assistant" means a manager of a major agency organizational component who reports directly to an executive or administrative officer listed in subsections (1) to (3) of this section or deputy and who is designated as such by that executive or administrative officer with the approval of the Director of the Oregon Department of Administrative Services.

(5) Employees in the Governor's office and the principal assistant and private secretary in the Secretary of State's division.

(6) The director, principals, instructors and teachers in the school operated under ORS 346.010.

(7) Apprentice trainees only during the prescribed length of their course of training.

(8) Licensed physicians and dentists employed in their professional capacities and student nurses, interns, and patient or adult in custody help in state institutions.

(9) Lawyers employed in their professional capacities.

(10) All members of the Oregon State Police appointed under ORS 181A.050.

(11) The Deputy Superintendent of Public Instruction appointed under ORS 326.300 and associate superintendents in the Department of Education.

(12) Temporary seasonal farm laborers engaged in single phases of agricultural production or harvesting.

(13) Any individual employed and paid from federal funds received under a federal program intended primarily to alleviate unemployment. However, persons employed under this subsection shall be treated as classified employees for purposes of ORS 243.650 to 243.809.

(14) Managers, department heads, directors, producers and announcers of the state radio and television network.

(15) Employees, including managers, of the foreign trade offices of the Oregon Business Development Department located outside the country.

(16) Any other position designated by law as unclassified. [Amended by 1953 c.699 §3; 1955 c.738 §4; 1957 c.597 §1; 1959 c.230 §1; 1959 c.566 §4; 1961 c.645 §1; 1965 c.405 §2; 1969 c.80 §49; 1969 c.199 §18; 1969 c.564 §3; 1969 c.599 §§66a,66b; 1971 c.301 §19; 1971 c.467 §25c; 1975 c.3 §1; 1975 c.393 §1a; 1975 c.427 §2a; 1977 c.271 §1; 1979 c.747 §1; 1979 c.468 §11; 1981 c.518 §3; 1981 s.s. c.3 §40; 1983 c.763 §30; 1985 c.388 §1; 1985 c.565 §38; 1991 c.149 §3; 1991 c.887 §2; 1993 c.741 §19; 1995 c.612 §13; 2001 c.883 §42; 2007 c.858 §61; 2009 c.562 §17; 2011 c.9 §28; 2011 c.547 §40; 2011 c.731 §8; 2019 c.213 §59]

240.207 [1969 c.564 §2; 1979 c.468 §29; repealed by 1995 c.612 §24]

240.210 Classified service. The classified service comprises all positions in the state service existing on June 16, 1945, or thereafter created and which are not listed in ORS 240.200, 240.205 or 240.212. [Amended by 1955 c.738 §7; 1981 c.409 §2]

240.212 Management service. The management service shall comprise all positions not in the unclassified or exempt service that have been determined to be confidential employees, supervisory employees or managerial employees, as defined in ORS 243.650. [1981 c.409 §6; 1995 c.286 §25]

240.215 Classification plan; job share; career ladder; transfers. (1) The Personnel Division of the Oregon Department of Administrative Services shall adopt a classification plan which shall group all positions in the classified service in classifications based on their duties, authority and responsibilities; and which shall set forth for each classification, a class title, a statement of the minimum qualifications, duties, authority and responsibilities thereof. Each classification of positions may be subdivided and classes may be grouped and ranked in an appropriate manner.

(2) The allocation of positions within the various operating agencies to the classifications in the classification plan shall be performed by the agency appointing authority with post-audit review by the division. Agencies shall allocate positions to the available class that most accurately describes the work based upon the assigned duties, authorities and responsibilities. If a position is found to be misallocated, the agency shall change the allocation of the position to the proper class for the work, whether or not the assigned duties have changed since the previous allocation decision.

(3) In adopting a classification system, the division shall consult with appointing authorities to determine the positions in a class of positions that can be classified as job-sharing positions.

(4) The division shall group jobs into broad, statewide classes, whenever possible, consistent with good management practices and ORS 240.190 and 243.650 to 243.809. In this process, the division shall work to reduce the total number of classes, in conjunction with developing career ladders and voluntary cross-agency transfers in concert with employees of the agency. It is intended that employees be provided the necessary training in those instances where additional skills are required. [Amended by 1969 c.80 §50; 1979 c.302 §5; 1979 c.468 §10a; 1993 c.724 §11; 1995 c.155 §1]

240.217 Certain reclassifications prohibited. Whenever class specifications for a class of positions in the classified service are changed to reflect revised or added responsibilities that require either the same level or a higher level of competence, such change will not result in a downward reclassification of the class. [1978 c.6 §2]

Note: 240.217 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 240 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

240.220 [Amended by 1969 c.80 §51; repealed by 1979 c.468 §1]

240.225 [Repealed by 1979 c.468 §1]

240.227 Salary for legislator appointed to exempt, unclassified or management service. (1) Except as otherwise provided by section 30, Article IV of the Oregon Constitution, notwithstanding any statute or salary plan establishing the salary for a position in the exempt, unclassified or management service, a Senator or Representative who is appointed to a position in the exempt, unclassified or management service during the Senator's or Representative's term of office shall receive a salary established as follows:

(a) If the salary for the position to which the Senator or Representative is appointed has been increased during the Senator's or Representative's term of office, the Senator or Representative shall receive a salary equal to that established for the position immediately prior to the commencement of the Senator's or Representative's term of office until the term of office of the Senator or Representative expires.

(b) If the salary for the position to which the Senator or Representative is appointed decreased or remained unchanged during the Senator's or Representative's term of office, the Senator or Representative shall receive the salary established by the applicable statute or salary plan.

(2) As used in this section, "term of office" means the particular four-year or two-year period for which

the Senator or Representative was elected pursuant to section 4, Article IV of the Oregon Constitution. In the event that the Senator or Representative was appointed to fill a vacancy in the Legislative Assembly, "term of office" means the remainder of the four-year or two-year period for which the Senator or Representative was appointed, beginning on the date of appointment. "Term of office" does not mean the Senator's or Representative's duration of service in the Legislative Assembly. [1987 c.879 §23]

240.230 [Repealed by 1979 c.468 §1]

240.233 [1955 c.738 §8; 1969 c.80 §52; 1975 c.139 §1; repealed by 1979 c.468 §1]

240.235 Compensation plan for classified service. (1) The Personnel Division shall establish and implement a merit pay system which shall take into consideration individual performance and organizational accomplishment, prevailing rates of pay for the services performed and for comparable services in public and private employment, living costs, maintenance or other benefits received, obligations established by collective bargaining agreements, and the state's financial condition and policies. The merit pay system may provide for monetary awards to employees for past meritorious service and contribution to the mission and goals of the employing agency.

(2) Modifications of the merit pay system may be adopted by the division and shall be effective only when approved by the Director of the Oregon Department of Administrative Services.

(3) Except as provided in subsection (4) of this section, each employee in the classified service shall be paid a rate within the salary range set forth in the merit pay system for the class of positions in which employed.

(4) Following any modification of the classification plan affecting a position, the division may provide that the rate of compensation of the employee holding such position shall not be reduced by reason of any such modification. An employee holding such a position shall not be eligible for any salary increase during such period of time that the employee's salary is above the maximum of the salary range of the classification to which the employee's position is allocated. [Amended by 1961 c.451 §1; 1969 c.80 §53; 1975 c.305 §1; 1979 c.468 §12]

240.240 Application of chapter to unclassified or management service. (1) The unclassified service or, except as provided in ORS 240.250, the management service shall not be subject to this chapter, except that employees and officers in the unclassified or management service shall be subject to the laws, rules and policies pertaining to any type of leave with pay except as otherwise provided in subsections (4) and (5) of this section, and shall be subject to the laws, rules and policies pertaining to salary plans except as otherwise provided in subsections (3) and (5) of this section.

(2) With regard to any unclassified or management service position for which the salary is not fixed by law, and except as otherwise provided in subsections (3) and (5) of this section, the Personnel Division shall adopt a salary plan which is equitably applied to various categories in the unclassified or management service and is in reasonable conformity with the general salary structure of the state. The division shall maintain this unclassified and management salary plan in accordance with the procedures established for the classified salary plan as provided in ORS 240.235.

(3) The Secretary of State and the State Treasurer, for the purpose of maintaining a salary plan for unclassified and management service positions in their departments, may request the advice and assistance of the division.

(4) With regard to unclassified instructors and teachers under annual teaching contracts for an academic year in the school operated under ORS 346.010, arrangements for leave with pay shall be established by the Department of Education.

(5) With regard to unclassified positions in the Oregon Business Development Department's foreign offices, the salary plan and arrangements for leave with pay shall be established by the Director of the Oregon Business Development Department. [1955 c.738 §5; 1969 c.80 §54; 1971 c.695 §2; 1975 c.427 §4; 1981 c.409 §3; 1985 c.121 §1; 1991 c.149 §4; 1995 c.612 §14; 2007 c.858 §62; 2009 c.562 §18]

240.245 Application of chapter to exempt service. The exempt service shall not be subject to the provisions of this chapter, except that, with regard to any position for which salaries are not fixed by law, the officer authorized by law to appoint or fill such position shall maintain a salary plan equitably applied to the exempt position and in reasonable conformity with the general salary structure of the state. [1955 c.738 §3; 1969 c.80 §55]

240.250 Rules applicable to management service. The Personnel Division shall adopt rules, policies and procedures necessary for the management service. The rules may cover any wages, hours, terms and conditions of employment addressed by this chapter, even if, absent the rule, those wages, hours, terms and conditions would not otherwise apply to the management service. The rules shall further merit principles in the examination, selection and promotion of individuals for the management service. [1981 c.409 §7; 1985 c.121 §2]

240.305 [Amended by 1975 c.427 §5; repealed by 1979 c.468 §1]

METHOD OF SELECTING EMPLOYEES FOR SERVICE IN CLASSIFIED POSITIONS

240.306 Recruitment, selection and promotion of state employees; criteria; procedures; duties of department. (1) Recruiting, selecting and promoting employees shall be on the basis of their relative ability, knowledge, experience and skills, determined by open competition and consideration of qualified applicants, without regard to an individual's race, color, religion, sex, sexual orientation, gender identity, national origin, marital status, age, disability, political affiliation or other nonjob related factors, with proper regard for an individual's privacy. Nothing in this subsection shall be construed to enlarge or diminish the obligation of the state or the rights of employees concerning claims of employment discrimination as prescribed by applicable state and federal employment discrimination laws.

(2) The Oregon Department of Administrative Services shall establish procedures to provide for statewide open recruitment and selection for classifications that are common to state agencies. The procedures shall include adequate public notice, affirmative action to seek out underutilized members of protected minorities, and job related testing. The department may delegate to individual operating agencies the responsibility for recruitment and selection of classifications where appropriate.

(3) Competition for appropriate positions may be limited to facilitate employment of those with a substantial disability or who are economically disadvantaged, or for purposes of implementing a specified affirmative action program.

(4) Appointments to positions in state service shall be made on the basis of qualifications and merit by selection from eligible lists established by the department or a delegated operating agency.

(5)(a) Noncompetitive selection and appointment procedures may be used for unskilled or semiskilled positions, or where job related ranking measures are not practical or appropriate.

(b) Noncompetitive selection and appointment or direct appointment also may be used by agency appointing authorities to fill positions that:

(A) Require special or unique skills such as expert professional level or executive positions; or

(B) Have critical timing requirements affecting recruitment.

(6) Minimum qualifications and performance requirements and duties of a classification may be appropriately modified to permit the appointment and promotion of trainees to positions normally filled at full proficiency level.

(7) The department or delegated agencies shall establish systems to provide opportunities for promotion through meritorious service, training, education and career development assignments. The department shall certify to the eligibility of persons selected for promotion or delegate that responsibility to operating agencies in appropriate situations. Provision shall be made to bring persons into state service through open competition at higher levels when the competition provides abilities not available among existing employees, enrich state service or contribute to improved employment opportunity for underrepresented groups. [1979

c.468 §20; 1985 c.635 §1; 1989 c.224 §28; 1997 c.51 §1; 2007 c.100 §22; 2021 c.367 §13]

240.307 Procedure for enforcement of ORS 240.309; rules. (1) Any complaint alleging violation of ORS 240.309 shall be filed with the Employment Relations Board.

(2) Any employee may file a complaint with the board alleging violation of ORS 240.309.

(3) If the employee makes a prima facie case showing that the employer has violated ORS 240.309, then the burden of rebutting the prima facie case is on the employer.

(4)(a) Any employer found to be in violation of ORS 240.309 by the board may be required to pay any affected employee damages for any loss of wages, benefits and rights. The board may also require the agency to discontinue the improper practices.

(b) Any award granted to an affected employee by the board shall be in addition to any penalty imposed under ORS 240.990.

(5) Subject to the requirements of ORS 183.452, the state agency need not be represented by legal counsel in these proceedings before the Employment Relations Board. The board may adopt, by rule, special informal proceedings to review these matters and may, in its discretion, rely on any grievance procedure records developed by the state agency. If the board adopts a rule under this subsection, the employer shall not be required to comply with ORS 183.452 (2)(b) for hearings conducted under the board rule. Any court review of the board's decision under this section shall give special deference to the informality of the proceedings in reviewing the sufficiency of the record. [1990 c.3 §3; 1999 c.448 §7]

240.309 Temporary appointments; limitations; duration; extension; periodic reports; post-audit review; investigation; exceptions. (1) Temporary employment shall be used for the purpose of meeting emergency, nonrecurring or short-term workload needs of the state.

(2) A temporary employee may be given a nonstatus appointment without open competition and consideration only for the purposes enumerated in this section. Temporary appointments shall not be used to defeat the open competition and consideration system.

(3) A temporary employee may not be employed in a permanent, seasonal, intermittent or limited duration position except to replace an employee during an approved leave period.

(4) Employment of a temporary employee for the same workload need, other than for leave, may not exceed six calendar months. The decision to extend the period of employment may be delegated by the Personnel Division of the Oregon Department of Administrative Services to other state agencies. Approval to extend shall be allowed only upon an appointing authority's finding that the original emergency continues to exist and that there is no other reasonable means to meet the emergency. Agency actions under this subsection are subject to post-audit review by the Oregon Department of Administrative Services as provided in ORS 240.311.

(5) Employment of a temporary employee for different workload needs shall not exceed the equivalent of six calendar months in a 12-month period.

(6) A temporary employee shall not be denied permanent work because of the temporary status. Temporary service shall not be used as any portion of a required trial service period.

(7) The Personnel Division of the Oregon Department of Administrative Services shall report the use of temporary employees, by agency, once every six months, including the duration and reason for use or extensions, if any, of temporary appointments. The reports shall be made available upon request to interested parties, including employee organizations. If any interested party alleges misuse of temporary employees, the division shall investigate, report its findings and take appropriate action.

(8) The Department of Justice may use temporary status appointments for student law clerks for a period not to exceed 24 months.

(9) The chief administrative law judge of the Office of Administrative Hearings may use temporary status appointments for student law clerks for a period not to exceed 24 months. Student law clerks appointed under this subsection may not act as administrative law judges or conduct hearings for the Office of Administrative Hearings.

(10) The Public Utility Commission may use temporary status appointments for student law clerks for a

period not to exceed 24 months.

(11) A state agency may use temporary status appointments for a period not to exceed 48 months for student interns who are enrolled in high school or who are under 19 years of age and are training to receive a certificate for passing an approved high school equivalency test such as the General Educational Development (GED) test. Student interns are not eligible for benefits under ORS 243.105 to 243.285. [1985 c.635 §3; 1990 c.3 §1; 1993 c.98 §5; 1993 c.724 §12; 2001 c.312 §1; 2003 c.75 §20; 2009 c.177 §1; 2017 c.66 §14]

240.310 [Amended by 1969 c.80 §56; 1975 c.427 §6; repealed by 1979 c.468 §1]

240.311 Delegation of authority and responsibility by division; post-audit review. (1) Delegations of authority and responsibility to operating agencies shall be subject to appropriate post-audit review by the Personnel Division.

(2) Controversies between operating agencies and the division arising from post-audit reviews shall be resolved by the Director of the Oregon Department of Administrative Services. [1979 c.468 §22]

240.315 [Amended by 1969 c.80 §57; 1975 c.427 §7; repealed by 1979 c.468 §1]

240.316 Trial service; regular status; procedures for transfer, demotion and separation of employees. (1)(a) Persons initially appointed to or promoted to a permanent or seasonal position in state service shall be subject to a trial service period.

(b) An appointing authority has the discretion to subject an employee to a trial service period when:

(A) A management service employee or a classified, unrepresented employee transfers to a different agency;

(B) A management service employee or a classified, unrepresented employee transfers back to the same agency after an absence of more than one year;

(C) A former management service employee or former classified, unrepresented employee is reemployed by the same agency after an absence of more than one year; or

(D) A former management service employee or former classified, unrepresented employee is reemployed by a different agency.

(c) Any employee who serves the trial service period designated by the Personnel Division or a delegated operating agency for a given classification or as described in paragraph (b) of this subsection shall be given regular employee status.

(2) Employees who have acquired regular status will not be subject to separation except for cause as defined by ORS 240.555 or lack of work, curtailment of funds, or reorganization requiring a reduction in force.

(3) Procedures shall be established by the division to provide for the layoff and opportunity for reemployment of employees separated for reasons other than cause, which shall take into account the needs of the service, qualifications, quality of performance, relative merit and length of service.

(4) Procedures shall also be established by the division for the transfer, discipline or demotion of employees for the good of the service or separation of employees whose conduct or performance continues to be improper or inadequate after reasonable attempts have been made to correct it, where appropriate. [1979 c.468 §23; 1981 c.155 §1; 1989 c.134 §1; 1989 c.890 §11]

240.320 [Amended by 1969 c.80 §58; repealed by 1979 c.468 §1]

240.321 Collective bargaining; effect of collective bargaining agreements on personnel rules; grievance procedures. (1) All collective bargaining between the state and its agencies and any certified or recognized exclusive employee representative of classified employees shall be under the direction and supervision of the Director of the Oregon Department of Administrative Services.

(2) Notwithstanding any of the provisions of ORS 240.235, 240.306, 240.316, 240.430 and 240.551,

employees of state agencies who are in certified or recognized appropriate bargaining units shall have all aspects of their wages, hours and other terms and conditions of employment determined by collective bargaining agreements between the state and its agencies and the exclusive employee representatives of such employees pursuant to the provisions of ORS 243.650 to 243.809, except with regard to the recruitment and selection of applicants for initial appointment to state service.

(3) The provisions of rules adopted by the Oregon Department of Administrative Services, the subjects of which are incorporated into collective bargaining agreements, shall not be applicable to employees within appropriate bargaining units covered by such agreements.

(4) The department shall ensure the speedy resolution of employee grievances by adopting a grievance procedure resulting in a final employer determination within 60 days of the filing of a written grievance, with appeal thereafter to the Employment Relations Board, the Civil Rights Division of the Bureau of Labor and Industries, or other appropriate review agency. Employees in collective bargaining units shall have their grievances resolved as provided for by the collective bargaining agreement. [1979 c.468 §24; 1997 c.23 §1]

240.325 [Amended by 1969 c.80 §59; repealed by 1979 c.468 §1]

240.330 [Amended by 1969 c.80 §60; repealed by 1979 c.468 §1]

240.335 [Repealed by 1979 c.468 §1]

240.340 [Amended by 1959 c.689 §5; 1959 c.694 §1; 1969 c.80 §61; 1973 c.189 §1; 1973 c.827 §23; 1975 c.427 §8; 1979 c.861 §7; repealed by 1979 c.468 §1]

240.345 [Amended by 1969 c.80 §62; repealed by 1979 c.468 §1]

240.350 [Amended by 1969 c.80 §63; repealed by 1979 c.468 §1]

240.355 [Amended by 1969 c.80 §64; 1971 c.695 §3; 1975 c.325 §1; repealed by 1979 c.468 §1]

240.360 [Amended by 1955 c.140 §1; 1969 c.80 §65; 1975 c.427 §9; repealed by 1979 c.468 §1]

240.365 [Amended by 1969 c.80 §66; 1969 c.347 §1; 1975 c.427 §10; repealed by 1979 c.468 §37]

240.370 [Amended by 1971 c.696 §1; repealed by 1979 c.468 §1]

240.375 [Amended by 1959 c.375 §1; 1969 c.80 §67; repealed by 1979 c.468 §1]

240.379 [1981 c.557 §2; 1987 c.743 §1; 1989 c.224 §29; repealed by 1997 c.221 §1]

240.380 [Amended by 1971 c.695 §6; repealed by 1979 c.468 §1]

240.384 [1981 c.557 §3; 1989 c.224 §30; repealed by 1997 c.221 §1]

240.385 [Repealed by 1971 c.695 §10]

240.387 [1971 c.697 §2; repealed by 1979 c.468 §1]

240.390 [Repealed by 1979 c.468 §1]

240.391 [1979 c.217 §2; 1987 c.743 §2; 1989 c.224 §31; 1991 c.402 §2; 1993 c.9 §1; repealed by 2005 c.45 §1]

240.392 [1979 c.217 §3; 1989 c.224 §32; repealed by 1997 c.221 §1]

240.393 [1979 c.217 §4; 1981 c.557 §4; 1989 c.224 §33; repealed by 1997 c.221 §1]

240.394 [1979 c.217 §5; 1983 c.740 §63; 1989 c.224 §34; repealed by 1997 c.221 §1]

240.395 Suspension of merit system in emergencies; reinstatement. (1) In the event of emergency or abnormal employment conditions due to disaster, national defense, war or conflict in which the Armed Forces of the United States are participating and because of which Oregon citizens are subject to induction into the Armed Forces, if a critical shortage of persons available and employable to fill positions and discharge duties in the classified service results, and the Personnel Division so finds and the Governor so certifies, the examination, certification and appointment procedures required by law shall be suspended for the duration of the emergency as to all or any classes of positions in which there is a shortage of employees.

(2) When the division determines that the emergency or abnormal condition no longer exists, and the Governor so certifies, the regular examination, certification and employment procedures shall be reestablished. Temporary appointments made with the approval of the division during the emergency period shall terminate 90 days after the date of establishment of eligible lists for positions to which temporary appointments have been made. [Amended by 1969 c.80 §68]

240.400 Designation by appointing authority of staff employees to act as alternates. An appointing authority may file in writing with the Personnel Division names of staff employees to act in the name of the appointing authority and to perform any act or duty of the appointing authority authorized under the provisions of this chapter. [1971 c.695 §5; 1979 c.468 §14]

240.405 [Amended by 1961 c.647 §1; 1963 c.185 §1; 1969 c.80 §69; 1969 c.346 §1; repealed by 1979 c.468 §1]

EMPLOYER-REQUESTED INTERVIEWS

240.406 Right of unclassified or exempt employee to be accompanied to employer-requested interview. An employee in the state service employed in an unclassified or exempt position who is not a confidential employee, managerial employee or supervisory employee, as defined in ORS 243.650, and who is not represented by an exclusive representative as defined in ORS 243.650 may be accompanied by an individual selected by the employee to be present during any interview with the employee requested by the appointing authority, manager or supervisor of the employee. [2011 c.687 §6]

REMOVAL DURING TRIAL SERVICE; SEASONAL EMPLOYEES; MERIT RATINGS

240.410 Removals during trial period. At any time during the trial service period, the appointing authority may remove an employee if, in the opinion of the appointing authority, the trial service indicates that such employee is unable or unwilling to perform duties satisfactorily or that the habits and dependability of the employee do not merit continuance in the service. [Amended by 1979 c.468 §15]

240.415 [Repealed by 1979 c.468 §1]

240.420 [Repealed by 1961 c.646 §1]

240.425 Regular seasonal employees. Positions which occur, terminate and recur periodically and regularly regardless of the duration thereof shall be designated by rule, policy or procedure of the Personnel Division as seasonal positions. An employee who satisfactorily serves in a seasonal position the trial service

period designated by the division or a delegated operating agency for the classification to which the seasonal position is allocated is entitled to permanent status as a regular seasonal employee. [Amended by 1969 c.80 §70; 1981 c.156 §1]

240.430 Merit ratings. In cooperation with appointing authorities, the Personnel Division shall establish a system of merit ratings to determine the quality of performance and relative merit of employees in the classified service. [Amended by 1969 c.80 §71; 1979 c.468 §16]

STATE MANAGEMENT CREDENTIALS PROGRAM

240.435 State Management Credentials Program required; purpose. The Oregon Department of Administrative Services shall establish a state management credentials program for state agency managers and employees on a career track to become agency managers. The state management credentials program shall include training opportunities for agency employees and training requirements for existing agency managers. The purpose of the state management credentials program is to insure that agency managers have the necessary training and skills to be effective leaders and team builders and to provide training in management skills as part of a professional development program for nonmanagement agency employees. To that end, the department shall:

(1) Identify necessary job skills for state managers, including team-building skills;

(2) Identify skills and training needs for state managers to meet workplace requirements in the future;

(3) Identify incentives for employees to participate in the program; and

(4) Identify continuing education resources in the public sector and through in-service training to implement the state management credentials program. [1993 c.724 §13a(1)]

Note: 240.435 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 240 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

240.505 [Repealed by 1979 c.468 §1]

240.510 [Amended by 1963 c.199 §3; 1969 c.80 §72; repealed by 1979 c.468 §1]

240.515 [Amended by 1953 c.353 §2; 1961 c.450 §1; 1969 c.80 §73; 1973 c.471 §1; repealed by 1979 c.468 §1]

240.520 [Amended by 1969 c.80 §74; repealed by 1979 c.468 §1]

240.525 [Repealed by 1979 c.468 §1]

240.530 [Repealed by 1979 c.468 §1]

240.535 [Amended by 1969 c.80 §75; repealed by 1979 c.468 §1]

240.540 [Amended by 1969 c.80 §76; repealed by 1979 c.468 §1]

240.545 [Repealed by 1979 c.468 §1]

WORKING HOURS; LEAVES; DISCIPLINE; REEMPLOYMENT

240.546 Payments in lieu of sick leave with pay; rules; exclusions. The Personnel Division may adopt rules, policies and procedures for state agencies to provide employees in the classified and unclassified service with payments on account of sickness in lieu of accrued and any future sick leave with pay. The

Legislative Assembly, state courts and Department of Education may similarly adopt rules, policies and procedures providing unclassified employees with such payments. Payments on account of sickness may be made directly or from an insured plan, but the payments may not include medical treatment, hospitalization, dental or eye or other health care or duplicate any group insurance coverage otherwise provided in whole or in part by employer contributions. [1981 c.567 §9; 1995 c.612 §15; 2005 c.751 §3]

240.550 [Repealed by 1979 c.468 §1]

240.551 Working hours, holidays, leaves of absence and vacations of employees in state classified service. The Personnel Division shall establish the hours of work, holidays, leaves of absence with and without pay and vacations of employees in the state classified service. The division may delegate this responsibility to individual operating agencies where appropriate. [1979 c.468 §21]

240.555 Suspension, reduction, demotion or dismissal. The appointing authority in any division of the service may suspend, reduce, demote or dismiss an employee thereof for misconduct, inefficiency, incompetence, insubordination, indolence, malfeasance or other unfitness to render effective service. [Amended by 1969 c.80 §77; 1975 c.427 §11; 1979 c.468 §17]

240.560 Appeal procedure. (1) A regular employee who is reduced, dismissed, suspended or demoted, shall have the right to appeal to the Employment Relations Board not later than 30 days after the effective date of the reduction, dismissal, suspension or demotion. The appeal must be in writing. The appeal is timely if it is received by the board or postmarked, if mailed postpaid and properly addressed, not later than 30 days after the effective date of the reduction, dismissal, suspension or demotion. The board shall hear the appeal within 30 days after the board receives the appeal, unless the parties to the hearing agree to a postponement. The board shall furnish the division of the service concerned with a copy of the appeal in advance of the hearing.

(2) The hearing shall be conducted as provided for a contested case in ORS chapter 183.

(3) If the board finds that the action complained of was taken by the appointing authority for any political, religious or racial reasons, or because of sex, marital status or age, the employee shall be reinstated to the position and shall not suffer any loss in pay.

(4) In all other cases, if the board finds that the action was not taken in good faith for cause, it shall order the immediate reinstatement and the reemployment of the employee in the position without the loss of pay. In lieu of affirming the action, the board may modify the action by directing a suspension without pay for a given period, and a subsequent restoration to duty, or a demotion in classification, grade or pay. The findings and order of the board shall be certified in writing to the appointing authority and shall be forthwith put into effect by the appointing authority. [Amended by 1957 c.205 §1; 1959 c.689 §6; 1969 c.80 §78; 1971 c.734 §35; 1975 c.427 §12; 1977 c.400 §1; 1977 c.770 §6; 1993 c.778 §24; 2003 c.213 §1]

240.563 Judicial review. Judicial review of orders under ORS 240.560 shall be as provided in ORS chapter 183. [1971 c.734 §31]

240.565 [Amended by 1969 c.80 §79; repealed by 1979 c.468 §1]

240.570 Classified employee filling position in unclassified, exempt or management service. (1) Positions in the unclassified, management and exempt services may be filled by classified employees. After an employee is terminated from the unclassified or exempt service or removed from the management service, for reasons other than those specified in ORS 240.555, the state agency that employed the employee before the appointment to the unclassified, exempt or management service may, at the agency's sole discretion, restore the employee to a position held in the agency before the appointment if the employee meets the position requirements. If an employee is restored to a former position, the employee is subject to any applicable agency collective bargaining agreement.

(2) An appointing authority may assign, reassign and transfer management service employees for the good of the service and may remove employees from the management service due to reorganization or lack of work.

(3) A management service employee is subject to a trial service period established pursuant to rules of the Personnel Division under ORS 240.250. Thereafter, the management service employee may be disciplined by reprimand, salary reduction, suspension or demotion or may be removed or dismissed from the management service if the employee is unable or unwilling to fully and faithfully perform the duties of the position satisfactorily.

(4) Management service employees who are assigned, reassigned, transferred or removed, as provided in subsection (2) of this section, and employees who are disciplined, removed or dismissed from the management service as authorized in subsection (3) of this section may appeal to the Employment Relations Board in the manner provided by ORS 240.560.

(5)(a) Management service employees with immediate prior former regular status in the classified service who are removed from trial service pursuant to ORS 240.410 have a right to be restored to their former positions.

(b) Except as provided in paragraph (a) of this subsection, management service employees with immediate prior former regular status in the classified service who are appointed to the management service and who have not been dismissed from the management service for a reason specified in ORS 240.555:

(A) Prior to January 1, 2015, have the right to restoration to the classified service for three years from the date of appointment to the management service.

(B) After December 31, 2014, have no right to restoration to the classified service. [1955 c.738 §6; 1979 c.468 §18; 1981 c.409 §4; 1985 c.121 §3; 1987 c.269 §1; 2005 c.766 §1; 2014 c.22 §1]

240.572 [1977 c.271 §3; repealed by 1979 c.468 §1]

240.575 [1971 c.542 §2; repealed by 1979 c.468 §1]

240.580 Service credits for service in unclassified service. An employee who is initially appointed to a position in the unclassified service as a member of the Oregon State Police under ORS 181A.050, who separates voluntarily from that service and who, within two years after the separation, is appointed to a position in the classified service, whether within a bargaining unit covered by a collective bargaining agreement or not, and acquires regular employee status shall be entitled, for purposes of layoff and opportunity for reemployment after separation for reasons other than cause, to service credit for the service in the unclassified service preceding the service in the classified service. ORS 240.321 (3) does not apply to service credit granted under this section. [1983 c.746 §2; 2011 c.547 §41]

240.590 Reemployment of employee in exempt service. An employee in the exempt service who has been employed full-time for at least 12 months consecutively in such service may be noncompetitively reemployed in a position for which qualified within two years from the date of separation, if separated from state service in good standing. However, such reemployment shall occur only after current bargaining unit members have exhausted any rights under an applicable collective bargaining agreement. [1985 c.635 §5]

BOARD FEES

240.610 Mediation service fee; labor relations and negotiation training fee; amount; payment; disposition of fees. (1) Notwithstanding ORS 662.435, when the Employment Relations Board assigns a mediator under ORS 243.712 or 662.425 to resolve a labor dispute or labor controversy between a local public employer and the exclusive representative of the public employees of that employer, the board may charge a fee for the mediation services provided by the board. The local public employer and the exclusive representative shall each pay one-half of the amount of the fee to the board.

(2) Notwithstanding any other law, the fee charged by the board under this section may not exceed:

(a) $1,000 for the first two mediation sessions;
(b) $625 for the third mediation session;
(c) $625 for the fourth mediation session; and
(d) $1,000 for each additional mediation session.
(3) Notwithstanding any other law, in addition to fees for mediation services, the board may establish fees for providing labor relations and negotiation training. The fees are not subject to the provisions of subsection (2) of this section.
(4) Fees received by the board under this section shall be deposited to the credit of the Employment Relations Board Administrative Account.
(5) As used in this section:
(a) "Exclusive representative" and "labor dispute" have the meanings given those terms in ORS 243.650.
(b) "Local public employer" means any political subdivision in this state, including a city, county, community college, school district, special district and a public and quasi-public corporation. [1993 c.711 §2; 1995 c.79 §84; 1995 c.448 §1; 2007 c.296 §7; 2011 c.593 §1; 2017 c.383 §1]

240.705 [Repealed by 1967 c.630 §5]

PROHIBITED CONDUCT

240.710 Certain acts unlawful. (1) No person shall make any false statement, certificate, mark, rating or report with regard to any test, certification, or appointment made under this chapter, or in any manner commit or attempt to commit any fraud preventing the impartial execution of this chapter and the rules.
(2) No person shall, directly or indirectly, give, render, pay, offer, solicit or accept any money, service or other valuable consideration for or on account of any appointment, proposed appointment, promotion or proposed promotion to, or any advantage in, a position in the classified service.
(3) No employee of the Personnel Division, examiner or other person shall defeat, deceive or obstruct any person in the right of the person to examination, eligibility, certification or appointment under this chapter, or furnish to any person any special or secret information for the purpose of affecting the rights or prospects of any person with respect to employment in the classified service. [Amended by 1969 c.80 §80]

240.740 [1983 c.808 §2; repealed by 1989 c.890 §12]

240.750 When discipline action not to be retained in personnel file. No copy of a personnel discipline action that has been communicated orally or in writing to the employee and subsequently reduced in severity or eliminated through collective bargaining, grievance or personnel process shall be placed or otherwise retained in the personnel file of the employee unless agreed to by the employer and the employee. [1985 c.813 §2]

Note: 240.750 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 240 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

MISCELLANEOUS

240.850 Policy on work environments; duties of state agencies. It is the policy of the State of Oregon to encourage cooperative, participatory work environments and team-based management practices in all state agencies. To that end, when feasible and appropriate, state agencies shall:
(1) Delegate responsibility for decision-making and service delivery to the lowest possible level;
(2) Involve all workers, especially frontline workers, in the development and design of processes and program improvements;
(3) Simplify and eliminate internal administrative rules and policies that unduly impede the attainment of

the agency's mission and delivery of services;

(4) Eliminate layers of organizational hierarchies;

(5) Envision state government as a high performance organization in which training and technology are viewed as an investment in the workforce; and

(6) Promote continuous improvement of state services through the involvement of all workers in process design and performance-based outcome development. [1993 c.724 §13b]

Note: 240.850 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 240 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

240.855 Telecommuting; state policy; agencies to adopt written policies; identification of barriers and solutions. (1) As used in this section:

(a) "State agency" means any state office, department, division, bureau, board and commission, whether in the executive, legislative or judicial branch.

(b) "Telecommute" means to work from the employee's home or from an office near the employee's home, rather than from the principal place of employment.

(2) It is the policy of the State of Oregon to encourage state agencies to allow employees to telecommute when there are opportunities for improved employee performance, reduced commuting miles or agency savings.

(3) Each state agency shall adopt a written policy that:

(a) Defines specific criteria and procedures for telecommuting;

(b) Is applied consistently throughout the agency; and

(c) Requires the agency, in exercising its discretion, to consider an employee request to telecommute in relation to the agency's operating and customer needs.

(4) Each state agency that has an electronic bulletin board, home page or similar means of communication shall post the policy adopted under subsection (3) of this section on the bulletin board, home page or similar site.

(5) The Oregon Department of Administrative Services, in consultation with the State Chief Information Officer and state agencies, shall work to identify barriers to telecommuting for state employees and identify solutions to promote telecommuting. [Formerly 283.550; 2019 c.278 §22]

Note: 240.855 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 240 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

PENALTIES

240.990 Penalties. (1) Subject to ORS 153.022, any person who willfully violates any provision of this chapter or of the rules thereunder commits a Class A misdemeanor.

(2) Any person who fails to appear in response to a subpoena or to answer any question or produce any books or papers pertinent to any investigation or hearing authorized by this chapter commits a Class A misdemeanor.

(3) A state officer or employee who fails to comply with any provision of this chapter or of any rule, regulation or order thereunder is subject to all penalties and remedies provided by law for failure of a public officer or employee to do an act required of a public officer or employee by law.

(4) Any person who is convicted of a Class A misdemeanor under this chapter shall, for a period of five years, be ineligible for appointment to or employment in a position in the state service, and if the person is an officer or employee of the state, shall be deemed guilty of malfeasance in office and shall be subject to forfeit of the office or position. [Amended by 1999 c.1051 §301; 2011 c.597 §172]

DAS DEPARTMENT OF ADMINISTRATIVE SERVICES

State HR Policy

SUBJECT:	Recruitment and Selection	**NUMBER:**	40.010.02
DIVISION:	Chief Human Resources Office	**EFFECTIVE DATE:**	01/01/2022

APPROVED: Signature on file with the Chief Human Resources Office

POLICY STATEMENT: Oregon state government is committed to a recruitment and selection process, including reemployment lists and other various appointment types resulting in the retention of a diverse, qualified and competent workforce.

AUTHORITY: ORS 240.145(3), 240.012, 240.013, 240.015, 240.145, 240.195, 240.250, 240.306, 240.309, 240.425, 240.570, 659A.043, 659A.046, 659A.052

APPLICABILITY: All employees where not in conflict with an applicable bargaining agreement, excluding temporary employees.

ATTACHMENTS: See Toolkit

DEFINITIONS: Refer to State HR Policy 10.000.01, Definitions

POLICY:

(1) Recruitments

a) A person shall follow the job posting instructions and submit an official Oregon state government application within the designated time-period. Agencies have the right to exclude or disqualify applicants for failing to follow job posting instructions and timelines.

b) Hiring agencies shall not require additional materials besides a resume and/or cover letter for the initial application. Additional materials such as transcripts, responses to essay questions, or work samples, may be requested from applicants who advance in the selection process.

c) Hiring agencies shall not require an applicant to possess or present a valid driver license unless the ability to legally drive is an essential function of the job or is related to a legitimate business purpose.

d) Any recruitment and selection process shall be competitive, unbiased, and of such content as to assist in determining an applicant's qualification to perform the work. This includes inclusive job postings and diverse interview panels which reflect the community being served.

e) Hiring agencies shall post a job opportunity for a minimum seven calendar days when filling vacancies through an internal or external recruitment process using the Oregon Jobs page.

(A) Job postings shall include all requirements provided in State HR Policy 10.000.01 Definitions.

f) Hiring agencies shall conduct reference checks to verify statements contained in an application or statements made in an interview and secure further information concerning the applicant's

qualifications prior to making an offer of employment. Reference checks include contacting other state agencies and public employers. An adjustment may be made to the applicant's rating if information obtained materially affects the applicant's rating of experience, education, training or suitability.

g) Hiring agencies shall develop a process for responding to applicants' concerns regarding the selection process.

(2) Types and Order of Applicant Lists

(a) Lists shall be used to facilitate the recruitment and selection process in the order listed below or as prescribed by the applicable collective bargaining agreement when making any appointment, except for appointment made as part of workforce adjustments to prevent layoff.

(A) Injured Worker List

(i) This list shall be used as first priority and shall consist of employees with compensable work-related injuries or illnesses that occurred while employed pursuant to ORS 659A.052.

(ii) The employee must not have waived reemployment rights in accordance with state or federal law or an applicable collective bargaining agreement.

(iii) The hiring agency shall follow State HR Policy 50.020.03 Reinstatement and Reemployment of Injured Workers when an injured worker is on the list for the same classification or salary range the agency is filling.

(B) Agency Layoff List

(i) Individual agencies shall establish a list, as second priority, and shall follow the exhaustion of the first priority list.

(ii) The list shall consist of permanent and seasonal employees who completed initial trial service with Oregon State Government and separated in good standing due to layoff or demotion in lieu of layoff.

(iii) Employees are placed on the list by the classification at separation or demotion within the category of service specified in ORS 240.195.

(iv) The term of eligibility on the list is two years from date of layoff or demotion.

(v) An individual shall be removed from the list upon the second refusal of a job offer unless an agency layoff plan allows for additional refusals or when the employee is returned to an equivalent position from layoff. This does not include temporary or limited duration work.

(vi) The agency shall select among employees on the list of the same classification and category of service of the position to be filled.

(vii) Any appointments from the list shall be made consistent with the agency's layoff plan.

(C) Statewide Layoff List

(i) Use of this list shall follow the exhaustion of the first and second priority lists.

(ii) An employee may request placement on the list via their agency's human resources office for the classifications for which qualified, at an equal, or lower salary range number.

(iii) This list shall consist of permanent employees in either the management or classified unrepresented service who separated due to layoff or unclassified executive service employees terminated from state service due to reduction in force.

(iv) Employees on the list must have completed initial trial service, if applicable.

(v) The term of eligibility on the list is two years from the date of layoff.

(vi) An individual shall be removed from the statewide layoff list upon the second refusal of a job offer or when a person accepts a position and has returned to work. This does not include temporary or limited duration work.

(vii) A hiring agency shall consider and interview those employees who meet the qualifications and special qualifications, if any, for the position.

(b) After fulfillment of the requirement in (2)(a), other eligible lists may be used when making an appointment.

(A) Transfer List. See State HR Policy, 40.045.01 Transfers

(B) Internal List. A list of agency employees or state employees who apply and are qualified for the position.

(C) External List: A list of applicants seeking employment with the state who are qualified for the position.

(3) Use of Applicant Lists

(a) The order in which applicant lists are used is outlined in (2) of this policy.

(b) When a vacant position is to be filled, an agency, when appropriate, shall create an eligible list on the state's recruitment system of record.

(A) The hiring agency shall develop and document a valid screening process to select from the eligible list the most qualified applicants to move forward in the selection process.

(B) The hiring agency shall consider education, work experience, and screening factors consistent with the State HR Policy 40.055.04, Candidate Preference in Employment.

(C) The selection process must include assessment and verification of an applicant's qualifications and may include screening application materials, interviewing, skills testing, and reference checking. The hiring agency may determine the selection stages and screening methods appropriate for the position.

(i) Agencies may disqualify or not move an applicant forward in the selection process for the following, but not limited to, reasons:

1. Evaluation or assessment determines the applicant does not possess the job qualifications;
2. Applicant falsifies statements in the selection process
3. Applicant does not pass required pre-employment checks

(c) Applicants on an eligible list may be placed on a related eligible list of the same classification at the agency's discretion.

(4) Types of Appointments. An agency head shall use one of the following methods to appoint persons to state service.

(a) Academic year appointment.

(A) Appointing authorities may extend employment into the period between academic years.

(B) Employees appointed to positions designated as academic years shall be placed on leave without pay during the period between academic years. Time spent on such leave shall constitute service for purposes of computing vacation accrual rates, recognized service dates, with appropriate adjustment, and any other purpose when service time is computed, except for the period of trial service.

(C) A person accepting an academic year appointment shall be informed of the conditions of the appointment and shall acknowledge their acceptance of the appointment in writing.

(b) Direct Appointment.

(A) An agency head has the delegated authority and discretion to make direct appointments.

(B) Criteria for direct appointment:

(i) A competitive recruitment is conducted and results in no suitable candidates as determined, documented and certified by the agency head. The recruitment shall be completed within the previous six (6) months; or

(ii) The appointment is made consistent with a court or administrative order, consent decree, court or administrative settlement, or negotiated tort claim settlement; or

(iii) The position requires special or unique skills at the professional level. Special or unique skills at the professional level are those which require specialized knowledge typically acquired from college coursework at the bachelor degree level or beyond; or

(iv) The position being filled is critical to agency operations and there is a demonstrated need to fill the position quickly; and

(v) The individual to be direct appointed meets the minimum qualifications of the classification; or

(vi) The individual is appointed as an underfill and will meet the minimum qualifications of the position within 12 months of the appointment.

(C) Each direct appointment shall be documented.

(i) The documentation shall be retained for a minimum of three years.

(ii) The documentation shall cite the applicable policy criteria, results of any open competitive recruitment, the qualification of the individual selected, and the agency appointing authority authorization signature.

(c) Limited Duration Appointment. See State HR Policy 40.025.02 Limited Duration Appointments

(d) Limited Competitive and Non-Competitive Appointments.

(A) Recruitment for positions using employment programs serving people with disabilities is not limited by using a list. A limited competitive selection process through such employment programs may be used to facilitate employment of persons with disabilities;

(B) Recruitment for the economically disadvantaged and non-competitive appointments is limited to those classifications listed in this policy unless otherwise authorized by the agency. The hiring agency shall:

(i) Open a job listing with the field office of the Employment Department nearest the location of the vacancy when the recruitment is open to the public

(ii) Make affirmative efforts to supplement referrals to create a diverse pool of candidates

(iii) This process may be used for economically disadvantaged persons who meet the following criteria:

1. Clients of the Department of Human Services programs;
2. Clients of juvenile justice division programs funded by the state.

(iv) The agency shall use the following criteria when reviewing appointing authority or designee requests for additions to the list:

1. The classification requires minimal or no requisite knowledge or skills;
2. It is impractical to develop an examination; and
3. It is impractical to follow the normal recruiting process.

(v) An appointment is made to designated classifications comprised of unskilled or semi-skilled positions for which there are minimal or no qualifying knowledge or skills, no screening or no ranking. Where more than one candidate is referred, the hiring manager may use an interview process to select the most qualified person.

(C) Limited-competitive appointment may also be used to limit the competition for appointment to non-competitive classes to those persons who meet the criteria. Limited-Competitive and Non-Competitive Appointment Classifications:

i. 0001, Supported Employment Worker
ii. 0100, Student Office Worker
iii. 0101, Office Assistant 1
iv. 0150, Student Professional/Technical Worker
v. 0321, Public Service Representative 1
vi. 0405, Mail Services Assistant
vii. 1105, Traffic Survey Interviewer
viii. 3769, Experimental Biology Aide
ix. 4101, Custodian
x. 4116, Laborer/Student Worker
xi. 4125, Litter Patrol Worker
xii. 4137, Liquor Distribution Worker
xiii. 14403, Transporter
xiv. 6605, Human Services Assistant 1
xv. 6701, Student Human Services Worker
xvi. 6750, Group Life Coordinator 1

xvii. 8125, Agricultural Worker

xviii. 8201, Forest Nursery Worker 1

xix. 8202, Forest Nursery Worker 2

xx. 8235, Student/Professional Forester Worker

xxi. 8253, Forest Lookout

xxii. 8254, Wildland Fire Suppression Specialist Entry

xxiii. 8263, Wildland Fire Dispatcher Entry

xxiv. 8340, Fish & Wildlife Technician Entry

(e) Permanent Appointment.

(f) Seasonal Appointment.

(g) Temporary Appointment. See State HR Policy 40.025.01, Temporary Appointments

(5) Alternative Methods for Filling Positions.

(a) All positions shall be filled at the budgeted salary range level and classification.

(b) An appointing authority may use the following alternative methods of filling positions to provide for situations such as employee development, job sharing, and short-term transitioning:

(A) Crossfill: a position may be crossfilled to a different classification with an equal salary range number providing an update to establish or modify the position pending in the HRIS.

(B) Doublefill (Non-budgeted position):

(i) A doublefill may occur for any of the following situations:

1. To cover an employee on leave for any reason when a temporary appointment is not appropriate and a vacant positon does not exist to address the workload need;
2. Short-term transition of employees into impending vacant positions for purposes of training;
3. Establishing position pending the budget system update;
4. When approved or directed by the Budget and Management Section to address budget issues;
5. Job share.

(ii) Employees doublefilling positions shall meet the minimum qualifications of those positions and be appointed according to applicable recruitment and appointment policies or collective bargaining agreements.

(iii) The doublefill method of filling positions shall not be used to permanently increase legislatively authorized staffing levels.

(iv) Agencies are responsible for monitoring doublefilled positions within their agency.

(v) Agencies are required to document the reason for the doublefill and the plan to resolve the doublefill in the Chief Human Resources Office human resources information system.

(C) Underfill:

(i) Appointment may be from an eligible list or as a direct appointment.

(ii) A position may be underfilled with an individual in a lower salary range number and classification when there is a reasonable expectation the employee will meet the minimum qualifications of the allocated level of the position within 36 months of an appointment made from an eligible list or within 12 months of a direct appointment.

(iii) Upon meeting position qualifications and performance requirements, the employee shall be changed to the allocated level of the position.

(iv) An employee underfilling shall be advised of the requirement necessary to qualify for the position they are underfilling.

(D) Overfill: An overfill may occur for any of the following situations:

(i) Establishing position pending the budget system update;

(ii) When approved or directed by the Budget and Management Section to address budget issues

(6) Agency Head Recruitment efforts shall be conducted by the Chief Human Resources Office. The agency may request to conduct the recruitment with the oversight of the Chief Human Resources Office.

(7) Retention of recruitment records shall be maintained in accordance with OAR 166-300-0040, Personnel Records.

Miscellaneous Benefits for Veterans and Service Personnel

ORS 408.230
Veterans' preference in public employment

(1) A public employer shall grant a preference to a veteran or disabled veteran who applies for a vacant civil service position or seeks promotion to a civil service position with a higher maximum salary rate and who:

(a) (A) Successfully completes an initial application screening or an application examination for the position; or

(B) Successfully completes a civil service test the employer administers to establish eligibility for the position; and

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

(2) The employer shall grant the preference in the following manner:

(a) For an initial application screening used to develop a list of persons for interviews, the employer shall add five preference points to a veteran's score and 10 preference points to a disabled veteran's score.

(b) For an application examination, given after the initial application screening, that results in a score, the employer shall add preference points to the total combined examination score without allocating the points to any single feature or part of the examination. The employer shall add five preference points to a veteran's score and 10 preference points to a disabled veteran's score.

(c) For an application examination that consists of an interview, an evaluation of the veteran's performance, experience or training, a supervisor's rating or any other method of ranking an applicant that does not result in a score, the employer shall give a preference to the veteran or disabled veteran. An employer that uses an application examination of the type described in this paragraph shall devise and apply methods by which the employer gives special consideration in the employer's hiring decision to veterans and disabled veterans.

(3) Preferences of the type described in subsection (1) of this section are not a requirement that the public employer appoint a veteran or disabled veteran to a civil service position.

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

(5) If a public employer does not appoint a veteran or disabled veteran to a vacant civil service position, upon written request of the veteran or disabled veteran, the employer, in writing, shall provide the employer's reasons for the decision not to appoint the veteran or disabled veteran to the position. The employer may base a decision not to appoint the veteran or disabled veteran solely on the veteran's or disabled veteran's merits or qualifications with

respect to the vacant civil service position.

(6) Violation of this section is an unlawful employment practice.

(7) A veteran or disabled veteran claiming to be aggrieved by a violation of this section may file a verified written complaint with the Commissioner of the Bureau of Labor and Industries in accordance with ORS 659A.820 (Complaints).

(8) For purposes of this section, “disabled veteran” includes a person who is receiving service-connected compensation from the United States Department of Veterans Affairs under 38 U.S.C. 1110 or 1131. [Amended by 1977 c.854 §3; 1989 c.507 §2; 1999 c.792 §1; 2007 c.525 §2; 2011 c.82 §1; 2018 c.91 §7]

Location: `https://oregon.public.law/statutes/ors_408.230`

Original Source: Section 408.230 — Veterans' preference in public employment, `https://www.oregonlegislature.gov/bills_laws/ors/ors408.html` (last accessed Jun. 26, 2021).

Department of Administrative Services

Chief Human Resources Office - Chapter 105

Division 40
FILLING POSITIONS

105-040-0001
Equal Employment Opportunity and Affirmative Action

(1) Oregon State Government 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 ensure:

(A) Equal employment opportunities are afforded to all applicants and employees by making non-discriminatory employment related decisions;

(B) Employment practices shall be in compliance with the state's Affirmative Action Guidelines, state and federal laws to:

(i) Promote good faith efforts to achieve established affirmative action objectives; and

(ii) Take proactive steps to develop diverse applicant pools for position vacancies.

(b) The Department of Administrative Services (DAS) shall:

(A) Maintain an automated affirmative action tracking system which uses a uniform methodology for communicating affirmative action objectives for each state agency.

(B) Produce periodic reports showing Oregon State Government's progress toward achieving established affirmative action objectives identified by the Chief Human Resources Office at DAS and the Governor's Office of Diversity and Inclusion.

(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 affirmative action representative within 365 calendar days of the alleged act or upon knowledge of the occurrence.

(2) Employment related decisions include, but are not limited to:

(a) Hiring,

(b) Promotion,

(c) Demotion,

(d) Transfer,

(e) Termination,

(f) Layoff,

(g) Training,

(h) Compensation,

(i) Benefits, and

(j) Performance evaluations;

(3) Diverse applicant pools are developed by using proactive outreach strategies.

(4) This rule does not preclude 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.

Statutory/Other Authority: ORS 184.340, 240.145 & 240.250
Statutes/Other Implemented: ORS 240.306 & 659A.012 - 659A.015
History:
CHRO 2-2016, f. 6-22-16, cert. ef. 7-1-16
HRSD 2-2008, f. & cert. ef. 11-4-08
HRSD 11-2003, f. 7-15-03, cert. ef. 7-21-03
PD 2-1994, f. & cert. ef. 8-1-94

Please use this link to bookmark or link to this rule.

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EXECUTIVE ORDER NO. 22-11

RELATING TO AFFIRMATIVE ACTION, EQUAL EMPLOYMENT OPPORTUNITY, DIVERSITY, EQUITY, AND INCLUSION

On January 26, 2005, Governor Kulongoski issued Executive Order 05-01, relating to affirmative action. That Executive Order directed Agency Directors and Administrators to review and discuss their affirmative action plans, to initiate training on affirmative action issues, including affirmative action responsibilities in key job descriptions, and to conduct Cultural Competency Assessment and training.

Since the issuance of Executive Order 05-01, Amendment 08-18, Amendment 16-09 and Amendment 17-11, state agencies have met with the Office of Cultural Change (OCC) and the Governor's Office (GO) to review and discuss their affirmative action plans. The Department of Administrative Services (DAS) has completed an audit of position descriptions for the inclusion of affirmative action duties and DAS has shared audit results with the OCC and GO. The Governor and agency leadership have pledged their commitment to prioritize equity in their work. As a result, a bold and executable Diversity, Equity, and Inclusion (DEI) Action Plan was created. The DEI Action Plan was designed to guide efforts of the state enterprise to dismantle racism and establish a shared understanding. It is intended to complement agencies' existing equity initiatives and provide guidance to agencies early in their journey and thread the collective equity initiatives across the state.

Significant gains have been made, and there is more work to be done. The State of Oregon remains committed to every person's right to work and advance on the basis of knowledge, skills, ability and professional experience. In order to continue implementation of the goals and policies set forth in Executive Order 05-01, 08-18, 16-09, and 17-11, I extend these orders as follows:

NOW THEREFORE, IT IS HEREBY DIRECTED AND ORDERED:

1. The OCC, GO, each Agency Director and Administrator shall review and discuss each agency's affirmative action plan and affirmative action goals to improve hiring and developmental opportunities.

2. To continue the State of Oregon's progress in promotion of Diversity, Equity, and Inclusion in the workplace, and the elimination of effects of past and present discrimination, intended or unintended, Agency Directors and Administrators shall:

a. Provide ongoing leadership in implementing each agency's affirmative action plan;

b. Ensure incorporation of affirmative action, diversity, equity, and inclusion responsibilities in executive and/or management job descriptions;

c. Ensure agencies fulfill their affirmative action responsibilities by requiring directors, administrators, managers, and coordinators of DEI, affirmative action, and equal employment opportunity, attend all OCC and GO meetings to assist Affirmative Action Representatives. Agencies will annually submit the name of agency Affirmative Action Representative and immediately inform the OCC if the representative is changed;

d. Post each agency's affirmative action plan policy statement and diversity and inclusion statement in a clearly visible area on agency's internal and external websites. The policy statement shall include the name and contact information for the agency's Affirmative Action Representative;

e. Communicate to all employees about the Affirmative Action resources available with each agency and the important role of Affirmative Action Representatives in responding to employees' concerns of discrimination in the areas of hiring, retention, promotion, and career development;

f. Track, evaluate, and measure trends in agency discrimination and/or harassment claims, reporting data and findings in the subsequent biennial Affirmative Action Plan/Statement Affirmative Action Statements are prescribed for agencies with ten or fewer FTE;

g. Work to improve implementation of the agency's affirmative action plan using professional development, performance assessments, and/or performance evaluations; and

h. Ensure agency-adopted systems address accessibility and ease of interaction through monitoring and continuous improvement to support a diverse, equitable, and inclusive workforce.

3. Under ORS 659A.012, state agencies are "required to include in the evaluation of all management personnel the manager's or supervisor's effectiveness in achieving affirmative action objectives as a key consideration of the manager's or supervisor's performance." Periodically, DAS shall conduct audits of agencies to determine whether management personnel are being evaluated based on effectiveness in achieving affirmative action objectives. Results of this audit shall be provided to the OCC and GO.

4. OCC will continue to coordinate with GO regarding the progression and presentation of statewide professional development designed to improve employees' skills and competency in managing affirmative action equity, and diversity issues.

5. OCC will annually monitor agencies' training and implementation of Diversity, Equity, Inclusion, Affirmative Action, and Equal Employment Opportunity and the internal and external impact of these professional development strategies. OCC, GO, Agency Directors and Administrators are expected to implement ongoing and current professional development by operationalizing equity and inclusion, which will promote a diverse workplace.

6. DAS, in conjunction with GO and the Oregon Department of Justice, has developed a web-based exit interview survey tool. Agency Directors and Administrators shall allow employees to use state equipment to access the Exit Interview Survey and shall encourage all employees to complete the survey prior to their transfer or departure.

7. OCC will use all data collected from DAS, Bureau of Labor and Industries (BOLI), Oregon Employment Department (OED), and other state agencies to produce and distribute a biennial report to the Governor, the Legislature, and key stakeholders.

EXECUTIVE ORDER NO. 22-11
PAGE FOUR

8. This Executive Order will expire on December 31, 2028.

Done at Salem Oregon, this 16th day of June, 2022.

Kate Brown

Kate Brown
GOVERNOR

ATTEST:

Shemia Fagan
SECRETARY OF STATE

Appendix C

29 USC 621: Congressional statement of findings and purpose
Text contains those laws in effect on October 27, 2022

From Title 29-LABOR
CHAPTER 14-AGE DISCRIMINATION IN EMPLOYMENT
Jump To:

§621. Congressional statement of findings and purpose

(a) The Congress hereby finds and declares that-

(1) in the face of rising productivity and affluence, older workers find themselves disadvantaged in their efforts to retain employment, and especially to regain employment when displaced from jobs;

(2) the setting of arbitrary age limits regardless of potential for job performance has become a common practice, and certain otherwise desirable practices may work to the disadvantage of older persons;

(3) the incidence of unemployment, especially long-term unemployment with resultant deterioration of skill, morale, and employer acceptability is, relative to the younger ages, high among older workers; their numbers are great and growing; and their employment problems grave;

(4) the existence in industries affecting commerce, of arbitrary discrimination in employment because of age, burdens commerce and the free flow of goods in commerce.

(b) It is therefore the purpose of this chapter to promote employment of older persons based on their ability rather than age; to prohibit arbitrary age discrimination in employment; to help employers and workers find ways of meeting problems arising from the impact of age on employment.

(Pub. L. 90–202, §2, Dec. 15, 1967, 81 Stat. 602 .)

U.S. Equal Employment Opportunity Commission

Titles I and V of the Americans with Disabilities Act of 1990 (ADA)

EDITOR'S NOTE: The following is the text of Titles I and V of the Americans with Disabilities Act of 1990 (Pub. L. 101-336) (ADA), as amended, as these titles will appear in volume 42 of the United States Code, beginning at section 12101. Title I of the ADA, which became effective for employers with 25 or more employees on July 26, 1992, prohibits employment discrimination against qualified individuals with disabilities. Since July 26, 1994, Title I has applied to employers with 15 or more employees. Title V contains miscellaneous provisions which apply to EEOC's enforcement of Title I.

The Civil Rights Act of 1991 (Pub. L. 102-166) (CRA) amended sections 101(4), 102 and 509 of the ADA. In addition, section 102 of the CRA (which is printed elsewhere in this publication) amended the statutes by adding a new section following section 1977 (42 U.S.C. 1981) to provide for the recovery of compensatory and punitive damages in cases of intentional violations of Title VII, the ADA, and section 501 of the Rehabilitation Act of 1973 (Rehab Act). The ***Americans with Disabilities Act Amendments Act of 2008 (https://www.eeoc.gov/statutes/ada-amendments-act-2008)*** *(Pub. L. 110-325) (ADAAA) amended sections 12101, 12102, 12111 to 12114, 12201 and 12210 of the ADA and section 705 of the Rehab Act. The ADAAA also enacted sections 12103 and 12205a and redesignated sections 12206 to 12213. The ADAAA also included findings and purposes that will not be codified.*

Most recently, the Lilly Ledbetter Fair Pay Act of 2009 (Pub. L. 111-2) amended Title VII, the Age Discrimination in Employment Act of 1967, the ADA and the Rehab Act to clarify the time frame in which victims of discrimination may challenge and recover for discriminatory compensation decisions or other discriminatory practices affecting

compensation.

ADAAA amendments and Lilly Ledbetter Fair Pay Act amendments appear in boldface type. Cross references to the ADA as enacted appear in italics following each section heading. Editor's notes also appear in italics.

An Act to establish a clear and comprehensive prohibition of discrimination on the basis of disability.

Be it enacted by the Senate and House of Representatives of the United States of America assembled, that this Act may be cited as the "Americans with Disabilities Act of 1990".

* * *

FINDINGS AND PURPOSES

SEC. 12101. *[Section 2]*

(a) Findings. - The Congress finds that-

(1) **physical or mental disabilities in no way diminish a person's right to fully participate in all aspects of society, yet many people with physical or mental disabilities have been precluded from doing so because of discrimination; others who have a record of a disability or are regarded as having a disability also have been subjected to discrimination;**

(2) historically, society has tended to isolate and segregate individuals with disabilities, and, despite some improvements, such forms of discrimination against individuals with disabilities continue to be a serious and pervasive social problem;

(3) discrimination against individuals with disabilities persists in such critical areas as employment, housing, public accommodations, education, transportation, communication, recreation, institutionalization, health services, voting, and access to public services;

(4) unlike individuals who have experienced discrimination on the basis of race, color, sex, national origin, religion, or age, individuals who have experienced discrimination on the basis of disability have often had no legal recourse to redress such discrimination;

(5) individuals with disabilities continually encounter various forms of discrimination, including outright intentional exclusion, the discriminatory effects of architectural, transportation, and communication barriers, overprotective rules and policies, failure to make modifications to existing facilities and practices, exclusionary qualification standards and criteria, segregation, and relegation to lesser services, programs, activities, benefits, jobs, or other opportunities;

(6) census data, national polls, and other studies have documented that people with disabilities, as a group, occupy an inferior status in our society, and are severely disadvantaged socially, vocationally, economically, and educationally;

(**7**) the Nation's proper goals regarding individuals with disabilities are to assure equality of opportunity, full participation, independent living, and economic self-sufficiency for such individuals; and

(**8**) the continuing existence of unfair and unnecessary discrimination and prejudice denies people with disabilities the opportunity to compete on an equal basis and to pursue those opportunities for which our free society is justifiably famous, and costs the United States billions of dollars in unnecessary expenses resulting from dependency and nonproductivity.

(b) Purpose. - It is the purpose of this chapter-

(1) to provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities;

(2) to provide clear, strong, consistent, enforceable standards addressing discrimination against individuals with disabilities;

(3) to ensure that the Federal Government plays a central role in enforcing the standards established in this chapter on behalf of individuals with disabilities; and

(4) to invoke the sweep of congressional authority, including the power to enforce the fourteenth amendment and to regulate commerce, in order to address the major areas of discrimination faced day to day by people with disabilities.

DEFINITION OF DISABILITY

SEC. 12102. *[Section 3]*

As used in this chapter:

(**1**) Disability. - The term "disability" means, with respect to an individual-

(A) a physical or mental impairment that substantially limits one or more major life activities of such individual;

(B) a record of such an impairment; or

(C) being regarded as having such an impairment **(as described in paragraph (3))**.

(2) Major life activities

A) In general

For purposes of paragraph (1), major life activities include, but are not limited to, caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working.

(B) Major bodily functions

For purposes of paragraph (1), a major life activity also includes the operation of a major bodily function, including but not limited to, functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions.

(3) Regarded as having such an impairment

For purposes of paragraph (1)(C):

(A) An individual meets the requirement of "being regarded as having such an impairment" if the individual establishes that he or she has been subjected to an action prohibited under this chapter because of an actual or perceived physical or mental impairment whether or not the impairment limits or is perceived to limit a major life activity.

(B) Paragraph (1)(C) shall not apply to impairments that are transitory and minor. A transitory impairment is an impairment with an actual or expected duration of 6 months or less.

(4) Rules of construction regarding the definition of disability

The definition of "disability" in paragraph (1) shall be construed in accordance with the following:

(A) The definition of disability in this chapter shall be construed in favor of broad coverage of individuals under this chapter, to the maximum extent permitted by the terms of this chapter.

(B) The term "substantially limits" shall be interpreted consistently with the findings and purposes of the ADA Amendments Act of 2008.

(C) An impairment that substantially limits one major life activity need not limit other major life activities in order to be considered a disability.

(D) An impairment that is episodic or in remission is a disability if it would substantially limit a major life activity when active.

(E)(i) The determination of whether an impairment substantially limits a major life activity shall be made without regard to the ameliorative effects of mitigating measures such as-

(I) medication, medical supplies, equipment, or appliances, low-vision devices (which do not include ordinary eyeglasses or contact lenses), prosthetics including limbs and devices, hearing aids and cochlear implants or other implantable hearing devices, mobility

devices, or oxygen therapy equipment and supplies;

(II) use of assistive technology;

(III) reasonable accommodations or auxiliary aids or services; or

(IV) learned behavioral or adaptive neurological modifications.

(ii) The ameliorative effects of the mitigating measures of ordinary eyeglasses or contact lenses shall be considered in determining whether an impairment substantially limits a major life activity.

(iii) As used in this subparagraph-

(I) the term "ordinary eyeglasses or contact lenses" means lenses that are intended to fully correct visual acuity or eliminate refractive error; and

(II) the term "low-vision devices" means devices that magnify, enhance, or otherwise augment a visual image.

ADDITIONAL DEFINITIONS

SEC. 12103. ***[Section 4]***

As used in this chapter:

(1) Auxiliary aids and services. - The term "auxiliary aids and services" includes-

(A) qualified interpreters or other effective methods of making aurally delivered materials available to individuals with hearing impairments;

(B) qualified readers, taped texts, or other effective methods of making visually delivered materials available to individuals with visual impairments;

(C) acquisition or modification of equipment or devices; and

(D) other similar services and actions.

(2) State. - The term "State" means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands of the United States, the Trust Territory of the Pacific Islands, and the Commonwealth of the Northern Mariana Islands.

SUBCHAPTER I *[TITLE I]* - EMPLOYMENT

DEFINITIONS

SEC. 12111. *[Section 101]*

As used in this subchapter:

(1) Commission. - The term "Commission" means the Equal Employment Opportunity Commission established by section 2000e-4 of this title *[section 705 of the Civil Rights Act of 1964]*.

(2) Covered entity. - The term "covered entity" means an employer, employment agency, labor organization, or joint labor management committee.

(3) Direct threat. - The term "direct threat" means a significant risk to the health or safety of others that cannot be eliminated by reasonable accommodation.

(4) Employee. - The term "employee" means an individual employed by an employer. With respect to employment in a foreign country, such term includes an individual who is a citizen of the United States.

(5) Employer. -

> (A) In general. - The term "employer" means a person engaged in an industry affecting commerce who has 15 or more employees for each working day in each of 20 or more calendar weeks in the current or preceding calendar year, and any agent of such person, except that, for two years following the effective date of this subchapter, an employer means a person engaged in an industry affecting commerce who has 25 or more employees for each working day in each of 20 or more calendar weeks in the current or preceding year, and any agent of such person.
>
> (B) Exceptions. - The term "employer" does not include-

(i) the United States, a corporation wholly owned by the government of the United States, or an Indian tribe; or

(ii) a bona fide private membership club (other than a labor organization) that is exempt from taxation under section 501(c) of Title 26 *[the Internal Revenue Code of 1986]*.

(6) Illegal use of drugs. -

(A) In general. - The term "illegal use of drugs" means the use of drugs, the possession or distribution of which is unlawful under the Controlled Substances Act [21 U.S.C. 801 et seq.]. Such term does not include the use of a drug taken under supervision by a licensed health care professional, or other uses authorized by the Controlled Substances Act or other provisions of Federal law.

(B) Drugs. - The term "drug" means a controlled substance, as defined in schedules I through V of section 202 of the Controlled Substances Act [21 U.S.C. 812].

(7) Person, etc. - The terms "person", "labor organization", "employment agency", "commerce", and "industry affecting commerce", shall have the same meaning given such terms in section 2000e of this title *[section 701 of the Civil Rights Act of 1964]*.

(8) **Qualified individual. - The term "qualified individual" means an individual** who, with or without reasonable accommodation, can perform the essential functions of the employment position that such individual holds or desires. For the purposes of this subchapter, consideration shall be given to the employer's judgment as to what functions of a job are essential, and if an employer has prepared a written description before advertising or interviewing applicants for the job, this description shall be considered evidence of the essential functions of the job.

(9) Reasonable accommodation. - The term "reasonable accommodation" may include-

(A) making existing facilities used by employees readily accessible to and usable by individuals with disabilities; and

(B) job restructuring, part-time or modified work schedules, reassignment to a vacant position, acquisition or modification of equipment or devices, appropriate adjustment or modifications of examinations, training materials or policies, the provision of qualified readers or interpreters, and other similar accommodations for individuals with disabilities.

(10) Undue hardship. -

(A) In general. - The term "undue hardship" means an action requiring significant difficulty or expense, when considered in light of the factors set forth in subparagraph (B).

(B) Factors to be considered. - In determining whether an accommodation would impose an undue hardship on a covered entity, factors to be considered include-

(i) the nature and cost of the accommodation needed under this chapter;

(ii) the overall financial resources of the facility or facilities involved in the provision of the reasonable accommodation; the number of persons employed at such facility; the effect on expenses and resources, or the impact otherwise of such accommodation upon the operation of the facility;

(iii) the overall financial resources of the covered entity; the overall size of the business of a covered entity with respect to the number of its employees; the number, type, and location of its facilities; and

(iv) the type of operation or operations of the covered entity, including the composition, structure, and functions of the workforce of such entity; the geographic separateness, administrative, or fiscal relationship of the facility or facilities in question to the covered entity.

DISCRIMINATION

SEC. 12112. *[Section 102]*

(a) General rule. - No covered entity shall discriminate against a qualified individual **on the basis of disability** in regard to job application procedures, the hiring, advancement, or discharge of employees, employee compensation, job training, and other terms, conditions, and privileges of employment.

(b) Construction. - As used in subsection (a) of this section, the term "discriminate **against a qualified individual on the basis of disability"** includes-

(1) limiting, segregating, or classifying a job applicant or employee in a way that adversely affects the opportunities or status of such applicant or employee because of the disability of such applicant or employee;

(2) participating in a contractual or other arrangement or relationship that has the effect of subjecting a covered entity's qualified applicant or employee with a disability to the discrimination prohibited by this subchapter (such relationship includes a relationship with an employment or referral agency, labor union, an organization providing fringe benefits to an employee of the covered entity, or an organization providing training and apprenticeship programs);

(3) utilizing standards, criteria, or methods of administration-

(A) that have the effect of discrimination on the basis of disability; or

(B) that perpetuate the discrimination of others who are subject to common administrative control;

(4) excluding or otherwise denying equal jobs or benefits to a qualified individual because of the known disability of an individual with whom the qualified individual is known to have a relationship or association;

(5) (A) not making reasonable accommodations to the known physical or mental limitations of an otherwise qualified individual with a disability who is an applicant or employee, unless such covered entity can demonstrate that the accommodation would impose an undue hardship on the operation of the business of such covered entity; or

(B) denying employment opportunities to a job applicant or

employee who is an otherwise qualified individual with a disability, if such denial is based on the need of such covered entity to make reasonable accommodation to the physical or mental impairments of the employee or applicant;

(6) using qualification standards, employment tests or other selection criteria that screen out or tend to screen out an individual with a disability or a class of individuals with disabilities unless the standard, test or other selection criteria, as used by the covered entity, is shown to be job-related for the position in question and is consistent with business necessity; and

(7) failing to select and administer tests concerning employment in the most effective manner to ensure that, when such test is administered to a job applicant or employee who has a disability that impairs sensory, manual, or speaking skills, such test results accurately reflect the skills, aptitude, or whatever other factor of such applicant or employee that such test purports to measure, rather than reflecting the impaired sensory, manual, or speaking skills of such employee or applicant (except where such skills are the factors that the test purports to measure).

(c) Covered entities in foreign countries. -

(1) In general. - It shall not be unlawful under this section for a covered entity to take any action that constitutes discrimination under this section with respect to an employee in a workplace in a foreign country if compliance with this section would cause such covered entity to violate the law of the foreign country in which such workplace is located.

(2) Control of corporation

(A) Presumption. - If an employer controls a corporation whose place of incorporation is a foreign country, any practice that constitutes discrimination under this section and is engaged in by such corporation shall be presumed to be engaged in by such employer.

(B) Exception. - This section shall not apply with respect to the foreign operations of an employer that is a foreign person

not controlled by an American employer.

(C) Determination. - For purposes of this paragraph, the determination of whether an employer controls a corporation shall be based on-

(i) the interrelation of operations;

(ii) the common management;

(iii) the centralized control of labor relations; and

(iv) the common ownership or financial control, of the employer and the corporation.

(d) Medical examinations and inquiries. -

(1) In general. - The prohibition against discrimination as referred to in subsection (a) of this section shall include medical examinations and inquiries.

(2) Pre-employment. -

(A) Prohibited examination or inquiry. - Except as provided in paragraph (3), a covered entity shall not conduct a medical examination or make inquiries of a job applicant as to whether such applicant is an individual with a disability or as to the nature or severity of such disability.

(B) Acceptable inquiry. - A covered entity may make pre-employment inquiries into the ability of an applicant to perform job-related functions.

(3) Employment entrance examination. - A covered entity may require a medical examination after an offer of employment has been made to a job applicant and prior to the commencement of the employment duties of such applicant, and may condition an offer of employment on the results of such examination, if-

(A) all entering employees are subjected to such an examination regardless of disability;

(B) information obtained regarding the medical condition or history of the applicant is collected and maintained on separate forms and in separate medical files and is treated as a confidential medical record, except that-

(i) supervisors and managers may be informed regarding necessary restrictions on the work or duties of the employee and necessary accommodations;

(ii) first aid and safety personnel may be informed, when appropriate, if the disability might require emergency treatment; and

(iii) government officials investigating compliance with this chapter shall be provided relevant information on request; and

(C) the results of such examination are used only in accordance with this subchapter.

(4) Examination and inquiry. -

(A) Prohibited examinations and inquiries. - A covered entity shall not require a medical examination and shall not make inquiries of an employee as to whether such employee is an individual with a disability or as to the nature or severity of the disability, unless such examination or inquiry is shown to be jobrelated and consistent with business necessity.

(B) Acceptable examinations and inquiries. - A covered entity may conduct voluntary medical examinations, including voluntary medical histories, which are part of an employee health program available to employees at that work site. A covered entity may make inquiries into the ability of an employee to perform job-related functions.

(C) Requirement. - Information obtained under subparagraph (B) regarding the medical condition or history of any employee are subject to the requirements of subparagraphs

(B) and (C) of paragraph (3).

DEFENSES

SEC. 12113. *[Section 103]*

(a) In general. - It may be a defense to a charge of discrimination under this chapter that an alleged application of qualification standards, tests, or selection criteria that screen out or tend to screen out or otherwise deny a job or benefit to an individual with a disability has been shown to be job-related and consistent with business necessity, and such performance cannot be accomplished by reasonable accommodation, as required under this subchapter.

(b) Qualification standards. - The term "qualification standards" may include a requirement that an individual shall not pose a direct threat to the health or safety of other individuals in the workplace.

(c) Qualification standards and tests related to uncorrected vision. - Notwithstanding section 12102(4)(E)(ii) of this title, a covered entity shall not use qualification standards, employment tests, or other selection criteria based on an individual's uncorrected vision unless the standard, test, or other selection criteria, as used by the covered entity, is shown to be job-related for the position in question and consistent with business necessity.

(d) Religious entities. -

(1) In general. - This subchapter shall not prohibit a religious corporation, association, educational institution, or society from giving preference in employment to individuals of a particular religion to perform work connected with the carrying on by such corporation, association, educational institution, or society of its activities.

(2) Religious tenets requirement. - Under this subchapter, a religious organization may require that all applicants and employees conform to the religious tenets of such organization.

(e) List of infectious and communicable diseases. -

(1) In general. - The Secretary of Health and Human Services, not later

than 6 months after July 26, 1990 *[the date of enactment of this Act]*, shall-

(A) review all infectious and communicable diseases which may be transmitted through handling the food supply;

(B) publish a list of infectious and communicable diseases which are transmitted through handling the food supply;

(C) publish the methods by which such diseases are transmitted; and

(D) widely disseminate such information regarding the list of diseases and their modes of transmissibility to the general public. Such list shall be updated annually.

(2) Applications. - In any case in which an individual has an infectious or communicable disease that is transmitted to others through the handling of food, that is included on the list developed by the Secretary of Health and Human Services under paragraph (1), and which cannot be eliminated by reasonable accommodation, a covered entity may refuse to assign or continue to assign such individual to a job involving food handling.

(3) Construction. - Nothing in this chapter shall be construed to preempt, modify, or amend any State, county, or local law, ordinance, or regulation applicable to food handling which is designed to protect the public health from individuals who pose a significant risk to the health or safety of others, which cannot be eliminated by reasonable accommodation, pursuant to the list of infectious or communicable diseases and the modes of transmissibility published by the Secretary of Health and Human Services.

ILLEGAL USE OF DRUGS AND ALCOHOL

SEC. 12114. *[Section 104]*

(a) Qualified individual with a disability. - For purposes of this subchapter, **a qualified individual with a disability** shall not include any employee or applicant who is currently engaging in the illegal use of drugs, when the covered entity acts on the basis of such use.

(b) Rules of construction. - Nothing in subsection (a) of this section shall be construed to exclude as a qualified individual with a disability an individual who-

(1) has successfully completed a supervised drug rehabilitation program and is no longer engaging in the illegal use of drugs, or has otherwise been rehabilitated successfully and is no longer engaging in such use;

(2) is participating in a supervised rehabilitation program and is no longer engaging in such use; or

(3) is erroneously regarded as engaging in such use, but is not engaging in such use; except that it shall not be a violation of this chapter for a covered entity to adopt or administer reasonable policies or procedures, including but not limited to drug testing, designed to ensure that an individual described in paragraph (1) or (2) is no longer engaging in the illegal use of drugs.

(c) Authority of covered entity. -

A covered entity-

(1) may prohibit the illegal use of drugs and the use of alcohol at the workplace by all employees;

(2) may require that employees shall not be under the influence of alcohol or be engaging in the illegal use of drugs at the workplace;

(3) may require that employees behave in conformance with the requirements established under the Drug Free Workplace Act of 1988 (41 U.S.C. 701 et seq.);

(4) may hold an employee who engages in the illegal use of drugs or who is an alcoholic to the same qualification standards for employment or job performance and behavior that such entity holds other employees, even if any unsatisfactory performance or behavior is related to the drug use or alcoholism of such employee; and (5) may, with respect to Federal

regulations regarding alcohol and the illegal use of drugs, require that-

(A) employees comply with the standards established in such regulations of the Department of Defense, if the employees of the covered entity are employed in an industry subject to such regulations, including complying with regulations (if any) that apply to employment in sensitive positions in such an industry, in the case of employees of the covered entity who are employed in such positions (as defined in the regulations of the Department of Defense);

(B) employees comply with the standards established in such regulations of the Nuclear Regulatory Commission, if the employees of the covered entity are employed in an industry subject to such regulations, including complying with regulations (if any) that apply to employment in sensitive positions in such an industry, in the case of employees of the covered entity who are employed in such positions (as defined in the regulations of the Nuclear Regulatory Commission); and

(C) employees comply with the standards established in such regulations of the Department of Transportation, if the employees of the covered entity are employed in a transportation industry subject to such regulations, including complying with such regulations (if any) that apply to employment in sensitive positions in such an industry, in the case of employees of the covered entity who are employed in such positions (as defined in the regulations of the Department of Transportation).

(d) Drug testing. -

(1) In general. - For purposes of this subchapter, a test to determine the illegal use of drugs shall not be considered a medical examination.

(2) Construction. - Nothing in this subchapter shall be construed to encourage, prohibit, or authorize the conducting of drug testing for the illegal use of drugs by job applicants or employees or making

employment decisions based on such test results.

(e) Transportation employees. - Nothing in this subchapter shall be construed to encourage, prohibit, restrict, or authorize the otherwise lawful exercise by entities subject to the jurisdiction of the Department of Transportation of authority to-

(1) test employees of such entities in, and applicants for, positions involving safety sensitive duties for the illegal use of drugs and for on duty impairment by alcohol; and

(2) remove such persons who test positive for illegal use of drugs and on duty impairment by alcohol pursuant to paragraph (1) from safety sensitive duties in implementing subsection (c) of this section.

POSTING NOTICES

SEC. 12115. *[Section 105]*

Every employer, employment agency, labor organization, or joint labor management committee covered under this subchapter shall post notices in an accessible format to applicants, employees, and members describing the applicable provisions of this chapter, in the manner prescribed by section 2000e-10 of this title *[section 711 of the Civil Rights Act of 1964]*.

REGULATIONS

SEC. 12116. *[Section 106]*

Not later than 1 year after July 26, 1990 *[the date of enactment of this Act]*, the Commission shall issue regulations in an accessible format to carry out this subchapter in accordance with subchapter II of chapter 5 of title 5 *[United States Code]*.

ENFORCEMENT

SEC. 12117. *[Section 107]*

(a) Powers, remedies, and procedures. - The powers, remedies, and procedures set forth in sections 2000e-4, 2000e-5, 2000e-6, 2000e-8, and 2000e-9 of this title *[sections 705, 706, 707, 709 and 710 of the Civil Rights Act of 1964]* shall be the powers, remedies, and procedures this subchapter provides to the Commission, to the Attorney General, or to any person alleging discrimination on the basis of disability in violation of any provision of this chapter, or regulations promulgated under section 12116 of this title *[section 106]*, concerning employment.

(b) Coordination. - The agencies with enforcement authority for actions which allege employment discrimination under this subchapter and under the Rehabilitation Act of 1973 *[29 U.S.C. 701 et seq.]* shall develop procedures to ensure that administrative complaints filed under this subchapter and under the Rehabilitation Act of 1973 are dealt with in a manner that avoids duplication of effort and prevents imposition of inconsistent or conflicting standards for the same requirements under this subchapter and the Rehabilitation Act of 1973. The Commission, the Attorney General, and the Office of Federal Contract Compliance Programs shall establish such coordinating mechanisms (similar to provisions contained in the joint regulations promulgated by the Commission and the Attorney General at part 42 of title 28 and part 1691 of title 29, Code of Federal Regulations, and the Memorandum of Understanding between the Commission and the Office of Federal Contract Compliance Programs dated January 16, 1981 (46 Fed. Reg. 7435, January 23, 1981)) in regulations implementing this subchapter and Rehabilitation Act of 1973 not later than 18 months after July 26, 1990 *[the date of enactment of this Act]*.

[42 USC § 2000e-5 note]

(a) AMERICANS WITH DISABILITIES ACT OF 1990. - The amendments made by section 3 *[Lilly Ledbetter Fair Pay Act of 2009, PL 111-2, 123 Stat. 5]* shall apply to claims of discrimination in compensation brought under title I and section 503 of the Americans with Disabilities Act of 1990 (42 U.S.C. 12111 et seq., 12203), pursuant to section 107(a) of such Act (42 U.S.C. 12117(a)), which adopts the powers, remedies, and procedures set forth in section 706 of the Civil Rights Act of 1964 (42 U.S.C. 2000e-5).

SUBCHAPTER IV *[TITLE V]* –

MISCELLANEOUS PROVISIONS

CONSTRUCTION

SEC. 12201. *[Section 501]*

(a) In general. - Except as otherwise provided in this chapter, nothing in this chapter shall be construed to apply a lesser standard than the standards applied under Title V of the Rehabilitation Act of 1973 (29 U.S.C. 790 et seq.) or the regulations issued by Federal agencies pursuant to such title.

(b) Relationship to other laws. - Nothing in this chapter shall be construed to invalidate or limit the remedies, rights, and procedures of any Federal law or law of any State or political subdivision of any State or jurisdiction that provides greater or equal protection for the rights of individuals with disabilities than are afforded by this chapter. Nothing in this chapter shall be construed to preclude the prohibition of, or the imposition of restrictions on, smoking in places of employment covered by subchapter I of this chapter *[title I]*, in transportation covered by subchapter II or III of this chapter *[title II or III]*, or in places of public accommodation covered by subchapter III of this chapter *[title III]*.

(c) Insurance. - Subchapters I through III of this chapter *[titles I through III]* and title IV of this Act shall not be construed to prohibit or restrict-

> (1) an insurer, hospital or medical service company, health maintenance organization, or any agent, or entity that administers benefit plans, or similar organizations from underwriting risks, classifying risks, or administering such risks that are based on or not inconsistent with State law; or
>
> (2) a person or organization covered by this chapter from establishing, sponsoring, observing or administering the terms of a bona fide benefit plan that are based on underwriting risks, classifying risks, or administering such risks that are based on or not inconsistent with State law; or
>
> (3) a person or organization covered by this chapter from establishing, sponsoring, observing or administering the terms of a bona fide benefit

plan that is not subject to State laws that regulate insurance.

Paragraphs (1), (2), and (3) shall not be used as a subterfuge to evade the purposes of subchapter I and III of this chapter *[titles I and III]*.

(d) Accommodations and services. - Nothing in this chapter shall be construed to require an individual with a disability to accept an accommodation, aid, service, opportunity, or benefit which such individual chooses not to accept.

(e) Benefits under State worker's compensation laws

Nothing in this chapter alters the standards for determining eligibility for benefits under State worker's compensation laws or under State and Federal disability benefit programs.

(f) Fundamental alteration

Nothing in this chapter alters the provision of section 12182(b)(2)(A)(ii) of this title, specifying that reasonable modifications in policies, practices, or procedures shall be required, unless an entity can demonstrate that making such modifications in policies, practices, or procedures, including academic requirements in postsecondary education, would fundamentally alter the nature of the goods, services, facilities, privileges, advantages, or accommodations involved.

(g) Claims of no disability

Nothing in this chapter shall provide the basis for a claim by an individual without a disability that the individual was subject to discrimination because of the individual's lack of disability.

(h) Reasonable accommodations and modifications

A covered entity under subchapter I of this chapter, a public entity under subchapter II of this chapter, and any person who owns, leases (or leases to), or operates a place of public accommodation under subchapter III of this chapter, need not provide a reasonable accommodation or a reasonable modification to policies, practices, or procedures to an individual who meets the definition of disability in section 12102(1) of this title solely under subparagraph (C) of such section.

STATE IMMUNITY

SEC. 12202. *[Section 502]*

A State shall not be immune under the eleventh amendment to the Constitution of the United States from an action in Federal or State court of competent jurisdiction for a violation of this chapter. In any action against a State for a violation of the requirements of this chapter, remedies (including remedies both at law and in equity) are available for such a violation to the same extent as such remedies are available for such a violation in an action against any public or private entity other than a State.

PROHIBITION AGAINST RETALIATION AND COERCION

SEC. 12203. *[Section 503]*

(a) Retaliation. - No person shall discriminate against any individual because such individual has opposed any act or practice made unlawful by this chapter or because such individual made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this chapter.

(b) Interference, coercion, or intimidation. - It shall be unlawful to coerce, intimidate, threaten, or interfere with any individual in the exercise or enjoyment of, or on account of his or her having exercised or enjoyed, or on account of his or her having aided or encouraged any other individual in the exercise or enjoyment of, any right granted or protected by this chapter.

(c) Remedies and procedures. - The remedies and procedures available under sections 12117, 12133, and 12188 of this title *[sections 107, 203 and 308]* shall be available to aggrieved persons for violations of subsections (a) and (b) of this section, with respect to subchapter I, subchapter II and subchapter III, respectively, of this chapter *[title I, title II and title III, respectively]*.

[42 USC § 2000e-5 note]

(a) AMERICANS WITH DISABILITIES ACT OF 1990. - The amendments made by section 3 *[Lilly Ledbetter Fair Pay Act of 2009, PL 111-2, 123 Stat. 5]* shall apply to

claims of discrimination in compensation brought under title I and section 503 of the Americans with Disabilities Act of 1990 (42 U.S.C. 12111 et seq., 12203), pursuant to section 107(a) of such Act (42 U.S.C. 12117(a)), which adopts the powers, remedies, and procedures set forth in section 706 of the Civil Rights Act of 1964 (42 U.S.C. 2000e-5).

REGULATIONS BY THE ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

SEC. 12204. *[Section 504]*

(a) Issuance of guidelines. - Not later than 9 months after July 26, 1990 *[the date of enactment of this Act]*, the Architectural and Transportation Barriers Compliance Board shall issue minimum guidelines that shall supplement the existing Minimum Guidelines and Requirements for Accessible Design for purposes of subchapters II and III of this chapter *[titles II and III]*. (b) Contents of guidelines. - The supplemental guidelines issued under subsection (a) of this section shall establish additional requirements, consistent with this chapter, to ensure that buildings, facilities, rail passenger cars, and vehicles are accessible, in terms of architecture and design, transportation, and communication, to individuals with disabilities.

(c) Qualified historic properties. -

> (1) In general. - The supplemental guidelines issued under subsection (a) of this section shall include procedures and requirements for alterations that will threaten or destroy the historic significance of qualified historic buildings and facilities as defined in 4.1.7(1)(a) of the Uniform Federal Accessibility Standards.
>
> (2) Sites eligible for listing in National Register. - With respect to alterations of buildings or facilities that are eligible for listing in the National Register of Historic Places under the National Historic Preservation Act (16 U.S.C. 470 et seq.), the guidelines described in paragraph (1) shall, at a minimum, maintain the procedures and

requirements established in 4.1.7(1) and (2) of the Uniform Federal Accessibility Standards.

(3) Other sites. - With respect to alterations of buildings or facilities designated as historic under State or local law, the guidelines described in paragraph (1) shall establish procedures equivalent to those established by 4.1.7(1)(b) and (c) of the Uniform Federal Accessibility Standards, and shall require, at a minimum, compliance with the requirements established in 4.1.7(2) of such standards.

ATTORNEY'S FEES

SEC. 12205. *[Section 505]*

In any action or administrative proceeding commenced pursuant to this chapter, the court or agency, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee, including litigation expenses, and costs, and the United States shall be liable for the foregoing the same as a private individual.

Rule of construction regarding regulatory authority

SEC. 12205a. [Section 506]

The authority to issue regulations granted to the Equal Employment Opportunity Commission, the Attorney General, and the Secretary of Transportation under this chapter includes the authority to issue regulations implementing the definitions of disability in section 12102 of this title (including rules of construction) and the definitions in section 12103 of this title, consistent with the ADA Amendments Act of 2008.

TECHNICAL ASSISTANCE

SEC. 12206. *[Section **507**]*

(a) Plan for assistance. -

(1) In general. - Not later than 180 days after July 26, 1990 *[the date of*

enactment of this Act], the Attorney General, in consultation with the Chair of the Equal Employment Opportunity Commission, the Secretary of Transportation, the Chair of the Architectural and Transportation Barriers Compliance Board, and the Chairman of the Federal Communications Commission, shall develop a plan to assist entities covered under this chapter, and other Federal agencies, in understanding the responsibility of such entities and agencies under this chapter.

(2) Publication of plan. - The Attorney General shall publish the plan referred to in paragraph (1) for public comment in accordance with subchapter II of chapter 5 of title 5 *[United States Code]* (commonly known as the Administrative Procedure Act).

(b) Agency and public assistance. - The Attorney General may obtain the assistance of other Federal agencies in carrying out subsection (a) of this section, including the National Council on Disability, the President's Committee on Employment of People with Disabilities, the Small Business Administration, and the Department of Commerce.

(c) Implementation. -

(1) Rendering assistance. - Each Federal agency that has responsibility under paragraph (2) for implementing this chapter may render technical assistance to individuals and institutions that have rights or duties under the respective subchapter or subchapters of this chapter for which such agency has responsibility.

(2) Implementation of subchapters. -

(A) Subchapter I *[Title I]*. - The Equal Employment Opportunity Commission and the Attorney General shall implement the plan for assistance developed under subsection (a) of this section, for subchapter I of this chapter *[title I]*. (B) Subchapter II *[Title II]*. -

(i) Part A *[Subtitle A]*. - The Attorney General shall implement such plan for assistance for part A of subchapter II of this chapter *[subtitle A of title II]*.

(ii) Part B *[Subtitle B]*. - The Secretary of Transportation shall implement such plan for assistance for part B of subchapter II of this chapter *[subtitle B of title II]*.

(C) Subchapter III *[Title III]*. - The Attorney General, in coordination with the Secretary of Transportation and the Chair of the Architectural Transportation Barriers Compliance Board, shall implement such plan for assistance for subchapter III of this chapter, except for section 12184 of this title *[section 304]*, the plan for assistance for which shall be implemented by the Secretary of Transportation.

(D) Title IV. - The Chairman of the Federal Communications Commission, in coordination with the Attorney General, shall implement such plan for assistance for title IV.

(3) Technical assistance manuals. - Each Federal agency that has responsibility under paragraph (2) for implementing this chapter shall, as part of its implementation responsibilities, ensure the availability and provision of appropriate technical assistance manuals to individuals or entities with rights or duties under this chapter no later than six months after applicable final regulations are published under subchapters I, II, and III of this chapter *[titles I, II, and III]* and title IV.

(d) Grants and contracts. -

(1) In general. - Each Federal agency that has responsibility under subsection (c)(2) of this section for implementing this chapter may make grants or award contracts to effectuate the purposes of this section, subject to the availability of appropriations. Such grants and contracts may be awarded to individuals, institutions not organized for profit and no part of the net earnings of which inures to the benefit of any private shareholder or individual (including educational institutions), and associations representing individuals who have rights or duties under this chapter. Contracts may be awarded to entities organized for profit, but such entities may not be the recipients or grants described in this paragraph.

(2) Dissemination of information. - Such grants and contracts, among other uses, may be designed to ensure wide dissemination of information about the rights and duties established by this chapter and to provide information and technical assistance about techniques for effective compliance with this chapter.

(e) Failure to receive assistance. - An employer, public accommodation, or other entity covered under this chapter shall not be excused from compliance with the requirements of this chapter because of any failure to receive technical assistance under this section, including any failure in the development or dissemination of any technical assistance manual authorized by this section.

FEDERAL WILDERNESS AREAS

SEC. 12207. *[Section **508**]*

(a) Study. - The National Council on Disability shall conduct a study and report on the effect that wilderness designations and wilderness land management practices have on the ability of individuals with disabilities to use and enjoy the National Wilderness Preservation System as established under the Wilderness Act (16 U.S.C. 1131 et seq.).

(b) Submission of report. - Not later than 1 year after July 26, 1990 *[the date of enactment of this Act]*, the National Council on Disability shall submit the report required under subsection (a) of this section to Congress.

(c) Specific wilderness access. -

(1) In general. - Congress reaffirms that nothing in the Wilderness Act [16 U.S.C. 1131 et seq.] is to be construed as prohibiting the use of a wheelchair in a wilderness area by an individual whose disability requires use of a wheelchair, and consistent with the Wilderness Act no agency is required to provide any form of special treatment or accommodation, or to construct any facilities or modify any conditions of lands within a wilderness area in order to facilitate such use.

(2) Definition. - For purposes of paragraph (1), the term "wheelchair" means a device designed solely for use by a mobility-impaired person

for locomotion, that is suitable for use in an indoor pedestrian area.

TRANSVESTITES

SEC. 12208. *[Section **509**]*

For the purposes of this chapter, the term "disabled" or "disability" shall not apply to an individual solely because that individual is a transvestite.

COVERAGE OF CONGRESS AND THE AGENCIES OF THE LEGISLATIVE BRANCH

SEC. 12209. *[Section **510**]*

(a) Coverage of the Senate. -

(1) Commitment to Rule XLII. - The Senate reaffirms its commitment to Rule XLII of the Standing Rules of the Senate which provides as follows:

"No member, officer, or employee of the Senate shall, with respect to employment by the Senate or any office thereof-

"(a) fail or refuse to hire an individual;

"(b) discharge an individual; or

"(c) otherwise discriminate against an individual with respect to promotion, compensation, or terms, conditions, or privileges of employment on the basis of such individual's race, color, religion, sex, national origin, age, or state of physical handicap."

(2) Matters other than employment. -

(A) In general. - The rights and protections under this chapter shall, subject to subparagraph (B), apply with respect to the

conduct of the Senate regarding matters other than employment.

(B) Remedies. - The Architect of the Capitol shall establish remedies and procedures to be utilized with respect to the rights and protections provided pursuant to subparagraph (A). Such remedies and procedures shall apply exclusively, after approval in accordance with subparagraph (C).

(C) Proposed remedies and procedures. - For purposes of subparagraph (B), the Architect of the Capitol shall submit proposed remedies and procedures to the Senate Committee on Rules and Administration. The remedies and procedures shall be effective upon the approval of the Committee on Rules and Administration.

(3) Exercise of rulemaking power. - Notwithstanding any other provision of law, enforcement and adjudication of the rights and protections referred to in paragraph (2)(A) shall be within the exclusive jurisdiction of the United States Senate. The provisions of paragraph (1), (2) are enacted by the Senate as an exercise of the rulemaking power of the Senate, with full recognition of the right of the Senate to change its rules, in the same manner, and to the same extent, as in the case of any other rule of the Senate.

(b) Coverage of the House of Representatives. -

(1) In general. - Notwithstanding any other provision of this chapter or of law, the purposes of this chapter shall, subject to paragraphs (2) and (3), apply in their entirety to the House of Representatives.

(2) Employment in the House. -

(A) Application. - The rights and protections under this chapter shall, subject to subparagraph (B), apply with respect to any employee in an employment position in the House of Representatives and any employing authority of the House of Representatives.

(B) Administration. -

(i) In general. - In the administration of this paragraph, the remedies and procedures made applicable pursuant to the resolution described in clause (ii) shall apply exclusively.

(ii) Resolution. - The resolution referred to in clause (i) is House Resolution 15 of the One Hundred First Congress, as agreed to January 3, 1989, or any other provision that continues in effect the provisions of, or is a successor to, the Fair Employment Practices Resolution (House Resolution 558 of the One Hundredth Congress, as agreed to October 4, 1988).

(C) Exercise of rulemaking power. - The provisions of subparagraph (B) are enacted by the House of Representatives as an exercise of the rulemaking power of the House of Representatives, with full recognition of the right of the House to change its rules, in the same manner, and to the same extent as in the case of any other rule of the House.

(3) Matters other than employment. -

(A) In general. - The rights and protections under this chapter shall, subject to subparagraph (B), apply with respect to the conduct of the House of Representatives regarding matters other than employment.

(B) Remedies. - The Architect of the Capitol shall establish remedies and procedures to be utilized with respect to the rights and protections provided pursuant to subparagraph (A). Such remedies and procedures shall apply exclusively, after approval in accordance with subparagraph (C).

(C) Approval. - For purposes of subparagraph (B), the Architect of the Capitol shall submit proposed remedies and procedures to the Speaker of the House of Representatives. The remedies and procedures shall be effective upon the

approval of the Speaker, after consultation with the House Office Building Commission.

(c) Instrumentalities of Congress. -

(1) In general. - The rights and protections under this chapter shall, subject to paragraph (2), apply with respect to the conduct of each instrumentality of the Congress.

(2) Establishment of remedies and procedures by instrumentalities. - The chief official of each instrumentality of the Congress shall establish remedies and procedures to be utilized with respect to the rights and protections provided pursuant to paragraph (1). Such remedies and procedures shall apply exclusively, except for the employees who are defined as Senate employees, in section 201(c)(1) of the Civil Rights Act of 1991.

(3) Report to Congress. - The chief official of each instrumentality of the Congress shall, after establishing remedies and procedures for purposes of paragraph (2), submit to the Congress a report describing the remedies and procedures.

(4) Definition of instrumentalities. - For purposes of this section, instrumentalities of the Congress include the following: the Architect of the Capitol, the Congressional Budget Office, the General Accounting Office, the Government Printing Office, the Library of Congress, the Office of Technology Assessment, and the United States Botanic Garden.

(5) Construction. - Nothing in this section shall alter the enforcement procedures for individuals with disabilities provided in the General Accounting Office Personnel Act of 1980 *[31 U.S.C. 731 et seq.]* and regulations promulgated pursuant to that Act.

ILLEGAL USE OF DRUGS

SEC. 12210. *[Section **511**]*

(a) In general. - For purposes of this chapter, the term "individual with a disability" does not include an individual who is currently engaging in the illegal use of drugs,

when the covered entity acts on the basis of such use.

(b) Rules of construction. - Nothing in subsection (a) of this section shall be construed to exclude as an individual with a disability an individual who-

(1) has successfully completed a supervised drug rehabilitation program and is no longer engaging in the illegal use of drugs, or has otherwise been rehabilitated successfully and is no longer engaging in such use;

(2) is participating in a supervised rehabilitation program and is no longer engaging in such use; or

(3) is erroneously regarded as engaging in such use, but is not engaging in such use; except that it shall not be a violation of this chapter for a covered entity to adopt or administer reasonable policies or procedures, including but not limited to drug testing, designed to ensure that an individual described in paragraph (1) or (2) is no longer engaging in the illegal use of drugs; however, nothing in this section shall be construed to encourage, prohibit, restrict, or authorize the conducting of testing for the illegal use of drugs.

(c) Health and other services. - Notwithstanding subsection (a) of this section and section 12211(b)(3) of this title *[section **512**(b)(3)]*, an individual shall not be denied health services, or services provided in connection with drug rehabilitation, on the basis of the current illegal use of drugs if the individual is otherwise entitled to such services.

(d) Definition of illegal use of drugs. -

(1) In general. - The term "illegal use of drugs" means the use of drugs, the possession or distribution of which is unlawful under the Controlled Substances Act (21 U.S.C. 812). Such term does not include the use of a drug taken under supervision by a licensed health care professional, or other uses authorized by the Controlled Substances Act or other provisions of Federal law.

(2) Drugs

The term "drug" means a controlled substance, as defined in schedules I through V of section 202 of the Controlled Substances Act *[21 U.S.C. 812]*.

DEFINITIONS

SEC. 12211. *[Section **512**]*

(a) Homosexuality and bisexuality. - For purposes of the definition of "disability" in section 12102(2) of this title *[section 3(2)]*, homosexuality and bisexuality are not impairments and as such are not disabilities under this chapter.

(b) Certain conditions. - Under this chapter, the term "disability" shall not include-

> (1) transvestism, transsexualism, pedophilia, exhibitionism, voyeurism, gender identity disorders not resulting from physical impairments, or other sexual behavior disorders;
>
> (2) compulsive gambling, kleptomania, or pyromania; or
>
> (3) psychoactive substance use disorders resulting from current illegal use of drugs.

ALTERNATIVE MEANS OF DISPUTE RESOLUTION

SEC. 12212. *[Section **514**]*

Where appropriate and to the extent authorized by law, the use of alternative means of dispute resolution, including settlement negotiations, conciliation, facilitation, mediation, factfinding, minitrials, and arbitration, is encouraged to resolve disputes arising under this chapter.

SEVERABILITY

SEC. 12213. *[Section **515**]*

Should any provision in this chapter be found to be unconstitutional by a court of law, such provision shall be severed from the remainder of the chapter, and such action shall not affect the enforceability of the remaining provisions of the chapter. *[Approved July 26, 1990]*

U.S. Equal Employment Opportunity Commission

The Genetic Information Nondiscrimination Act of 2008

An Act

To prohibit discrimination on the basis of genetic information with respect to health insurance and employment.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) Short Title.--This Act may be cited as the "Genetic Information Nondiscrimination Act of 2008".

(b) Table of Contents.--The table of contents of this Act is as follows:

TITLE I--GENETIC NONDISCRIMINATION IN HEALTH INSURANCE

Please note: Title I is not included here. The Departments of Labor, Health and Human Services and the Treasury have responsibility for issuing regulations for Title I of GINA, which addresses the use of genetic information in health insurance.

TITLE II--PROHIBITING EMPLOYMENT DISCRIMINATION ON THE BASIS OF GENETIC INFORMATION

TITLE III--MISCELLANEOUS PROVISIONS

SEC. 2. FINDINGS.

Congress makes the following findings:

(1) Deciphering the sequence of the human genome and other advances

in genetics open major new opportunities for medical progress. New knowledge about the genetic basis of illness will allow for earlier detection of illnesses, often before symptoms have begun. Genetic testing can allow individuals to take steps to reduce the likelihood that they will contract a particular disorder. New knowledge about genetics may allow for the development of better therapies that are more effective against disease or have fewer side effects than current treatments. These advances give rise to the potential misuse of genetic information to discriminate in health insurance and employment.

(2) The early science of genetics became the basis of State laws that provided for the sterilization of persons having presumed genetic "defects" such as mental retardation, mental disease, epilepsy, blindness, and hearing loss, among other conditions. The first sterilization law was enacted in the State of Indiana in 1907. By 1981, a majority of States adopted sterilization laws to "correct" apparent genetic traits or tendencies. Many of these State laws have since been repealed, and many have been modified to include essential constitutional requirements of due process and equal protection. However, the current explosion in the science of genetics, and the history of sterilization laws by the States based on early genetic science, compels Congressional action in this area.

(3) Although genes are facially neutral markers, many genetic conditions and disorders are associated with particular racial and ethnic groups and gender. Because some genetic traits are most prevalent in particular groups, members of a particular group may be stigmatized or discriminated against as a result of that genetic information. This form of discrimination was evident in the 1970s, which saw the advent of programs to screen and identify carriers of sickle cell anemia, a disease which afflicts African-Americans. Once again, State legislatures began to enact discriminatory laws in the area, and in the early 1970s began mandating genetic screening of all African Americans for sickle cell anemia, leading to discrimination and unnecessary fear. To alleviate some of this stigma, Congress in 1972 passed the National Sickle Cell Anemia Control Act, which withholds Federal funding from States unless sickle cell testing is voluntary.

(4) Congress has been informed of examples of genetic discrimination in the workplace. These include the use of pre- employment genetic screening at Lawrence Berkeley Laboratory, which led to a court decision in favor of the employees in that case Norman-Bloodsaw v. Lawrence Berkeley Laboratory (135 F.3d 1260, 1269 (9th Cir. 1998)). Congress clearly has a compelling public interest in relieving the fear of discrimination and in prohibiting its actual practice in employment and health insurance.

(5) Federal law addressing genetic discrimination in health insurance and employment is incomplete in both the scope and depth of its protections. Moreover, while many States have enacted some type of genetic non-discrimination law, these laws vary widely with respect to their approach, application, and level of protection. Congress has collected substantial evidence that the American public and the medical community find the existing patchwork of State and Federal laws to be confusing and inadequate to protect them from discrimination. Therefore Federal legislation establishing a national and uniform basic standard is necessary to fully protect the public from discrimination and allay their concerns about the potential for discrimination, thereby allowing individuals to take advantage of genetic testing, technologies, research, and new therapies.

TITLE II--PROHIBITING EMPLOYMENT DISCRIMINATION ON THE BASIS OF GENETIC INFORMATION

SEC. 201. DEFINITIONS.

In this title:

(1) Commission.--The term "Commission" means the Equal Employment Opportunity Commission as created by section 705 of the Civil Rights Act of 1964 (42 U.S.C. 2000e-4).

(2) Employee; employer; employment agency; labor organization; member.--

(A) In general.--The term "employee" means--

(i) an employee (including an applicant), as defined in section 701(f) of the Civil Rights Act of 1964 (42 U.S.C. 2000e(f));

(ii) a State employee (including an applicant) described in section 304(a) of the Government Employee Rights Act of 1991 (42 U.S.C. 2000e-16c(a));

(iii) a covered employee (including an applicant), as defined in section 101 of the Congressional Accountability Act of 1995 (2 U.S.C. 1301);

(iv) a covered employee (including an applicant), as defined in section 411(c) of title 3, United States Code; or

(v) an employee or applicant to which section 717(a) of the Civil Rights Act of 1964 (42 U.S.C. 2000e-16(a)) applies.

(B) Employer.--The term "employer" means--

(i) an employer (as defined in section 701(b) of the Civil Rights Act of 1964 (42 U.S.C. 2000e(b)));

(ii) an entity employing a State employee described in section 304(a) of the Government Employee Rights Act of 1991;

(iii) an employing office, as defined in section 101 of the Congressional Accountability Act of 1995;

(iv) an employing office, as defined in section 411(c) of title 3, United States Code; or

(v) an entity to which section 717(a) of the Civil Rights Act of 1964 applies.

(C) Employment agency; labor organization.--The terms "employment agency" and "labor organization" have the meanings given the terms in section 701 of the Civil Rights Act of 1964 (42 U.S.C. 2000e).

(D) Member.--The term "member", with respect to a labor organization, includes an applicant for membership in a labor organization.

(3) Family member.--The term "family member" means, with respect to an individual--

(A) a dependent (as such term is used for purposes of section 701(f)(2) of the Employee Retirement Income Security Act of 1974) of such individual, and

(B) any other individual who is a first-degree, second-degree, third-degree, or fourth-degree relative of such individual or of an individual described in subparagraph (A).

(4) Genetic information.--

(A) In general.--The term "genetic information" means, with respect to any individual, information about--

(i) such individual's genetic tests,

(ii) the genetic tests of family members of such individual, and

(iii) the manifestation of a disease or disorder in family members of such individual.

(B) Inclusion of genetic services and participation in genetic research.--Such term includes, with respect to any individual, any request for, or receipt of, genetic services, or participation in clinical research which includes genetic services, by such individual or any family member of such

individual.

(C) Exclusions.--The term "genetic information" shall not include information about the sex or age of any individual.

(5) Genetic monitoring.--The term "genetic monitoring" means the periodic examination of employees to evaluate acquired modifications to their genetic material, such as chromosomal damage or evidence of increased occurrence of mutations, that may have developed in the course of employment due to exposure to toxic substances in the workplace, in order to identify, evaluate, and respond to the effects of or control adverse environmental exposures in the workplace.

(6) Genetic services.--The term "genetic services" means--

(A) a genetic test;

(B) genetic counseling (including obtaining, interpreting, or assessing genetic information); or

(C) genetic education.

(7) Genetic test.--

(A) In general.--The term "genetic test" means an analysis of human DNA, RNA, chromosomes, proteins, or metabolites, that detects genotypes, mutations, or chromosomal changes.

(B) Exceptions.--The term "genetic test" does not mean an analysis of proteins or metabolites that does not detect genotypes, mutations, or chromosomal changes.

SEC. 202. EMPLOYER PRACTICES.

(a) Discrimination Based on Genetic Information.--It shall be an unlawful employment practice for an employer--

(1) to fail or refuse to hire, or to discharge, any employee, or otherwise to discriminate against any employee with respect to the compensation, terms, conditions, or privileges of employment of the employee,

because of genetic information with respect to the employee; or

(2) to limit, segregate, or classify the employees of the employer in any way that would deprive or tend to deprive any employee of employment opportunities or otherwise adversely affect the status of the employee as an employee, because of genetic information with respect to the employee.

(b) Acquisition of Genetic Information.--It shall be an unlawful employment practice for an employer to request, require, or purchase genetic information with respect to an employee or a family member of the employee except--

(1) where an employer inadvertently requests or requires family medical history of the employee or family member of the employee;

(2) where--

(A) health or genetic services are offered by the employer, including such services offered as part of a wellness program;

(B) the employee provides prior, knowing, voluntary, and written authorization;

(C) only the employee (or family member if the family member is receiving genetic services) and the licensed health care professional or board certified genetic counselor involved in providing such services receive individually identifiable information concerning the results of such services; and

(D) any individually identifiable genetic information provided under subparagraph (C) in connection with the services provided under subparagraph (A) is only available for purposes of such services and shall not be disclosed to the employer except in aggregate terms that do not disclose the identity of specific employees;

(3) where an employer requests or requires family medical history from the employee to comply with the certification provisions of section 103 of the Family and Medical Leave Act of 1993 (29 U.S.C. 2613) or such

requirements under State family and medical leave laws;

(4) where an employer purchases documents that are commercially and publicly available (including newspapers, magazines, periodicals, and books, but not including medical databases or court records) that include family medical history;

(5) where the information involved is to be used for genetic monitoring of the biological effects of toxic substances in the workplace, but only if--

(A) the employer provides written notice of the genetic monitoring to the employee;

(B)(i) the employee provides prior, knowing, voluntary, and written authorization; or

(ii) the genetic monitoring is required by Federal or State law;

(C) the employee is informed of individual monitoring results;

(D) the monitoring is in compliance with--

(i) any Federal genetic monitoring regulations, including any such regulations that may be promulgated by the Secretary of Labor pursuant to the Occupational Safety and Health Act of 1970 (29 U.S.C. 651 et seq.), the Federal Mine Safety and Health Act of 1977 (30 U.S.C. 801 et seq.), or the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.); or

(ii) State genetic monitoring regulations, in the case of a State that is implementing genetic monitoring regulations under the authority of the Occupational Safety and Health Act of 1970 (29 U.S.C. 651 et seq.); and

(E) the employer, excluding any licensed health care professional or board certified genetic counselor that is involved in the genetic monitoring program, receives the

results of the monitoring only in aggregate terms that do not disclose the identity of specific employees; or

(6) where the employer conducts DNA analysis for law enforcement purposes as a forensic laboratory or for purposes of human remains identification, and requests or requires genetic information of such employer's employees, but only to the extent that such genetic information is used for analysis of DNA identification markers for quality control to detect sample contamination.

(c) Preservation of Protections.--In the case of information to which any of paragraphs (1) through (6) of subsection (b) applies, such information may not be used in violation of paragraph (1) or (2) of subsection (a) or treated or disclosed in a manner that violates section 206.

SEC. 203. EMPLOYMENT AGENCY PRACTICES.

(a) Discrimination Based on Genetic Information.--It shall be an unlawful employment practice for an employment agency--

(1) to fail or refuse to refer for employment, or otherwise to discriminate against, any individual because of genetic information with respect to the individual;

(2) to limit, segregate, or classify individuals or fail or refuse to refer for employment any individual in any way that would deprive or tend to deprive any individual of employment opportunities, or otherwise adversely affect the status of the individual as an employee, because of genetic information with respect to the individual; or

(3) to cause or attempt to cause an employer to discriminate against an individual in violation of this title.

(b) Acquisition of Genetic Information.--It shall be an unlawful employment practice for an employment agency to request, require, or purchase genetic information with respect to an individual or a family member of the individual except--

(1) where an employment agency inadvertently requests or requires family medical history of the individual or family member of the individual;

(2) where--

(A) health or genetic services are offered by the employment agency, including such services offered as part of a wellness program;

(B) the individual provides prior, knowing, voluntary, and written authorization;

(C) only the individual (or family member if the family member is receiving genetic services) and the licensed health care professional or board certified genetic counselor involved in providing such services receive individually identifiable information concerning the results of such services; and

(D) any individually identifiable genetic information provided under subparagraph (C) in connection with the services provided under subparagraph (A) is only available for purposes of such services and shall not be disclosed to the employment agency except in aggregate terms that do not disclose the identity of specific individuals;

(3) where an employment agency requests or requires family medical history from the individual to comply with the certification provisions of section 103 of the Family and Medical Leave Act of 1993 (29 U.S.C. 2613) or such requirements under State family and medical leave laws;

(4) where an employment agency purchases documents that are commercially and publicly available (including newspapers, magazines, periodicals, and books, but not including medical databases or court records) that include family medical history; or

(5) where the information involved is to be used for genetic monitoring of the biological effects of toxic substances in the workplace, but only if--

(A) the employment agency provides written notice of the genetic monitoring to the individual;

(B)(i) the individual provides prior, knowing, voluntary, and

written authorization; or

(ii) the genetic monitoring is required by Federal or State law;

(C) the individual is informed of individual monitoring results;

(D) the monitoring is in compliance with--

(i) any Federal genetic monitoring regulations, including any such regulations that may be promulgated by the Secretary of Labor pursuant to the Occupational Safety and Health Act of 1970 (29 U.S.C. 651 et seq.), the Federal Mine Safety and Health Act of 1977 (30 U.S.C. 801 et seq.), or the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.); or

(ii) State genetic monitoring regulations, in the case of a State that is implementing genetic monitoring regulations under the authority of the Occupational Safety and Health Act of 1970 (29 U.S.C. 651 et seq.); and

(E) the employment agency, excluding any licensed health care professional or board certified genetic counselor that is involved in the genetic monitoring program, receives the results of the monitoring only in aggregate terms that do not disclose the identity of specific individuals.

(c) Preservation of Protections.--In the case of information to which any of paragraphs (1) through (5) of subsection (b) applies, such information may not be used in violation of paragraph (1), (2), or (3) of subsection (a) or treated or disclosed in a manner that violates section 206.

SEC. 204. LABOR ORGANIZATION PRACTICES.

(a) Discrimination Based on Genetic Information.--It shall be an unlawful employment practice for a labor organization--

(1) to exclude or to expel from the membership of the organization, or otherwise to discriminate against, any member because of genetic information with respect to the member;

(2) to limit, segregate, or classify the members of the organization, or fail or refuse to refer for employment any member, in any way that would deprive or tend to deprive any member of employment opportunities, or otherwise adversely affect the status of the member as an employee, because of genetic information with respect to the member; or

(3) to cause or attempt to cause an employer to discriminate against a member in violation of this title.

(b) Acquisition of Genetic Information.--It shall be an unlawful employment practice for a labor organization to request, require, or purchase genetic information with respect to a member or a family member of the member except--

(1) where a labor organization inadvertently requests or requires family medical history of the member or family member of the member;

(2) where--

(A) health or genetic services are offered by the labor organization, including such services offered as part of a wellness program;

(B) the member provides prior, knowing, voluntary, and written authorization;

(C) only the member (or family member if the family member is receiving genetic services) and the licensed health care professional or board certified genetic counselor involved in providing such services receive individually identifiable information concerning the results of such services; and

(D) any individually identifiable genetic information provided under subparagraph (C) in connection with the services provided under subparagraph (A) is only available for purposes of such services and shall not be disclosed to the labor organization except in aggregate terms that do not

disclose the identity of specific members;

(3) where a labor organization requests or requires family medical history from the members to comply with the certification provisions of section 103 of the Family and Medical Leave Act of 1993 (29 U.S.C. 2613) or such requirements under State family and medical leave laws;

(4) where a labor organization purchases documents that are commercially and publicly available (including newspapers, magazines, periodicals, and books, but not including medical databases or court records) that include family medical history; or

(5) where the information involved is to be used for genetic monitoring of the biological effects of toxic substances in the workplace, but only if--

(A) the labor organization provides written notice of the genetic monitoring to the member;

(B)(i) the member provides prior, knowing, voluntary, and written authorization; or

(ii) the genetic monitoring is required by Federal or State law;

(C) the member is informed of individual monitoring results;

(D) the monitoring is in compliance with--

(i) any Federal genetic monitoring regulations, including any such regulations that may be promulgated by the Secretary of Labor pursuant to the Occupational Safety and Health Act of 1970 (29 U.S.C. 651 et seq.), the Federal Mine Safety and Health Act of 1977 (30 U.S.C. 801 et seq.), or the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.); or

(ii) State genetic monitoring regulations, in the case of a State that is implementing genetic monitoring regulations under the authority of the Occupational Safety and Health Act of 1970 (29 U.S.C. 651 et seq.); and

(E) the labor organization, excluding any licensed health care professional or board certified genetic counselor that is involved in the genetic monitoring program, receives the results of the monitoring only in aggregate terms that do not disclose the identity of specific members.

(c) Preservation of Protections.--In the case of information to which any of paragraphs (1) through (5) of subsection (b) applies, such information may not be used in violation of paragraph (1), (2), or (3) of subsection (a) or treated or disclosed in a manner that violates section 206.

SEC. 205. TRAINING PROGRAMS.

(a) Discrimination Based on Genetic Information.--It shall be an unlawful employment practice for any employer, labor organization, or joint labor-management committee controlling apprenticeship or other training or retraining, including on-the-job training programs--

(1) to discriminate against any individual because of genetic information with respect to the individual in admission to, or employment in, any program established to provide apprenticeship or other training or retraining;

(2) to limit, segregate, or classify the applicants for or participants in such apprenticeship or other training or retraining, or fail or refuse to refer for employment any individual, in any way that would deprive or tend to deprive any individual of employment opportunities, or otherwise adversely affect the status of the individual as an employee, because of genetic information with respect to the individual; or

(3) to cause or attempt to cause an employer to discriminate against an applicant for or a participant in such apprenticeship or other training or retraining in violation of this title.

(b) Acquisition of Genetic Information.--It shall be an unlawful employment practice for an employer, labor organization, or joint labor- management committee described in subsection (a) to request, require, or purchase genetic information with respect to an individual or a family member of the individual except--

(1) where the employer, labor organization, or joint labor- management committee inadvertently requests or requires family medical history of the individual or family member of the individual;

(2) where--

(A) health or genetic services are offered by the employer, labor organization, or joint labor-management committee, including such services offered as part of a wellness program;

(B) the individual provides prior, knowing, voluntary, and written authorization;

(C) only the individual (or family member if the family member is receiving genetic services) and the licensed health care professional or board certified genetic counselor involved in providing such services receive individually identifiable information concerning the results of such services; and

(D) any individually identifiable genetic information provided under subparagraph (C) in connection with the services provided under subparagraph (A) is only available for purposes of such services and shall not be disclosed to the employer, labor organization, or joint labor-management committee except in aggregate terms that do not disclose the identity of specific individuals;

(3) where the employer, labor organization, or joint labor- management committee requests or requires family medical history from the individual to comply with the certification provisions of section 103 of the Family and Medical Leave Act of 1993 (29 U.S.C. 2613) or such requirements under State family and medical leave laws;

(4) where the employer, labor organization, or joint labor- management committee purchases documents that are commercially and publicly available (including newspapers, magazines, periodicals, and books, but not including medical databases or court records) that include family medical history;

(5) where the information involved is to be used for genetic monitoring of the biological effects of toxic substances in the workplace, but only if--

(A) the employer, labor organization, or joint labor-management committee provides written notice of the genetic monitoring to the individual;

(B)(i) the individual provides prior, knowing, voluntary, and written authorization; or

(ii) the genetic monitoring is required by Federal or State law;

(C) the individual is informed of individual monitoring results;

(D) the monitoring is in compliance with--

(i) any Federal genetic monitoring regulations, including any such regulations that may be promulgated by the Secretary of Labor pursuant to the Occupational Safety and Health Act of 1970 (29 U.S.C. 651 et seq.), the Federal Mine Safety and Health Act of 1977 (30 U.S.C. 801 et seq.), or the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.); or

(ii) State genetic monitoring regulations, in the case of a State that is implementing genetic monitoring regulations under the authority of the Occupational Safety and Health Act of 1970 (29 U.S.C. 651 et seq.); and

(E) the employer, labor organization, or joint labor-management committee, excluding any licensed health care professional or board certified genetic counselor that is involved in the genetic monitoring program, receives the results of the monitoring only in aggregate terms that do not disclose the identity of specific individuals; or

(6) where the employer conducts DNA analysis for law enforcement

purposes as a forensic laboratory or for purposes of human remains identification, and requests or requires genetic information of such employer's apprentices or trainees, but only to the extent that such genetic information is used for analysis of DNA identification markers for quality control to detect sample contamination.

(c) Preservation of Protections.--In the case of information to which any of paragraphs (1) through (6) of subsection (b) applies, such information may not be used in violation of paragraph (1), (2), or (3) of subsection (a) or treated or disclosed in a manner that violates section 206.

SEC. 206. CONFIDENTIALITY OF GENETIC INFORMATION.

(a) Treatment of Information as Part of Confidential Medical Record.--If an employer, employment agency, labor organization, or joint labor-management committee possesses genetic information about an employee or member, such information shall be maintained on separate forms and in separate medical files and be treated as a confidential medical record of the employee or member. An employer, employment agency, labor organization, or joint labor-management committee shall be considered to be in compliance with the maintenance of information requirements of this subsection with respect to genetic information subject to this subsection that is maintained with and treated as a confidential medical record under section 102(d)(3)(B) of the Americans With Disabilities Act (42 U.S.C. 12112(d)(3)(B)).

(b) Limitation on Disclosure.--An employer, employment agency, labor organization, or joint labor-management committee shall not disclose genetic information concerning an employee or member except--

(1) to the employee or member of a labor organization (or family member if the family member is receiving the genetic services) at the written request of the employee or member of such organization;

(2) to an occupational or other health researcher if the research is conducted in compliance with the regulations and protections provided for under part 46 of title 45, Code of Federal Regulations;

(3) in response to an order of a court, except that--

(A) the employer, employment agency, labor organization, or joint labor-management committee may disclose only the genetic information expressly authorized by such order; and

(B) if the court order was secured without the knowledge of the employee or member to whom the information refers, the employer, employment agency, labor organization, or joint labor-management committee shall inform the employee or member of the court order and any genetic information that was disclosed pursuant to such order;

(4) to government officials who are investigating compliance with this title if the information is relevant to the investigation;

(5) to the extent that such disclosure is made in connection with the employee's compliance with the certification provisions of section 103 of the Family and Medical Leave Act of 1993 (29 U.S.C. 2613) or such requirements under State family and medical leave laws; or

(6) to a Federal, State, or local public health agency only with regard to information that is described in section 201(4)(A)(iii) and that concerns a contagious disease that presents an imminent hazard of death or life-threatening illness, and that the employee whose family member or family members is or are the subject of a disclosure under this paragraph is notified of such disclosure.

(c) Relationship to HIPAA Regulations.--With respect to the regulations promulgated by the Secretary of Health and Human Services under part C of title XI of the Social Security Act (42 U.S.C. 1320d et seq.) and section 264 of the Health Insurance Portability and Accountability Act of 1996 (42 U.S.C. 1320d-2 note), this title does not prohibit a covered entity under such regulations from any use or disclosure of health information that is authorized for the covered entity under such regulations. The previous sentence does not affect the authority of such Secretary to modify such regulations.

SEC. 207. REMEDIES AND ENFORCEMENT.

(a) Employees Covered by Title VII of the Civil Rights Act of 1964.--

(1) In general.--The powers, procedures, and remedies provided in sections 705, 706, 707, 709, 710, and 711 of the Civil Rights Act of 1964 (42 U.S.C. 2000e-4 et seq.) to the Commission, the Attorney General, or any person, alleging a violation of title VII of that Act (42 U.S.C. 2000e et seq.) shall be the powers, procedures, and remedies this title provides to the Commission, the Attorney General, or any person, respectively, alleging an unlawful employment practice in violation of this title against an employee described in section 201(2)(A)(i), except as provided in paragraphs (2) and (3).

(2) Costs and fees.--The powers, remedies, and procedures provided in subsections (b) and (c) of section 722 of the Revised Statutes of the United States (42 U.S.C. 1988), shall be powers, remedies, and procedures this title provides to the Commission, the Attorney General, or any person, alleging such a practice. (3) Damages.--The powers, remedies, and procedures provided in section 1977A of the Revised Statutes of the United States (42 U.S.C. 1981a), including the limitations contained in subsection (b)(3) of such section 1977A, shall be powers, remedies, and procedures this title provides to the Commission, the Attorney General, or any person, alleging such a practice (not an employment practice specifically excluded from coverage under section 1977A(a)(1) of the Revised Statutes of the United States).

(b) Employees Covered by Government Employee Rights Act of 1991.--

(1) In general.--The powers, remedies, and procedures provided in sections 302 and 304 of the Government Employee Rights Act of 1991 (42 U.S.C. 2000e-16b, 2000e-16c) to the Commission, or any person, alleging a violation of section 302(a)(1) of that Act (42 U.S.C. 2000e-16b(a)(1)) shall be the powers, remedies, and procedures this title provides to the Commission, or any person, respectively, alleging an unlawful employment practice in violation of this title against an employee described in section 201(2)(A)(ii), except as provided in paragraphs (2) and (3).

(2) Costs and fees.--The powers, remedies, and procedures provided in subsections (b) and (c) of section 722 of the Revised Statutes of the United States (42 U.S.C. 1988), shall be powers, remedies, and procedures this title provides to the Commission, or any person, alleging

such a practice.

(3) Damages.--The powers, remedies, and procedures provided in section 1977A of the Revised Statutes of the United States (42 U.S.C. 1981a), including the limitations contained in subsection (b)(3) of such section 1977A, shall be powers, remedies, and procedures this title provides to the Commission, or any person, alleging such a practice (not an employment practice specifically excluded from coverage under section 1977A(a)(1) of the Revised Statutes of the United States).

(c) Employees Covered by Congressional Accountability Act of 1995.--

(1) In general.--The powers, remedies, and procedures provided in the Congressional Accountability Act of 1995 (2 U.S.C. 1301 et seq.) to the Board (as defined in section 101 of that Act (2 U.S.C. 1301)), or any person, alleging a violation of section 201(a)(1) of that Act (42 U.S.C. 1311(a)(1)) shall be the powers, remedies, and procedures this title provides to that Board, or any person, alleging an unlawful employment practice in violation of this title against an employee described in section 201(2)(A)(iii), except as provided in paragraphs (2) and (3).

(2) Costs and fees.--The powers, remedies, and procedures provided in subsections (b) and (c) of section 722 of the Revised Statutes of the United States (42 U.S.C. 1988), shall be powers, remedies, and procedures this title provides to that Board, or any person, alleging such a practice.

(3) Damages.--The powers, remedies, and procedures provided in section 1977A of the Revised Statutes of the United States (42 U.S.C. 1981a), including the limitations contained in subsection (b)(3) of such section 1977A, shall be powers, remedies, and procedures this title provides to that Board, or any person, alleging such a practice (not an employment practice specifically excluded from coverage under section 1977A(a)(1) of the Revised Statutes of the United States). (4) Other applicable provisions.--With respect to a claim alleging a practice described in paragraph (1), title III of the Congressional Accountability Act of 1995 (2 U.S.C. 1381 et seq.) shall apply in the same manner as such title applies with respect to a claim alleging a violation of section 201(a)(1) of such Act (2 U.S.C. 1311(a)(1)).

(d) Employees Covered by Chapter 5 of Title 3, United States Code.--

(1) In general.--The powers, remedies, and procedures provided in chapter 5 of title 3, United States Code, to the President, the Commission, the Merit Systems Protection Board, or any person, alleging a violation of section 411(a)(1) of that title, shall be the powers, remedies, and procedures this title provides to the President, the Commission, such Board, or any person, respectively, alleging an unlawful employment practice in violation of this title against an employee described in section 201(2)(A)(iv), except as provided in paragraphs (2) and (3).

(2) Costs and fees.--The powers, remedies, and procedures provided in subsections (b) and (c) of section 722 of the Revised Statutes of the United States (42 U.S.C. 1988), shall be powers, remedies, and procedures this title provides to the President, the Commission, such Board, or any person, alleging such a practice.

(3) Damages.--The powers, remedies, and procedures provided in section 1977A of the Revised Statutes of the United States (42 U.S.C. 1981a), including the limitations contained in subsection (b)(3) of such section 1977A, shall be powers, remedies, and procedures this title provides to the President, the Commission, such Board, or any person, alleging such a practice (not an employment practice specifically excluded from coverage under section 1977A(a)(1) of the Revised Statutes of the United States).

(e) Employees Covered by Section 717 of the Civil Rights Act of 1964.--

(1) In general.--The powers, remedies, and procedures provided in section 717 of the Civil Rights Act of 1964 (42 U.S.C. 2000e-16) to the Commission, the Attorney General, the Librarian of Congress, or any person, alleging a violation of that section shall be the powers, remedies, and procedures this title provides to the Commission, the Attorney General, the Librarian of Congress, or any person, respectively, alleging an unlawful employment practice in violation of this title against an employee or applicant described in section 201(2)(A)(v), except as provided in paragraphs (2) and (3).

(2) Costs and fees.--The powers, remedies, and procedures provided in subsections (b) and (c) of section 722 of the Revised Statutes of the United States (42 U.S.C. 1988), shall be powers, remedies, and procedures this title provides to the Commission, the Attorney General, the Librarian of Congress, or any person, alleging such a practice.

(3) Damages.--The powers, remedies, and procedures provided in section 1977A of the Revised Statutes of the United States (42 U.S.C. 1981a), including the limitations contained in subsection (b)(3) of such section 1977A, shall be powers, remedies, and procedures this title provides to the Commission, the Attorney General, the Librarian of Congress, or any person, alleging such a practice (not an employment practice specifically excluded from coverage under section 1977A(a)(1) of the Revised Statutes of the United States).

(f) Prohibition Against Retaliation.--No person shall discriminate against any individual because such individual has opposed any act or practice made unlawful by this title or because such individual made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this title. The remedies and procedures otherwise provided for under this section shall be available to aggrieved individuals with respect to violations of this subsection.

(g) Definition.--In this section, the term "Commission" means the Equal Employment Opportunity Commission.

SEC. 208. DISPARATE IMPACT.

(a) General Rule.--Notwithstanding any other provision of this Act, "disparate impact", as that term is used in section 703(k) of the Civil Rights Act of 1964 (42 U.S.C. 2000e-2(k)), on the basis of genetic information does not establish a cause of action under this Act.

(b) Commission.--On the date that is 6 years after the date of enactment of this Act, there shall be established a commission, to be known as the Genetic Nondiscrimination Study Commission (referred to in this section as the "Commission") to review the developing science of genetics and to make recommendations to Congress regarding whether to provide a disparate impact cause of action under this Act.

(c) Membership.--

(1) In general.--The Commission shall be composed of 8 members, of which--

(A) 1 member shall be appointed by the Majority Leader of the Senate;

(B) 1 member shall be appointed by the Minority Leader of the Senate;

(C) 1 member shall be appointed by the Chairman of the Committee on Health, Education, Labor, and Pensions of the Senate;

(D) 1 member shall be appointed by the ranking minority member of the Committee on Health, Education, Labor, and Pensions of the Senate;

(E) 1 member shall be appointed by the Speaker of the House of Representatives;

(F) 1 member shall be appointed by the Minority Leader of the House of Representatives;

(G) 1 member shall be appointed by the Chairman of the Committee on Education and Labor of the House of Representatives; and

(H) 1 member shall be appointed by the ranking minority member of the Committee on Education and Labor of the House of Representatives.

(2) Compensation and expenses.--The members of the Commission shall not receive compensation for the performance of services for the Commission, but shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5, United States Code, while away from their homes or regular places of business in the performance of services for the Commission.

(d) Administrative Provisions.--

(1) Location.--The Commission shall be located in a facility maintained by the Equal Employment Opportunity Commission.

(2) Detail of government employees.--Any Federal Government employee may be detailed to the Commission without reimbursement, and such detail shall be without interruption or loss of civil service status or privilege.

(3) Information from federal agencies.--The Commission may secure directly from any Federal department or agency such information as the Commission considers necessary to carry out the provisions of this section. Upon request of the Commission, the head of such department or agency shall furnish such information to the Commission.

(4) Hearings.--The Commission may hold such hearings, sit and act at such times and places, take such testimony, and receive such evidence as the Commission considers advisable to carry out the objectives of this section, except that, to the extent possible, the Commission shall use existing data and research.

(5) Postal services.--The Commission may use the United States mails in the same manner and under the same conditions as other departments and agencies of the Federal Government.

(e) Report.--Not later than 1 year after all of the members are appointed to the Commission under subsection (c)(1), the Commission shall submit to Congress a report that summarizes the findings of the Commission and makes such recommendations for legislation as are consistent with this Act.

(f) Authorization of Appropriations.--There are authorized to be appropriated to the Equal Employment Opportunity Commission such sums as may be necessary to carry out this section. SEC. 209. CONSTRUCTION.

(a) In General.--Nothing in this title shall be construed to--

(1) limit the rights or protections of an individual under any other Federal or State statute that provides equal or greater protection to an individual than the rights or protections provided for under this title,

including the protections of an individual under the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) (including coverage afforded to individuals under section 102 of such Act (42 U.S.C. 12112)), or under the Rehabilitation Act of 1973 (29 U.S.C. 701 et seq.);

(2)(A) limit the rights or protections of an individual to bring an action under this title against an employer, employment agency, labor organization, or joint labor-management committee for a violation of this title; or

(B) provide for enforcement of, or penalties for violation of, any requirement or prohibition applicable to any employer, employment agency, labor organization, or joint labor-management committee subject to enforcement for a violation under--

(i) the amendments made by title I of this Act;

(ii)(I) subsection (a) of section 701 of the Employee Retirement Income Security Act of 1974 as such section applies with respect to genetic information pursuant to subsection (b)(1)(B) of such section;

(II) section 702(a)(1)(F) of such Act; or

(III) section 702(b)(1) of such Act as such section applies with respect to genetic information as a health status-related factor;

(iii)(I) subsection (a) of section 2701 of the Public Health Service Act as such section applies with respect to genetic information pursuant to subsection (b)(1)(B) of such section;

(II) section 2702(a)(1)(F) of such Act; or

(III) section 2702(b)(1) of such Act as such section applies with respect to genetic information as a health status-related factor; or

(iv)(I) subsection (a) of section 9801 of the Internal Revenue Code of 1986 as such section applies with respect to genetic information pursuant to subsection (b)(1)(B) of such section;

(II) section 9802(a)(1)(F) of such Act; or

(III) section 9802(b)(1) of such Act as such section applies with respect to genetic information as a health status-related factor;

(3) apply to the Armed Forces Repository of Specimen Samples for the Identification of Remains;

(4) limit or expand the protections, rights, or obligations of employees or employers under applicable workers' compensation laws;

(5) limit the authority of a Federal department or agency to conduct or sponsor occupational or other health research that is conducted in compliance with the regulations contained in part 46 of title 45, Code of Federal Regulations (or any corresponding or similar regulation or rule);

(6) limit the statutory or regulatory authority of the Occupational Safety and Health Administration or the Mine Safety and Health Administration to promulgate or enforce workplace safety and health laws and regulations; or

(7) require any specific benefit for an employee or member or a family member of an employee or member under any group health plan or health insurance issuer offering group health insurance coverage in connection with a group health plan.

(b) Genetic Information of a Fetus or Embryo.--Any reference in this title to genetic information concerning an individual or family member of an individual shall--

(1) with respect to such an individual or family member of an individual who is a pregnant woman, include genetic information of any fetus carried by such pregnant woman; and

(2) with respect to an individual or family member utilizing an assisted reproductive technology, include genetic information of any embryo legally held by the individual or family member.

(c) Relation to Authorities Under Title I.--With respect to a group health plan, or a health insurance issuer offering group health insurance coverage in connection with a group health plan, this title does not prohibit any activity of such plan or issuer

that is authorized for the plan or issuer under any provision of law referred to in clauses (i) through (iv) of subsection (a)(2)(B).

SEC. 210. MEDICAL INFORMATION THAT IS NOT GENETIC INFORMATION.

An employer, employment agency, labor organization, or joint labor- management committee shall not be considered to be in violation of this title based on the use, acquisition, or disclosure of medical information that is not genetic information about a manifested disease, disorder, or pathological condition of an employee or member, including a manifested disease, disorder, or pathological condition that has or may have a genetic basis.

SEC. 211. REGULATIONS.

Not later than 1 year after the date of enactment of this title, the Commission shall issue final regulations to carry out this title.

SEC. 212. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated such sums as may be necessary to carry out this title (except for section 208).

SEC. 213. EFFECTIVE DATE.

This title takes effect on the date that is 18 months after the date of enactment of this Act.

TITLE III--MISCELLANEOUS PROVISIONS

SEC. 301. SEVERABILITY.

If any provision of this Act, an amendment made by this Act, or the application of such provision or amendment to any person or circumstance is held to be unconstitutional, the remainder of this Act, the amendments made by this Act, and

the application of such provisions to any person or circumstance shall not be affected thereby.

Approved May 21, 2008.

U.S. Equal Employment Opportunity Commission

The Equal Pay Act of 1963

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

MINIMUM WAGE

SEC. 206. *[Section 6]*

(d) Prohibition of sex discrimination

> (1) No employer having employees subject to any provisions of this section shall discriminate, within any establishment in which such employees are employed, between employees on the basis of sex by paying wages to employees in such establishment at a rate less than the rate at which he pays wages to employees of the opposite sex in such establishment for equal work on jobs the performance of which requires equal skill, effort, and responsibility, and which are performed under similar working conditions, except where such payment is made pursuant to (i) a seniority system; (ii) a merit system; (iii) a system which measures earnings by quantity or quality of production; or (iv) a

differential based on any other factor other than sex: *Provided*, That an employer who is paying a wage rate differential in violation of this subsection shall not, in order to comply with the provisions of this subsection, reduce the wage rate of any employee.

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

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

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

ADDITIONAL PROVISIONS OF EQUAL PAY ACT OF 1963

An Act

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

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

***

DECLARATION OF PURPOSE

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

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

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

(2) prevents the maximum utilization of the available labor

resources;

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

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

(5) constitutes an unfair method of competition.

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

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

EFFECTIVE DATE

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

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

termination of such collective bargaining agreement or upon the expiration of two years from the date of enactment of this Act, whichever shall first occur.

Approved June 10, 1963, 12 m.

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

ATTENDANCE OF WITNESSES

SEC. 209 *[Section 9]*

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

COLLECTION OF DATA

SEC. 211 *[Section 11]*

(a) Investigations and inspections

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

shall bring all actions under section 217 *[section 17]* of this title to restrain violations of this chapter.

(b) State and local agencies and employees

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

(c) Records

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

(d) Homework regulations

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

EXEMPTIONS

SEC. 213 *[Section 13]*

(a) Minimum wage and maximum hour requirements

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

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

(2) *[Repealed]*

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

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

(4) *[Repealed]*

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

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

(6) any employee employed in agriculture (A) if such employee is employed by an employer who did not, during any calendar quarter during the preceding calendar year, use more than five hundred man-days of agricultural labor, (B) if such employee is the parent, spouse, child, or other member of his employer's immediate family, (C) if such employee (i) is employed as a hand harvest laborer and is paid on a piece rate basis in an operation which has been, and is customarily and generally recognized as having been, paid on a piece rate basis in the region of employment, (ii) commutes daily from his permanent residence to the farm on which he is so employed, and (iii) has been employed in agriculture less than thirteen weeks during the preceding calendar year, (D) if such employee (other than an employee described in clause (C) of this subsection) (i) is sixteen years of age or under and is employed as a hand harvest laborer, is paid on a piece rate basis in an operation which has been, and is customarily and generally recognized as having been, paid on a piece rate basis in the region of employment, (ii) is employed on the same farm as his parent or person standing in the place of his parent, and (iii) is paid at the same piece rate as employees over age sixteen are paid on the same farm, or (E) if such employee is principally engaged in the range production of livestock; or

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

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

(9) *[Repealed]*

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

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

(11) *[Repealed]*

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

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

(13) *[Repealed]*

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

(14) *[Repealed]*

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

Standards Amendments of 1977.]

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

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

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

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

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

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

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

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

***

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

The exemption from section 206 *[section 6]* of this title provided by paragraph (6) of

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

PROHIBITED ACTS

SEC. 215 *[Section 15]*

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

> (1) to transport, offer for transportation, ship, deliver, or sell in commerce, or to ship, deliver, or sell with knowledge that shipment or delivery or sale thereof in commerce is intended, any goods in the production of which any employee was employed in violation of section 206 *[section 6]* or section 207 *[section 7]* of this title, or in violation of any regulation or order of the Secretary issued under section 214 *[section 14]* of this title, except that no provision of this chapter shall impose any liability upon any common carrier for the transportation in commerce in the regular course of its business of any goods not produced by such common carrier, and no provision of this chapter shall excuse any common carrier from its obligation to accept any goods for transportation; and except that any such transportation, offer, shipment, delivery, or sale of such goods by a purchaser who acquired them in good faith in reliance on written assurance from the producer that the goods were produced in compliance with the requirements of this chapter, and who acquired such goods for value without notice of any such violation, shall not be deemed unlawful;
>
> (2) to violate any of the provisions of section 206 *[section 6]* or section

207 *[section 7]* of this title, or any of the provisions of any regulation or order of the Secretary issued under section 214 *[section 14]* of this title;

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

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

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

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

PENALTIES

SEC. 216 *[Section 16]*

(a) Fines and imprisonment

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

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

Any employer who violates the provisions of section 206 *[section 6]* or section 207

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

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

The Secretary is authorized to supervise the payment of the unpaid minimum wages or the unpaid overtime compensation owing to any employee or employees under section 206 *[section 6]* or section 207 *[section 7]* of this title, and the agreement of any employee to accept such payment shall upon payment in full constitute a waiver by such employee of any right he may have under subsection (b) of this section to such unpaid minimum wages or unpaid overtime compensation and an additional equal amount as liquidated damages. The Secretary may bring an action in any court of competent jurisdiction to recover the amount of the unpaid

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

(d) Savings provisions

In any action or proceeding commenced prior to, on, or after August 8, 1956 *[the date of enactment of this subsection]*, no employer shall be subject to any liability or punishment under this chapter or the Portal-to-Portal Act of 1947 [29 U.S.C. 251 et seq.] on account of his failure to comply with any provision or provisions of this chapter or such Act (1) with respect to work heretofore or hereafter performed in a workplace to which the exemption in section 213(f) *[section 13(f)]* of this title is applicable, (2) with respect to work performed in Guam, the Canal Zone or Wake Island before the effective date of this amendment of subsection (d), or (3) with respect to work performed in a possession named in section 206(a)(3) *[section 6(a)(3)]* of this title at any time prior to the establishment by the Secretary, as provided therein, of a minimum wage rate applicable to such work.

(e)(1)(A) Any person who violates the provisions of sections 212 or 213(c) *[sections*

12 or 13(c)] of this title, relating to child labor, or any regulation issued pursuant to such sections, shall be subject to a civil penalty of not to exceed—

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

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

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

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

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

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

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

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

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

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

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

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

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

INJUNCTION PROCEEDINGS

SEC. 217 *[Section 17]*

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

RELATION TO OTHER LAWS

SEC. 218 *[Section 18]*

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

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

SEPARABILITY OF PROVISIONS

SEC. 219 *[Section 19]*

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

Approved June 25, 1938.

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

PART IV – MISCELLANEOUS

STATUTE OF LIMITATIONS

SEC. 255 *[Section 6]*

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

the Bacon-Davis Act [40 U.S.C. 276a et seq.]-

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

DETERMINATION OF COMMENCEMENT OF FUTURE ACTIONS

SEC. 256 *[Section 7]*

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

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

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

RELIANCE IN FUTURE ON ADMINISTRATIVE RULINGS, ETC.

SEC. 259 *[Section 10]*

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

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

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

LIQUIDATED DAMAGES

SEC. 260 *[Section 11]*

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

DEFINITIONS

SEC. 262 *[Section 13]*

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

SEPARABILITY

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

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

SHORT TITLE

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

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

Approved May 14, 1947.

U.S. Equal Employment Opportunity Commission

Title VII of the Civil Rights Act of 1964

EDITOR'S NOTE: The following is the text of Title VII of the Civil Rights Act of 1964 (Pub. L. 88-352) (Title VII), as amended, as it appears in volume 42 of the United States Code, beginning at section 2000e. Title VII prohibits employment discrimination based on race, color, religion, sex and national origin. The Civil Rights Act of 1991 (Pub. L. 102-166) (CRA) and the Lily Ledbetter Fair Pay Act of 2009 (Pub. L. 111-2) amend several sections of Title VII. In addition, section 102 of the CRA (which is printed elsewhere in this publication) amends the Revised Statutes by adding a new section following section 1977 (42 U.S.C. 1981), to provide for the recovery of compensatory and punitive damages in cases of intentional violations of Title VII, the Americans with Disabilities Act of 1990, and section 501 of the Rehabilitation Act of 1973. Cross references to Title VII as enacted appear in italics following each section heading. Editor's notes also appear in italics.

An Act

To enforce the constitutional right to vote, to confer jurisdiction upon the district courts of the United States to provide injunctive relief against discrimination in public accommodations, to authorize the attorney General to institute suits to protect constitutional rights in public facilities and public education, to extend the Commission on Civil Rights, to prevent discrimination in federally assisted programs, to establish a Commission on Equal Employment Opportunity, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Civil Rights Act of 1964".

* * *

DEFINITIONS

SEC. 2000e. *[Section 701]*

For the purposes of this subchapter-

(a) The term "person" includes one or more individuals, governments, governmental agencies, political subdivisions, labor unions, partnerships, associations, corporations, legal representatives, mutual companies, joint-stock companies, trusts, unincorporated organizations, trustees, trustees in cases under Title 11 *[originally, bankruptcy],* or receivers.

(b) The term "employer" means a person engaged in an industry affecting commerce who has fifteen or more employees for each working day in each of twenty or more calendar weeks in the current or preceding calendar year, and any agent of such a person, but such term does not include (1) the United States, a corporation wholly owned by the Government of the United States, an Indian tribe, or any department or agency of the District of Columbia subject by statute to procedures of the competitive service (as defined in section 2102 of Title 5 *[United States Code]*), or

(2) a bona fide private membership club (other than a labor organization) which is exempt from taxation under section 501(c) of Title 26 *[the Internal Revenue Code of 1986]*, except that during the first year after March 24, 1972 *[the date of enactment of the Equal Employment Opportunity Act of 1972]*, persons having fewer than twenty-five employees (and their agents) shall not be considered employers.

(c) The term "employment agency" means any person regularly undertaking with or without compensation to procure employees for an employer or to procure for employees opportunities to work for an employer and includes an agent of such a person.

(d) The term "labor organization" means a labor organization engaged in an industry affecting commerce, and any agent of such an organization, and includes any organization of any kind, any agency, or employee representation committee, group, association, or plan so engaged in which employees participate and which

exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours, or other terms or conditions of employment, and any conference, general committee, joint or system board, or joint council so engaged which is subordinate to a national or international labor organization.

(e) A labor organization shall be deemed to be engaged in an industry affecting commerce if (1) it maintains or operates a hiring hall or hiring office which procures employees for an employer or procures for employees opportunities to work for an employer, or (2) the number of its members (or, where it is a labor organization composed of other labor organizations or their representatives, if the aggregate number of the members of such other labor organization) is (A) twenty-five or more during the first year after March 24, 1972 *[the date of enactment of the Equal Employment Opportunity Act of 1972]*, or (B) fifteen or more thereafter, and such labor organization-

> (1) is the certified representative of employees under the provisions of the National Labor Relations Act, as amended *[29 U.S.C. 151 et seq.]*, or the Railway Labor Act, as amended *[45 U.S.C. 151 et seq.]*;
>
> (2) although not certified, is a national or international labor organization or a local labor organization recognized or acting as the representative of employees of an employer or employers engaged in an industry affecting commerce; or
>
> (3) has chartered a local labor organization or subsidiary body which is representing or actively seeking to represent employees of employers within the meaning of paragraph (1) or (2); or
>
> (4) has been chartered by a labor organization representing or actively seeking to represent employees within the meaning of paragraph (1) or (2) as the local or subordinate body through which such employees may enjoy membership or become affiliated with such labor organization; or
>
> (5) is a conference, general committee, joint or system board, or joint council subordinate to a national or international labor organization, which includes a labor organization engaged in an industry affecting commerce within the meaning of any of the preceding paragraphs of this subsection.

(f) The term "employee" means an individual employed by an employer, except that the term "employee" shall not include any person elected to public office in any State or political subdivision of any State by the qualified voters thereof, or any person chosen by such officer to be on such officer's personal staff, or an appointee on the policy making level or an immediate adviser with respect to the exercise of the constitutional or legal powers of the office. The exemption set forth in the preceding sentence shall not include employees subject to the civil service laws of a State government, governmental agency or political subdivision. With respect to employment in a foreign country, such term includes an individual who is a citizen of the United States.

(g) The term "commerce" means trade, traffic, commerce, transportation, transmission, or communication among the several States; or between a State and any place outside thereof; or within the District of Columbia, or a possession of the United States; or between points in the same State but through a point outside thereof.

(h) The term "industry affecting commerce" means any activity, business, or industry in commerce or in which a labor dispute would hinder or obstruct commerce or the free flow of commerce and includes any activity or industry "affecting commerce" within the meaning of the Labor-Management Reporting and Disclosure Act of 1959 *[29 U.S.C. 401 et seq.]*, and further includes any governmental industry, business, or activity.

(i) The term "State" includes a State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, Guam, Wake Island, the Canal Zone, and Outer Continental Shelf lands defined in the Outer Continental Shelf Lands Act *[43 U.S.C. 1331 et seq.]*.

(j) The term "religion" includes all aspects of religious observance and practice, as well as belief, unless an employer demonstrates that he is unable to reasonably accommodate to an employee's or prospective employee's religious observance or practice without undue hardship on the conduct of the employer's business.

(k) The terms "because of sex" or "on the basis of sex" include, but are not limited to, because of or on the basis of pregnancy, childbirth, or related medical conditions; and women affected by pregnancy, childbirth, or related medical conditions shall be treated the same for all employment-related purposes, including receipt of benefits under fringe benefit programs, as other persons not so

affected but similar in their ability or inability to work, and nothing in section 2000e-2(h) of this title *[section 703(h)]* shall be interpreted to permit otherwise. This subsection shall not require an employer to pay for health insurance benefits for abortion, except where the life of the mother would be endangered if the fetus were carried to term, or except where medical complications have arisen from an abortion: Provided, That nothing herein shall preclude an employer from providing abortion benefits or otherwise affect bargaining agreements in regard to abortion.

(l) The term "complaining party" means the Commission, the Attorney General, or a person who may bring an action or proceeding under this subchapter.

(m) The term "demonstrates" means meets the burdens of production and persuasion.

(n) The term "respondent" means an employer, employment agency, labor organization, joint labor management committee controlling apprenticeship or other training or retraining program, including an on-the-job training program, or Federal entity subject to section 2000e-16 of this title.

APPLICABILITY TO FOREIGN AND RELIGIOUS EMPLOYMENT

SEC. 2000e-1. *[Section 702]*

(a) Inapplicability of subchapter to certain aliens and employees of religious entities

This subchapter shall not apply to an employer with respect to the employment of aliens outside any State, or to a religious corporation, association, educational institution, or society with respect to the employment of individuals of a particular religion to perform work connected with the carrying on by such corporation, association, educational institution, or society of its activities.

(b) Compliance with statute as violative of foreign law

It shall not be unlawful under section 2000e-2 or 2000e-3 of this title *[section 703 or 704]* for an employer (or a corporation controlled by an employer), labor organization, employment agency, or joint labor-management committee controlling apprenticeship or other training or retraining (including on-the-job

training programs) to take any action otherwise prohibited by such section, with respect to an employee in a workplace in a foreign country if compliance with such section would cause such employer (or such corporation), such organization, such agency, or such committee to violate the law of the foreign country in which such workplace is located.

(c) Control of corporation incorporated in foreign country

(1) If an employer controls a corporation whose place of incorporation is a foreign country, any practice prohibited by section 2000e-2 or 2000e-3 of this title *[section 703 or 704]* engaged in by such corporation shall be presumed to be engaged in by such employer.

(2) Sections 2000e-2 and 2000e-3 of this title *[sections 703 and 704]* shall not apply with respect to the foreign operations of an employer that is a foreign person not controlled by an American employer.

(3) For purposes of this subsection, the determination of whether an employer controls a corporation shall be based on-

(A) the interrelation of operations;

(B) the common management;

(C) the centralized control of labor relations; and

(D) the common ownership or financial control, of the employer and the corporation.

UNLAWFUL EMPLOYMENT PRACTICES

SEC. 2000e-2. *[Section 703]*

(a) Employer practices

It shall be an unlawful employment practice for an employer -

(1) to fail or refuse to hire or to discharge any individual, or otherwise to

discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin; or

(2) to limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's race, color, religion, sex, or national origin.

(b) Employment agency practices

It shall be an unlawful employment practice for an employment agency to fail or refuse to refer for employment, or otherwise to discriminate against, any individual because of his race, color, religion, sex, or national origin, or to classify or refer for employment any individual on the basis of his race, color, religion, sex, or national origin.

(c) Labor organization practices

It shall be an unlawful employment practice for a labor organization-

(1) to exclude or to expel from its membership, or otherwise to discriminate against, any individual because of his race, color, religion, sex, or national origin;

(2) to limit, segregate, or classify its membership or applicants for membership, or to classify or fail or refuse to refer for employment any individual, in any way which would deprive or tend to deprive any individual of employment opportunities, or would limit such employment opportunities or otherwise adversely affect his status as an employee or as an applicant for employment, because of such individual's race, color, religion, sex, or national origin; or

(3) to cause or attempt to cause an employer to discriminate against an individual in violation of this section.

(d) Training programs

It shall be an unlawful employment practice for any employer, labor organization, or joint labor-management committee controlling apprenticeship or other training or

retraining, including on-the-job training programs to discriminate against any individual because of his race, color, religion, sex, or national origin in admission to, or employment in, any program established to provide apprenticeship or other training.

(e) Businesses or enterprises with personnel qualified on basis of religion, sex, or national origin; educational institutions with personnel of particular religion

Notwithstanding any other provision of this subchapter, (1) it shall not be an unlawful employment practice for an employer to hire and employ employees, for an employment agency to classify, or refer for employment any individual, for a labor organization to classify its membership or to classify or refer for employment any individual, or for an employer, labor organization, or joint labor management committee controlling apprenticeship or other training or retraining programs to admit or employ any individual in any such program, on the basis of his religion, sex, or national origin in those certain instances where religion, sex, or national origin is a bona fide occupational qualification reasonably necessary to the normal operation of that particular business or enterprise, and (2) it shall not be an unlawful employment practice for a school, college, university, or other educational institution or institution of learning to hire and employ employees of a particular religion if such school, college, university, or other educational institution or institution of learning is, in whole or in substantial part, owned, supported, controlled, or managed by a particular religion or by a particular religious corporation, association, or society, or if the curriculum of such school, college, university, or other educational institution or institution of learning is directed toward the propagation of a particular religion.

(f) Members of Communist Party or Communist-action or Communist-front organizations

As used in this subchapter, the phrase "unlawful employment practice" shall not be deemed to include any action or measure taken by an employer, labor organization, joint labor management committee, or employment agency with respect to an individual who is a member of the Communist Party of the United States or of any other organization required to register as a Communist-action or Communist-front organization by final order of the Subversive Activities Control Board pursuant to the Subversive Activities Control Act of 1950 *[50 U.S.C. 781 et seq.]*.

(g) National security

Notwithstanding any other provision of this subchapter, it shall not be an unlawful employment practice for an employer to fail or refuse to hire and employ any individual for any position, for an employer to discharge any individual from any position, or for an employment agency to fail or refuse to refer any individual for employment in any position, or for a labor organization to fail or refuse to refer any individual for employment in any position, if-

(1) the occupancy of such position, or access to the premises in or upon which any part of the duties of such position is performed or is to be performed, is subject to any requirement imposed in the interest of the national security of the United States under any security program in effect pursuant to or administered under any statute of the United States or any Executive order of the President; and

(2) such individual has not fulfilled or has ceased to fulfill that requirement.

(h) Seniority or merit system; quantity or quality of production; ability tests; compensation based on sex and authorized by minimum wage provisions

Notwithstanding any other provision of this subchapter, it shall not be an unlawful employment practice for an employer to apply different standards of compensation, or different terms, conditions, or privileges of employment pursuant to a bona fide seniority or merit system, or a system which measures earnings by quantity or quality of production or to employees who work in different locations, provided that such differences are not the result of an intention to discriminate because of race, color, religion, sex, or national origin, nor shall it be an unlawful employment practice for an employer to give and to act upon the results of any professionally developed ability test provided that such test, its administration or action upon the results is not designed, intended or used to discriminate because of race, color, religion, sex or national origin. It shall not be an unlawful employment practice under this subchapter for any employer to differentiate upon the basis of sex in determining the amount of the wages or compensation paid or to be paid to employees of such employer if such differentiation is authorized by the provisions of section 206(d) of Title 29 *[section 6(d) of the Labor Standards Act of 1938, as amended]*.

(i) Businesses or enterprises extending preferential treatment to Indians

Nothing contained in this subchapter shall apply to any business or enterprise on or near an Indian reservation with respect to any publicly announced employment practice of such business or enterprise under which a preferential treatment is given to any individual because he is an Indian living on or near a reservation.

(j) Preferential treatment not to be granted on account of existing number or percentage imbalance

Nothing contained in this subchapter shall be interpreted to require any employer, employment agency, labor organization, or joint labor-management committee subject to this subchapter to grant preferential treatment to any individual or to any group because of the race, color, religion, sex, or national origin of such individual or group on account of an imbalance which may exist with respect to the total number or percentage of persons of any race, color, religion, sex, or national origin employed by any employer, referred or classified for employment by any employment agency or labor organization, admitted to membership or classified by any labor organization, or admitted to, or employed in, any apprenticeship or other training program, in comparison with the total number or percentage of persons of such race, color, religion, sex, or national origin in any community, State, section, or other area, or in the available work force in any community, State, section, or other area.

(k) Burden of proof in disparate impact cases

(1) (A) An unlawful employment practice based on disparate impact is established under this subchapter only if-

> (i) a complaining party demonstrates that a respondent uses a particular employment practice that causes a disparate impact on the basis of race, color, religion, sex, or national origin and the respondent fails to demonstrate that the challenged practice is job related for the position in question and consistent with business necessity; or
>
> (ii) the complaining party makes the demonstration described in subparagraph (C) with respect to an alternative employment practice and the respondent refuses to adopt such alternative employment practice.
>
> (B) (i) With respect to demonstrating that a particular employment practice causes a disparate impact as described in subparagraph (A)(i),

the complaining party shall demonstrate that each particular challenged employment practice causes a disparate impact, except that if the complaining party can demonstrate to the court that the elements of a respondent's decisionmaking process are not capable of separation for analysis, the decisionmaking process may be analyzed as one employment practice.

(ii) If the respondent demonstrates that a specific employment practice does not cause the disparate impact, the respondent shall not be required to demonstrate that such practice is required by business necessity.

(C) The demonstration referred to by subparagraph (A)(ii) shall be in accordance with the law as it existed on June 4, 1989, with respect to the concept of "alternative employment practice".

(2) A demonstration that an employment practice is required by business necessity may not be used as a defense against a claim of intentional discrimination under this subchapter.

(3) Notwithstanding any other provision of this subchapter, a rule barring the employment of an individual who currently and knowingly uses or possesses a controlled substance, as defined in schedules I and II of section 102(6) of the Controlled Substances Act (21 U.S.C. 802(6)), other than the use or possession of a drug taken under the supervision of a licensed health care professional, or any other use or possession authorized by the Controlled Substances Act *[21 U.S.C. 801 et seq.]* or any other provision of Federal law, shall be considered an unlawful employment practice under this subchapter only if such rule is adopted or applied with an intent to discriminate because of race, color, religion, sex, or national origin.

(l) Prohibition of discriminatory use of test scores

It shall be an unlawful employment practice for a respondent, in connection with the selection or referral of applicants or candidates for employment or promotion, to adjust the scores of, use different cutoff scores for, or otherwise alter the results of, employment related tests on the basis of race, color, religion, sex, or national origin.

(m) Impermissible consideration of race, color, religion, sex, or national origin in employment practices

Except as otherwise provided in this subchapter, an unlawful employment practice is established when the complaining party demonstrates that race, color, religion, sex, or national origin was a motivating factor for any employment practice, even though other factors also motivated the practice.

(n) Resolution of challenges to employment practices implementing litigated or consent judgments or orders

(1) (A) Notwithstanding any other provision of law, and except as provided in paragraph (2), an employment practice that implements and is within the scope of a litigated or consent judgment or order that resolves a claim of employment discrimination under the Constitution or Federal civil rights laws may not be challenged under the circumstances described in subparagraph (B).

(B) A practice described in subparagraph (A) may not be challenged in a claim under the Constitution or Federal civil rights laws-

(i) by a person who, prior to the entry of the judgment or order described in subparagraph (A), had-

(I) actual notice of the proposed judgment or order sufficient to apprise such person that such judgment or order might adversely affect the interests and legal rights of such person and that an opportunity was available to present objections to such judgment or order by a future date certain; and

(II) a reasonable opportunity to present objections to such judgment or order; or

(ii) by a person whose interests were adequately represented by another person who had previously challenged the judgment or order on the same legal grounds and with a similar factual situation, unless there has been an intervening change in law or fact.

(2) Nothing in this subsection shall be construed to-

(A) alter the standards for intervention under rule 24 of the Federal Rules of Civil Procedure or apply to the rights of parties who have successfully intervened pursuant to such rule in the proceeding in which the parties intervened;

(B) apply to the rights of parties to the action in which a litigated or consent judgment or order was entered, or of members of a class represented or sought to be represented in such action, or of members of a group on whose behalf relief was sought in such action by the Federal Government;

(C) prevent challenges to a litigated or consent judgment or order on the ground that such judgment or order was obtained through collusion or fraud, or is transparently invalid or was entered by a court lacking subject matter jurisdiction; or

(D) authorize or permit the denial to any person of the due process of law required by the Constitution.

(3) Any action not precluded under this subsection that challenges an employment consent judgment or order described in paragraph (1) shall be brought in the court, and if possible before the judge, that entered such judgment or order. Nothing in this subsection shall preclude a transfer of such action pursuant to section 1404 of Title 28 [*United States Code]*.

OTHER UNLAWFUL EMPLOYMENT PRACTICES

SEC. 2000e-3. *[Section 704]*

(a) Discrimination for making charges, testifying, assisting, or participating in enforcement proceedings

It shall be an unlawful employment practice for an employer to discriminate against any of his employees or applicants for employment, for an employment agency, or joint labor-management committee controlling apprenticeship or other training or

retraining, including on—the-job training programs, to discriminate against any individual, or for a labor organization to discriminate against any member thereof or applicant for membership, because he has opposed any practice made an unlawful employment practice by this subchapter, or because he has made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this subchapter.

(b) Printing or publication of notices or advertisements indicating prohibited preference, limitation, specification, or discrimination; occupational qualification exception

It shall be an unlawful employment practice for an employer, labor organization, employment agency, or joint labor-management committee controlling apprenticeship or other training or retraining, including on-the-job training programs, to print or publish or cause to be printed or published any notice or advertisement relating to employment by such an employer or membership in or any classification or referral for employment by such a labor organization, or relating to any classification or referral for employment by such an employment agency, or relating to admission to, or employment in, any program established to provide apprenticeship or other training by such a joint labor-management committee, indicating any preference, limitation, specification, or discrimination, based on race, color, religion, sex, or national origin, except that such a notice or advertisement may indicate a preference, limitation, specification, or discrimination based on religion, sex, or national origin when religion, sex, or national origin is a bona fide occupational qualification for employment.

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

SEC. 2000e-4. *[Section 705]*

(a) Creation; composition; political representation; appointment; term; vacancies; Chairman and Vice Chairman; duties of Chairman; appointment of personnel; compensation of personnel

There is hereby created a Commission to be known as the Equal Employment Opportunity Commission, which shall be composed of five members, not more than

three of whom shall be members of the same political party. Members of the Commission shall be appointed by the President by and with the advice and consent of the Senate for a term of five years. Any individual chosen to fill a vacancy shall be appointed only for the unexpired term of the member whom he shall succeed, and all members of the Commission shall continue to serve until their successors are appointed and qualified, except that no such member of the Commission shall continue to serve (1) for more than sixty days when the Congress is in session unless a nomination to fill such vacancy shall have been submitted to the Senate, or (2) after the adjournment sine die of the session of the Senate in which such nomination was submitted. The President shall designate one member to serve as Chairman of the Commission, and one member to serve as Vice Chairman. The Chairman shall be responsible on behalf of the Commission for the administrative operations of the Commission, and, except as provided in subsection (b) of this section, shall appoint, in accordance with the provisions of Title 5 *[United States Code]* governing appointments in the competitive service, such officers, agents, attorneys, administrative law judges *[originally, hearing examiners]*, and employees as he deems necessary to assist it in the performance of its functions and to fix their compensation in accordance with the provisions of chapter 51 and subchapter III of chapter 53 of Title 5 *[United States Code]*, relating to classification and General Schedule pay rates: Provided, That assignment, removal, and compensation of administrative law judges *[originally, hearing examiners]* shall be in accordance with sections 3105, 3344, 5372, and 7521 of Title 5 *[United States Code]*.

(b) General Counsel; appointment; term; duties; representation by attorneys and Attorney General

> (1) There shall be a General Counsel of the Commission appointed by the President, by and with the advice and consent of the Senate, for a term of four years. The General Counsel shall have responsibility for the conduct of litigation as provided in sections 2000e-5 and 2000e-6 of this title *[sections 706 and 707]*. The General Counsel shall have such other duties as the Commission may prescribe or as may be provided by law and shall concur with the Chairman of the Commission on the appointment and supervision of regional attorneys. The General Counsel of the Commission on the effective date of this Act shall continue in such position and perform the functions specified in this subsection until a successor is appointed and qualified.

(2) Attorneys appointed under this section may, at the direction of the Commission, appear for and represent the Commission in any case in court, provided that the Attorney General shall conduct all litigation to which the Commission is a party in the Supreme Court pursuant to this subchapter.

(c) Exercise of powers during vacancy; quorum

A vacancy in the Commission shall not impair the right of the remaining members to exercise all the powers of the Commission and three members thereof shall constitute a quorum.

(d) Seal; judicial notice

The Commission shall have an official seal which shall be judicially noticed.

(e) Reports to Congress and the President

The Commission shall at the close of each fiscal year report to the Congress and to the President concerning the action it has taken *[originally, the names, salaries, and duties of all individuals in its employ]* and the moneys it has disbursed. It shall make such further reports on the cause of and means of eliminating discrimination and such recommendations for further legislation as may appear desirable.

(f) Principal and other offices

The principal office of the Commission shall be in or near the District of Columbia, but it may meet or exercise any or all its powers at any other place. The Commission may establish such regional or State offices as it deems necessary to accomplish the purpose of this subchapter.

(g) Powers of Commission

The Commission shall have power-

(1) to cooperate with and, with their consent, utilize regional, State, local, and other agencies, both public and private, and individuals;

(2) to pay to witnesses whose depositions are taken or who are summoned before the Commission or any of its agents the same witness and mileage fees as are paid to witnesses in the courts of the United

States;

(3) to furnish to persons subject to this subchapter such technical assistance as they may request to further their compliance with this subchapter or an order issued thereunder;

(4) upon the request of (i) any employer, whose employees or some of them, or (ii) any labor organization, whose members or some of them, refuse or threaten to refuse to cooperate in effectuating the provisions of this subchapter, to assist in such effectuation by conciliation or such other remedial action as is provided by this subchapter;

(5) to make such technical studies as are appropriate to effectuate the purposes and policies of this subchapter and to make the results of such studies available to the public;

(6) to intervene in a civil action brought under section 2000e-5 of this title *[section 706]* by an aggrieved party against a respondent other than a government, governmental agency or political subdivision.

(h) Cooperation with other departments and agencies in performance of educational or promotional activities; outreach activities

(1) The Commission shall, in any of its educational or promotional activities, cooperate with other departments and agencies in the performance of such educational and promotional activities.

(2) In exercising its powers under this subchapter, the Commission shall carry out educational and outreach activities (including dissemination of information in languages other than English) targeted to-

(A) individuals who historically have been victims of employment discrimination and have not been equitably served by the Commission; and

(B) individuals on whose behalf the Commission has authority to enforce any other law prohibiting employment discrimination, concerning rights and obligations under this subchapter or such law, as the case may be.

(i) Personnel subject to political activity restrictions

All officers, agents, attorneys, and employees of the Commission shall be subject to the provisions of section 7324 of Title 5 *[originally, section 9 of the Act of August 2, 1939, as amended (the Hatch Act)]*, notwithstanding any exemption contained in such section.

(j) Technical Assistance Training Institute

(1) The Commission shall establish a Technical Assistance Training Institute, through which the Commission shall provide technical assistance and training regarding the laws and regulations enforced by the Commission.

(2) An employer or other entity covered under this subchapter shall not be excused from compliance with the requirements of this subchapter because of any failure to receive technical assistance under this subsection.

(3) There are authorized to be appropriated to carry out this subsection such sums as may be necessary for fiscal year 1992.

(k) EEOC Education, Technical Assistance, and Training Revolving Fund

(1) There is hereby established in the Treasury of the United States a revolving fund to be known as the "EEOC Education, Technical Assistance, and Training Revolving Fund" (hereinafter in this subsection referred to as the "Fund") and to pay the cost (including administrative and personnel expenses) of providing education, technical assistance, and training relating to laws administered by the Commission. Monies in the Fund shall be available without fiscal year limitation to the Commission for such purposes.

(2)(A) The Commission shall charge fees in accordance with the provisions of this paragraph to offset the costs of education, technical assistance, and training provided with monies in the Fund. Such fees for any education, technical assistance, or training--

(i) shall be imposed on a uniform basis on persons and entities receiving such education, assistance, or training,

(ii) shall not exceed the cost of providing such education, assistance, and training, and

(iii) with respect to each person or entity receiving such education, assistance, or training, shall bear a reasonable relationship to the cost of providing such education, assistance, or training to such person or entity.

(B) Fees received under subparagraph (A) shall be deposited in the Fund by the Commission.

(C) The Commission shall include in each report made under subsection (e) of this section information with respect to the operation of the Fund, including information, presented in the aggregate, relating to--

(i) the number of persons and entities to which the Commission provided education, technical assistance, or training with monies in the Fund, in the fiscal year for which such report is prepared,

(ii) the cost to the Commission to provide such education, technical assistance, or training to such persons and entities, and

(iii) the amount of any fees received by the Commission from such persons and entities for such education, technical assistance, or training.

(3) The Secretary of the Treasury shall invest the portion of the Fund not required to satisfy current expenditures from the Fund, as determined by the Commission, in obligations of the United States or obligations guaranteed as to principal by the United States. Investment proceeds shall be deposited in the Fund.

(4) There is hereby transferred to the Fund $1,000,000 from the Salaries and Expenses appropriation of the Commission.

ENFORCEMENT PROVISIONS

SEC. 2000e-5. *[Section 706]*

(a) Power of Commission to prevent unlawful employment practices

The Commission is empowered, as hereinafter provided, to prevent any person from engaging in any unlawful employment practice as set forth in section 2000e-2

or 2000e-3 of this title *[section 703 or 704]*.

(b) Charges by persons aggrieved or member of Commission of unlawful employment practices by employers, etc.; filing; allegations; notice to respondent; contents of notice; investigation by Commission; contents of charges; prohibition on disclosure of charges; determination of reasonable cause; conference, conciliation, and persuasion for elimination of unlawful practices; prohibition on disclosure of informal endeavors to end unlawful practices; use of evidence in subsequent proceedings; penalties for disclosure of information; time for determination of reasonable cause

Whenever a charge is filed by or on behalf of a person claiming to be aggrieved, or by a member of the Commission, alleging that an employer, employment agency, labor organization, or joint labormanagement committee controlling apprenticeship or other training or retraining, including on-the-job training programs, has engaged in an unlawful employment practice, the Commission shall serve a notice of the charge (including the date, place and circumstances of the alleged unlawful employment practice) on such employer, employment agency, labor organization, or joint labor-management committee (hereinafter referred to as the "respondent") within ten days, and shall make an investigation thereof. Charges shall be in writing under oath or affirmation and shall contain such information and be in such form as the Commission requires. Charges shall not be made public by the Commission. If the Commission determines after such investigation that there is not reasonable cause to believe that the charge is true, it shall dismiss the charge and promptly notify the person claiming to be aggrieved and the respondent of its action. In determining whether reasonable cause exists, the Commission shall accord substantial weight to final findings and orders made by State or local authorities in proceedings commenced under State or local law pursuant to the requirements of subsections (c) and (d) of this section. If the Commission determines after such investigation that there is reasonable cause to believe that the charge is true, the Commission shall endeavor to eliminate any such alleged unlawful employment practice by informal methods of conference, conciliation, and persuasion. Nothing said or done during and as a part of such informal endeavors may be made public by the Commission, its officers or employees, or used as evidence in a subsequent proceeding without the written consent of the persons concerned. Any person who makes public information in violation of this subsection shall be fined not more than $1,000 or imprisoned for not more than one year, or both. The Commission shall make its determination on

reasonable cause as promptly as possible and, so far as practicable, not later than one hundred and twenty days from the filing of the charge or, where applicable under subsection (c) or (d) of this section, from the date upon which the Commission is authorized to take action with respect to the charge.

(c) State or local enforcement proceedings; notification of State or local authority; time for filing charges with Commission; commencement of proceedings

In the case of an alleged unlawful employment practice occurring in a State, or political subdivision of a State, which has a State or local law prohibiting the unlawful employment practice alleged and establishing or authorizing a State or local authority to grant or seek relief from such practice or to institute criminal proceedings with respect thereto upon receiving notice thereof, no charge may be filed under subsection (a) of this section by the person aggrieved before the expiration of sixty days after proceedings have been commenced under the State or local law, unless such proceedings have been earlier terminated, provided that such sixty- day period shall be extended to one hundred and twenty days during the first year after the effective date of such State or local law. If any requirement for the commencement of such proceedings is imposed by a State or local authority other than a requirement of the filing of a written and signed statement of the facts upon which the proceeding is based, the proceeding shall be deemed to have been commenced for the purposes of this subsection at the time such statement is sent by registered mail to the appropriate State or local authority.

(d) State or local enforcement proceedings; notification of State or local authority; time for action on charges by Commission

In the case of any charge filed by a member of the Commission alleging an unlawful employment practice occurring in a State or political subdivision of a State which has a State or local law prohibiting the practice alleged and establishing or authorizing a State or local authority to grant or seek relief from such practice or to institute criminal proceedings with respect thereto upon receiving notice thereof, the Commission shall, before taking any action with respect to such charge, notify the appropriate State or local officials and, upon request, afford them a reasonable time, but not less than sixty days (provided that such sixty-day period shall be extended to one hundred and twenty days during the first year after the effective day of such State or local law), unless a shorter period is requested, to act under such State or local law to remedy the practice alleged.

(e) Time for filing charges; time for service of notice of charge on respondent; filing of charge by Commission with State or local agency; seniority system

(1) A charge under this section shall be filed within one hundred and eighty days after the alleged unlawful employment practice occurred and notice of the charge (including the date, place and circumstances of the alleged unlawful employment practice) shall be served upon the person against whom such charge is made within ten days thereafter, except that in a case of an unlawful employment practice with respect to which the person aggrieved has initially instituted proceedings with a State or local agency with authority to grant or seek relief from such practice or to institute criminal proceedings with respect thereto upon receiving notice thereof, such charge shall be filed by or on behalf of the person aggrieved within three hundred days after the alleged unlawful employment practice occurred, or within thirty days after receiving notice that the State or local agency has terminated the proceedings under the State or local law, whichever is earlier, and a copy of such charge shall be filed by the Commission with the State or local agency.

(2) For purposes of this section, an unlawful employment practice occurs, with respect to a seniority system that has been adopted for an intentionally discriminatory purpose in violation of this subchapter (whether or not that discriminatory purpose is apparent on the face of the seniority provision), when the seniority system is adopted, when an individual becomes subject to the seniority system, or when a person aggrieved is injured by the application of the seniority system or provision of the system.

(3)(A) For purposes of this section, an unlawful employment practice occurs, with respect to discrimination in compensation in violation of this title, when a discriminatory compensation decision or other practice is adopted, when an individual becomes subject to a discriminatory compensation decision or other practice, or when an individual is affected by application of a discriminatory compensation decision or other practice, including each time wages, benefits, or other compensation is paid, resulting in whole or in part from such a decision or other practice.

(B) In addition to any relief authorized by section 1977A of

the Revised Statutes (42 U.S.C. 1981a), liability may accrue and an aggrieved person may obtain relief as provided in subsection (g)(1), including recovery of back pay for up to two years preceding the filing of the charge, where the unlawful employment practices that have occurred during the charge filing period are similar or related to unlawful employment practices with regard to discrimination in compensation that occurred outside the time for filing a charge.

(f) Civil action by Commission, Attorney General, or person aggrieved; preconditions; procedure; appointment of attorney; payment of fees, costs, or security; intervention; stay of Federal proceedings; action for appropriate temporary or preliminary relief pending final disposition of charge; jurisdiction and venue of United States courts; designation of judge to hear and determine case; assignment of case for hearing; expedition of case; appointment of master

(1) If within thirty days after a charge is filed with the Commission or within thirty days after expiration of any period of reference under subsection (c) or (d) of this section, the Commission has been unable to secure from the respondent a conciliation agreement acceptable to the Commission, the Commission may bring a civil action against any respondent not a government, governmental agency, or political subdivision named in the charge. In the case of a respondent which is a government, governmental agency, or political subdivision, if the Commission has been unable to secure from the respondent a conciliation agreement acceptable to the Commission, the Commission shall take no further action and shall refer the case to the Attorney General who may bring a civil action against such respondent in the appropriate United States district court. The person or persons aggrieved shall have the right to intervene in a civil action brought by the Commission or the Attorney General in a case involving a government, governmental agency, or political subdivision. If a charge filed with the Commission pursuant to subsection (b) of this section is dismissed by the Commission, or if within one hundred and eighty days from the filing of such charge or the expiration of any period of reference under subsection (c) or (d) of this section, whichever is later, the Commission has not filed a civil action under this section or the Attorney

General has not filed a civil action in a case involving a government, governmental agency, or political subdivision, or the Commission has not entered into a conciliation agreement to which the person aggrieved is a party, the Commission, or the Attorney General in a case involving a government, governmental agency, or political subdivision, shall so notify the person aggrieved and within ninety days after the giving of such notice a civil action may be brought against the respondent named in the charge (A) by the person claiming to be aggrieved or (B) if such charge was filed by a member of the Commission, by any person whom the charge alleges was aggrieved by the alleged unlawful employment practice. Upon application by the complainant and in such circumstances as the court may deem just, the court may appoint an attorney for such complainant and may authorize the commencement of the action without the payment of fees, costs, or security. Upon timely application, the court may, in its discretion, permit the Commission, or the Attorney General in a case involving a government, governmental agency, or political subdivision, to intervene in such civil action upon certification that the case is of general public importance. Upon request, the court may, in its discretion, stay further proceedings for not more than sixty days pending the termination of State or local proceedings described in subsection (c) or (d) of this section or further efforts of the Commission to obtain voluntary compliance.

(2) Whenever a charge is filed with the Commission and the Commission concludes on the basis of a preliminary investigation that prompt judicial action is necessary to carry out the purposes of this Act, the Commission, or the Attorney General in a case involving a government, governmental agency, or political subdivision, may bring an action for appropriate temporary or preliminary relief pending final disposition of such charge. Any temporary restraining order or other order granting preliminary or temporary relief shall be issued in accordance with rule 65 of the Federal Rules of Civil Procedure. It shall be the duty of a court having jurisdiction over proceedings under this section to assign cases for hearing at the earliest practicable date and to cause such cases to be in every way expedited.

(3) Each United States district court and each United States court of a place subject to the jurisdiction of the United States shall have

jurisdiction of actions brought under this subchapter. Such an action may be brought in any judicial district in the State in which the unlawful employment practice is alleged to have been committed, in the judicial district in which the employment records relevant to such practice are maintained and administered, or in the judicial district in which the aggrieved person would have worked but for the alleged unlawful employment practice, but if the respondent is not found within any such district, such an action may be brought within the judicial district in which the respondent has his principal office. For purposes of sections 1404 and 1406 of Title 28 *[United States Code]*, the judicial district in which the respondent has his principal office shall in all cases be considered a district in which the action might have been brought.

(4) It shall be the duty of the chief judge of the district (or in his absence, the acting chief judge) in which the case is pending immediately to designate a judge in such district to hear and determine the case. In the event that no judge in the district is available to hear and determine the case, the chief judge of the district, or the acting chief judge, as the case may be, shall certify this fact to the chief judge of the circuit (or in his absence, the acting chief judge) who shall then designate a district or circuit judge of the circuit to hear and determine the case.

(5) It shall be the duty of the judge designated pursuant to this subsection to assign the case for hearing at the earliest practicable date and to cause the case to be in every way expedited. If such judge has not scheduled the case for trial within one hundred and twenty days after issue has been joined, that judge may appoint a master pursuant to rule 53 of the Federal Rules of Civil Procedure.

(g) Injunctions; appropriate affirmative action; equitable relief; accrual of back pay; reduction of back pay; limitations on judicial orders

(1) If the court finds that the respondent has intentionally engaged in or is intentionally engaging in an unlawful employment practice charged in the complaint, the court may enjoin the respondent from engaging in such unlawful employment practice, and order such affirmative action as may be appropriate, which may include, but is not limited to, reinstatement or hiring of employees, with or without back pay (payable by the employer, employment agency, or labor organization, as the case

may be, responsible for the unlawful employment practice), or any other equitable relief as the court deems appropriate. Back pay liability shall not accrue from a date more than two years prior to the filing of a charge with the Commission. Interim earnings or amounts earnable with reasonable diligence by the person or persons discriminated against shall operate to reduce the back pay otherwise allowable.

(2) (A) No order of the court shall require the admission or reinstatement of an individual as a member of a union, or the hiring, reinstatement, or promotion of an individual as an employee, or the payment to him of any back pay, if such individual was refused admission, suspended, or expelled, or was refused employment or advancement or was suspended or discharged for any reason other than discrimination on account of race, color, religion, sex, or national origin or in violation of section 2000e-3(a) of this Title *[section 704(a)]*.

(B) On a claim in which an individual proves a violation under section 2000e-2(m) of this title *[section 703(m)]* and a respondent demonstrates that the respondent would have taken the same action in the absence of the impermissible motivating factor, the court-

(i) may grant declaratory relief, injunctive relief (except as provided in clause (ii)), and attorney's fees and costs demonstrated to be directly attributable only to the pursuit of a claim under section 2000e-2(m) of this title *[section 703(m)]*; and

(ii) shall not award damages or issue an order requiring any admission, reinstatement, hiring, promotion, or payment, described in subparagraph (A).

(h) Provisions of chapter 6 of Title 29 not applicable to civil actions for prevention of unlawful practices

The provisions of chapter 6 of title 29 *[the Act entitled"An Act to amend the Judicial Code and to define and limit the jurisdiction of courts sitting in equity, and for other purposes," approved March 23, 1932 (29 U.S.C. 105-115)]* shall not apply with respect to civil actions brought under this section.

(i) Proceedings by Commission to compel compliance with judicial orders In any

case in which an employer, employment agency, or labor organization fails to comply with an order of a court issued in a civil action brought under this section, the Commission may commence proceedings to compel compliance with such order.

(j) Appeals

Any civil action brought under this section and any proceedings brought under subsection (i) of this section shall be subject to appeal as provided in sections 1291 and 1292, Title 28 *[United States Code]*.

(k) Attorney's fee; liability of Commission and United States for costs

In any action or proceeding under this subchapter the court, in its discretion, may allow the prevailing party, other than the Commission or the United States, a reasonable attorney's fee (including expert fees) as part of the costs, and the Commission and the United States shall be liable for costs the same as a private person.

CIVIL ACTIONS BY THE ATTORNEY GENERAL

SEC. 2000e-6. *[Section 707]*

(a) Complaint

Whenever the Attorney General has reasonable cause to believe that any person or group of persons is engaged in a pattern or practice of resistance to the full enjoyment of any of the rights secured by this subchapter, and that the pattern or practice is of such a nature and is intended to deny the full exercise of the rights herein described, the Attorney General may bring a civil action in the appropriate district court of the United States by filing with it a complaint (1) signed by him (or in his absence the Acting Attorney General), (2) setting forth facts pertaining to such pattern or practice, and (3) requesting such relief, including an application for a permanent or temporary injunction, restraining order or other order against the person or persons responsible for such pattern or practice, as he deems necessary to insure the full enjoyment of the rights herein described.

(b) Jurisdiction; three-judge district court for cases of general public importance: hearing, determination, expedition of action, review by Supreme Court; single judge district court: hearing, determination, expedition of action

The district courts of the United States shall have and shall exercise jurisdiction of proceedings instituted pursuant to this section, and in any such proceeding the Attorney General may file with the clerk of such court a request that a court of three judges be convened to hear and determine the case. Such request by the Attorney General shall be accompanied by a certificate that, in his opinion, the case is of general public importance. A copy of the certificate and request for a three-judge court shall be immediately furnished by such clerk to the chief judge of the circuit (or in his absence, the presiding circuit judge of the circuit) in which the case is pending. Upon receipt of such request it shall be the duty of the chief judge of the circuit or the presiding circuit judge, as the case may be, to designate immediately three judges in such circuit, of whom at least one shall be a circuit judge and another of whom shall be a district judge of the court in which the proceeding was instituted, to hear and determine such case, and it shall be the duty of the judges so designated to assign the case for hearing at the earliest practicable date, to participate in the hearing and determination thereof, and to cause the case to be in every way expedited. An appeal from the final judgment of such court will lie to the Supreme Court.

In the event the Attorney General fails to file such a request in any such proceeding, it shall be the duty of the chief judge of the district (or in his absence, the acting chief judge) in which the case is pending immediately to designate a judge in such district to hear and determine the case. In the event that no judge in the district is available to hear and determine the case, the chief judge of the district, or the acting chief judge, as the case may be, shall certify this fact to the chief judge of the circuit (or in his absence, the acting chief judge) who shall then designate a district or circuit judge of the circuit to hear and determine the case.

It shall be the duty of the judge designated pursuant to this section to assign the case for hearing at the earliest practicable date and to cause the case to be in every way expedited.

(c) Transfer offunctions, etc., to Commission; effective date; prerequisite to transfer; execution of functions by Commission

Effective two years after March 24, 1972 *[the date of enactment of the Equal*

Employment Opportunity Act of 1972], the functions of theAttorney General under this section shall be transferred to the Commission, together with such personnel, property, records, and unexpended balances of appropriations, allocations, and other funds employed, used, held, available, or to be made available in connection with such functions unless the President submits, and neither House of Congress vetoes, a reorganization plan pursuant to chapter 9 of Title 5 *[United States Code]*, inconsistent with the provisions of this subsection. The Commission shall carry out such functions in accordance with subsections (d) and (e) of this section.

(d) Transfer of functions, etc., not to affect suits commenced pursuant to this section prior to date of transfer

Upon the transfer of functions provided for in subsection (c) of this section, in all suits commenced pursuant to this section prior to the date of such transfer, proceedings shall continue without abatement, all court orders and decrees shall remain in effect, and the Commission shall be substituted as a party for the United States of America, the Attorney General, or the Acting Attorney General, as appropriate.

(e) Investigation and action by Commission pursuant to filing of charge of discrimination; procedure

Subsequent to March 24, 1972 *[the date of enactment of the Equal Employment Opportunity Act of 1972]*, the Commission shall haveauthority to investigate and act on a charge of a pattern or practice ofdiscrimination, whether filed by or on behalf of a person claiming to beaggrieved or by a member of the Commission. All such actions shall beconducted in accordance with the procedures set forth in section 2000e-5of this title *[section 706]*.

EFFECT ON STATE LAWS

SEC. 2000e-7. *[Section 708]*

Nothing in this subchapter shall be deemed to exempt or relieve any person from any liability, duty, penalty, or punishment provided by any present or future law of any State or political subdivision of a State, other than any such law which purports to require or permit the doing of any act which would be an unlawful employment practice under this subchapter.

INVESTIGATIONS

SEC. 2000e-8. *[Section 709]*

(a) Examination and copying of evidence related to unlawful employment practices

In connection with any investigation of a charge filed under section 2000e-5 of this title *[section 706]*, the Commission or its designated representative shall at all reasonable times have access to, for the purposes of examination, and the right to copy any evidence of any person being investigated or proceeded against that relates to unlawful employment practices covered by this subchapter and is relevant to the charge under investigation.

(b) Cooperation with State and local agencies administering State fair employment practices laws; participation in and contribution to research and other projects; utilization of services; payment in advance or reimbursement; agreements and rescission of agreements

The Commission may cooperate with State and local agencies charged with the administration of State fair employment practices laws and, with the consent of such agencies, may, for the purpose of carrying out its functions and duties under this subchapter and within the limitation of funds appropriated specifically for such purpose, engage in and contribute to the cost of research and other projects of mutual interest undertaken by such agencies, and utilize the services of such agencies and their employees, and, notwithstanding any other provision of law, pay by advance or reimbursement such agencies and their employees for services rendered to assist the Commission in carrying out this subchapter. In furtherance of such cooperative efforts, the Commission may enter into written agreements with such State or local agencies and such agreements may include provisions under which the Commission shall refrain from processing a charge in any cases or class of cases specified in such agreements or under which the Commission shall relieve any person or class of persons in such State or locality from requirements imposed under this section. The Commission shall rescind any such agreement whenever it determines that the agreement no longer serves the interest of effective enforcement of this subchapter.

(c) Execution, retention, and preservation of records; reports to Commission; training program records; appropriate relief from regulation or order for undue hardship; procedure for exemption; judicial action to compel compliance

Every employer, employment agency, and labor organization subject to this subchapter shall (1) make and keep such records relevant to the determinations of whether unlawful employment practices have been or are being committed, (2) preserve such records for such periods, and (3) make such reports therefrom as the Commission shall prescribe by regulation or order, after public hearing, as reasonable, necessary, or appropriate for the enforcement of this subchapter or the regulations or orders thereunder. The Commission shall, by regulation, require each employer, labor organization, and joint labor-management committee subject to this subchapter which controls an apprenticeship or other training program to maintain such records as are reasonably necessary to carry out the purposes of this subchapter, including, but not limited to, a list of applicants who wish to participate in such program, including the chronological order in which applications were received, and to furnish to the Commission upon request, a detailed description of the manner in which persons are selected to participate in the apprenticeship or other training program. Any employer, employment agency, labor organization, or joint labor-management committee which believes that the application to it of any regulation or order issued under this section would result in undue hardship may apply to the Commission for an exemption from the application of such regulation or order, and, if such application for an exemption is denied, bring a civil action in the United States district court for the district where such records are kept. If the Commission or the court, as the case may be, finds that the application of the regulation or order to the employer, employment agency, or labor organization in question would impose an undue hardship, the Commission or the court, as the case may be, may grant appropriate relief. If any person required to comply with the provisions of this subsection fails or refuses to do so, the United States district court for the district in which such person is found, resides, or transacts business, shall, upon application of the Commission, or the Attorney General in a case involving a government, governmental agency or political subdivision, have jurisdiction to issue to such person an order requiring him to comply.

(d) Consultation and coordination between Commission and interested State and Federal agencies in prescribing recordkeeping and reporting requirements; availability of information furnished pursuant to recordkeeping and reporting requirements; conditions on availability

In prescribing requirements pursuant to subsection (c) of this section, the Commission shall consult with other interested State and Federal agencies and shall endeavor to coordinate its requirements with those adopted by such agencies. The

Commission shall furnish upon request and without cost to any State or local agency charged with the administration of a fair employment practice law information obtained pursuant to subsection (c) of this section from any employer, employment agency, labor organization, or joint labor-management committee subject to the jurisdiction of such agency. Such information shall be furnished on condition that it not be made public by the recipient agency prior to the institution of a proceeding under State or local law involving such information. If this condition is violated by a recipient agency, the Commission may decline to honor subsequent requests pursuant to this subsection.

(e) Prohibited disclosures; penalties

It shall be unlawful for any officer or employee of the Commission to make public in any manner whatever any information obtained by the Commission pursuant to its authority under this section prior to the institution of any proceeding under this subchapter involving such information. Any officer or employee of the Commission who shall make public in any manner whatever any information in violation of this subsection shall be guilty of a misdemeanor and upon conviction thereof, shall be fined not more than $1,000, or imprisoned not more than one year.

CONDUCT OF HEARINGS AND INVESTIGATIONS PURSUANT TO SECTION 161 OF Title 29

SEC. 2000e-9. *[Section 710]*

For the purpose of all hearings and investigations conducted by the Commission or its duly authorized agents or agencies, section 161 of Title 29 *[section 11 of the National Labor Relations Act]* shall apply.

POSTING OF NOTICES; PENALTIES

SEC. 2000e-10. *[Section 711]*

(a) Every employer, employment agency, and labor organization, as the case may be, shall post and keep posted in conspicuous places upon its premises where

notices to employees, applicants for employment, and members are customarily posted a notice to be prepared or approved by the Commission setting forth excerpts from or, summaries of, the pertinent provisions of this subchapter and information pertinent to the filing of a complaint.

(b) A willful violation of this section shall be punishable by a fine of not more than $100 for each separate offense.

VETERANS' SPECIAL RIGHTS OR PREFERENCE

SEC. 2000e-11. *[Section 712]*

Nothing contained in this subchapter shall be construed to repeal or modify any Federal, State, territorial, or local law creating special rights or preference for veterans.

REGULATIONS; CONFORMITY OF REGULATIONS WITH ADMINISTRATIVE PROCEDURE PROVISIONS; RELIANCE ON INTERPRETATIONS AND INSTRUCTIONS OF COMMISSION

SEC. 2000e-12. *[Section 713]*

(a) The Commission shall have authority from time to time to issue, amend, or rescind suitable procedural regulations to carry out the provisions of this subchapter. Regulations issued under this section shall be in conformity with the standards and limitations of subchapter II of chapter 5 of Title 5 *[originally, the Administrative Procedure Act]*.

(b) In any action or proceeding based on any alleged unlawful employment practice, no person shall be subject to any liability or punishment for or on account of (1) the

commission by such person of an unlawful employment practice if he pleads and proves that the act or omission complained of was in good faith, in conformity with, and in reliance on any written interpretation or opinion of the Commission, or (2) the failure of such person to publish and file any information required by any provision of this subchapter if he pleads and proves that he failed to publish and file such information in good faith, in conformity with the instructions of the Commission issued under this subchapter regarding the filing of such information. Such a defense, if established, shall be a bar to the action or proceeding, notwithstanding that (A) after such act or omission, such interpretation or opinion is modified or rescinded or is determined by judicial authority to be invalid or of no legal effect, or (B) after publishing or filing the description and annual reports, such publication or filing is determined by judicial authority not to be in conformity with the requirements of this subchapter.

APPLICATION TO PERSONNEL OF COMMISSION OF SECTIONS 111 AND 1114 OF TITLE 18; PUNISHMENT FOR VIOLATION OF SECTION 1114 OF TITLE 18

SEC. 2000e-13. *[Section 714]*

The provisions of sections 111 and 1114, Title 18 *[United States Code]*, shall apply to officers, agents, and employees of the Commission in the performance of their official duties. Notwithstanding the provisions of sections 111 and 1114 of Title 18 *[United States Code]*, whoever in violation of the provisions of section 1114 of such title kills a person while engaged in or on account of the performance of his official functions under this Act shall be punished by imprisonment for any term of years or for life.

TRANSFER OF AUTHORITY

[Administration of the duties of the Equal Employment Opportunity Coordinating Council was transferred to the Equal Employment Opportunity Commission effective

July 1, 1978, under the President's Reorganization Plan of 1978.]

EQUAL EMPLOYMENT OPPORTUNITY COORDINATING COUNCIL; ESTABLISHMENT; COMPOSITION; DUTIES; REPORT TO PRESIDENT AND CONGRESS

SEC. 2000e-14. *[Section 715]*

[Original introductory text: There shall be established an Equal Employment Opportunity Coordinating Council (hereinafter referred to in this section as the Council) composed of the Secretary of Labor, the Chairman of the Equal Employment Opportunity Commission, the Attorney General, the Chairman of the United States Civil Service Commission, and the Chairman of the United States Civil Rights Commission, or their respective delegates.]

The Equal Employment Opportunity Commission *[originally, Council]* shall have the responsibility for developing and implementing agreements, policies and practices designed to maximize effort, promote efficiency, and eliminate conflict, competition, duplication and inconsistency among the operations, functions and jurisdictions of the various departments, agencies and branches of the Federal Government responsible for the implementation and enforcement of equal employment opportunity legislation, orders, and policies. On or before October 1 *[originally, July 1]* of each year, the Equal Employment Opportunity Commission *[originally, Council]* shall transmit to the President and to the Congress a report of its activities, together with such recommendations for legislative or administrative changes as it concludes are desirable to further promote the purposes of this section.

PRESIDENTIAL CONFERENCES; ACQUAINTANCE OF LEADERSHIP WITH PROVISIONS FOR

EMPLOYMENT RIGHTS AND OBLIGATIONS; PLANS FOR FAIR ADMINISTRATION; MEMBERSHIP

SEC. 2000e-15. *[Section 716]*

[Original text: (a) This title shall become effective one year after the date of its enactment.

(b) Notwithstanding subsection (a), sections of this title other than sections 703, 704, 706, and 707 shall become effective immediately.

(c)] The President shall, as soon as feasible after July 2, 1964 *[the date of enactment of this title]*, convene one or more conferences for the purpose of enabling the leaders of groups whose members will be affected by this subchapter to become familiar with the rights afforded and obligations imposed by its provisions, and for the purpose of making plans which will result in the fair and effective administration of this subchapter when all of its provisions become effective. The President shall invite the participation in such conference or conferences of (1) the members of the President's Committee on Equal Employment Opportunity, (2) the members of the Commission on Civil Rights, (3) representatives of State and local agencies engaged in furthering equal employment opportunity, (4) representatives of private agencies engaged in furthering equal employment opportunity, and (5) representatives of employers, labor organizations, and employment agencies who will be subject to this subchapter.

TRANSFER OF AUTHORITY

[Enforcement of Section 717 was transferred to the Equal Employment Opportunity Commission from the Civil Service Commission (Office of Personnel Management) effective January 1, 1979 under the President's Reorganization Plan No. 1 of 1978.]

EMPLOYMENT BY FEDERAL GOVERNMENT

SEC. 2000e-16. *[Section 717]*

(a) Discriminatory practices prohibited; employees or applicants for employment subject to coverage

All personnel actions affecting employees or applicants for employment (except with regard to aliens employed outside the limits of the United States) in military departments as defined in section 102 of Title 5 *[United States Code]*, in executive agencies *[originally, other than the General Accounting Office]* as defined in section 105 of Title 5 *[United States Code]* (including employees and applicants for employment who are paid from nonappropriated funds), in the United States Postal Service and the Postal Regulatory Commission, in those units of the Government of the District of Columbia having positions in the competitive service, and in those units of the judicial branch of the Federal Government having positions in the competitive service, in the Smithsonian Institution, and in the Government Printing Office, the Government Accountability Office, and the Library of Congress shall be made free from any discrimination based on race, color, religion, sex, or national origin.

(b) Equal Employment Opportunity Commission; enforcement powers; issuance of rules, regulations, etc.; annual review and approval of national and regional equal employment opportunity plans; review and evaluation of equal employment opportunity programs and publication of progress reports; consultations with interested parties; compliance with rules, regulations, etc.; contents of national and regional equal employment opportunity plans; authority of Librarian of Congress

Except as otherwise provided in this subsection, the Equal Employment Opportunity Commission *[originally, Civil Service Commission]* shall have authority to enforce the provisions of subsection (a) of this section through appropriate remedies, including reinstatement or hiring of employees with or without back pay, as will effectuate the policies of this section, and shall issue such rules, regulations, orders and instructions as it deems necessary and appropriate to carry out its responsibilities under this section. The Equal Employment Opportunity Commission *[originally, Civil Service Commission]* shall-

> (1) be responsible for the annual review and approval of a national and regional equal employment opportunity plan which each department and agency and each appropriate unit referred to in subsection (a) of this section shall submit in order to maintain an affirmative program of

equal employment opportunity for all such employees and applicants for employment;

(2) be responsible for the review and evaluation of the operation of all agency equal employment opportunity programs, periodically obtaining and publishing (on at least a semiannual basis) progress reports from each such department, agency, or unit; and

(3) consult with and solicit the recommendations of interested individuals, groups, and organizations relating to equal employment opportunity.

The head of each such department, agency, or unit shall comply with such rules, regulations, orders, and instructions which shall include a provision that an employee or applicant for employment shall be notified of any final action taken on any complaint of discrimination filed by him thereunder. The plan submitted by each department, agency, and unit shall include, but not be limited to-

(1) provision for the establishment of training and education programs designed to provide a maximum opportunity for employees to advance so as to perform at their highest potential; and

(2) a description of the qualifications in terms of training and experience relating to equal employment opportunity for the principal and operating officials of each such department, agency, or unit responsible for carrying out the equal employment opportunity program and of the allocation of personnel and resources proposed by such department, agency, or unit to carry out its equal employment opportunity program.

With respect to employment in the Library of Congress, authorities granted in this subsection to the Equal Employment Opportunity Commission *[originally, Civil Service Commission]* shall be exercised by the Librarian of Congress.

(c) Civil action by employee or applicant for employment for redress of grievances; time for bringing of action; head of department, agency, or unit as defendant

Within 90 days of receipt of notice of final action taken by a department, agency, or unit referred to in subsection (a) of this section, or by the Equal Employment Opportunity Commission *[originally, Civil Service Commission]* upon an appeal from a decision or order of such department, agency, or unit on a complaint of

discrimination based on race, color, religion, sex or national origin, brought pursuant to subsection (a) of this section, Executive Order 11478 or any succeeding Executive orders, or after one hundred and eighty days from the filing of the initial charge with the department, agency, or unit or with the Equal Employment Opportunity Commission *[originally, Civil Service Commission]* on appeal from a decision or order of such department, agency, or unit until such time as final action may be taken by a department, agency, or unit, an employee or applicant for employment, if aggrieved by the final disposition of his complaint, or by the failure to take final action on his complaint, may file a civil action as provided in section 2000e-5 of this title *[section 706]*, in which civil action the head of the department, agency, or unit, as appropriate, shall be the defendant.

(d) Section 2000e-5(f) through (k) of this title applicable to civil actions

The provisions of section 2000e-5(f) through (k) of this title *[section 706(f) through (k)]*, as applicable, shall govern civil actions brought hereunder, and the same interest to compensate for delay in payment shall be available as in cases involving nonpublic parties.

(e) Government agency or official not relieved of responsibility to assure nondiscrimination in employment or equal employment opportunity

Nothing contained in this Act shall relieve any Government agency or official of its or his primary responsibility to assure nondiscrimination in employment as required by the Constitution and statutes or of its or his responsibilities under Executive Order 11478 relating to equal employment opportunity in the Federal Government.

(f) Section 2000e-5(e)(3) *[Section 706(e)(3)]* shall apply to complaints of discrimination in compensation under this section.

PROCEDURE FOR DENIAL, WITHHOLDING, TERMINATION, OR SUSPENSION OF GOVERNMENT CONTRACT SUBSEQUENT TO ACCEPTANCE BY GOVERNMENT OF

AFFIRMATIVE ACTION PLAN OF EMPLOYER; TIME OF ACCEPTANCE OF PLAN

SEC. 2000e-17. *[Section 718]*

No Government contract, or portion thereof, with any employer, shall be denied, withheld, terminated, or suspended, by any agency or officer of the United States under any equal employment opportunity law or order, where such employer has an affirmative action plan which has previously been accepted by the Government for the same facility within the past twelve months without first according such employer full hearing and adjudication under the provisions of section 554 of Title 5 *[United States Code]*, and the following pertinent sections: Provided, That if such employer has deviated substantially from such previously agreed to affirmative action plan, this section shall not apply: Provided further, That for the purposes of this section an affirmative action plan shall be deemed to have been accepted by the Government at the time the appropriate compliance agency has accepted such plan unless within forty-five days thereafter the Office of Federal Contract Compliance has disapproved such plan.

10.8 Civil Rights—Title VII—Retaliation—Elements and Burden of Proof

10.8 Civil Rights—Title VII—Retaliation—Elements and Burden of Proof

The plaintiff seeks damages against the defendant for retaliation. The plaintiff has the burden of proving each of the following elements by a preponderance of the evidence:

1. the plaintiff:

   [participated in an activity protected under federal law, that is [*specify protected activity, e.g., filing a discrimination complaint*]]

   or

   [opposed an unlawful employment practice, that is [*specify unlawful employment practice*]]; and

2. the employer subjected the plaintiff to an adverse employment action, that is [*specify adverse employment action*]; and

3. the plaintiff was subjected to the adverse employment action because of [[his] [her]] [participation in a protected activity] [opposition to an unlawful employment practice].

A plaintiff is "subjected to an adverse employment action" because of [[his] [her]] [participation in a protected activity] [opposition to an unlawful employment practice] if the adverse employment action would not have occurred but for that [participation] [opposition].

If you find that the plaintiff has proved all three of these elements, your verdict should be for the plaintiff. If, on the other hand, the plaintiff has failed to prove any of these elements, your verdict should be for the defendant.

Comment

Because the third element is whether the plaintiff was subjected to the adverse employment action "because of" his or her participation in a protected activity or opposition to an unlawful employment practice, consider including the definition of "because of" from Instruction 10.3.

Title VII makes it an unlawful employment practice for a person covered by the Act to discriminate against an individual "because he has opposed any practice made an unlawful employment practice by this subchapter, or because he has made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this subchapter." 42 U.S.C. § 2000e-3(a). *See Crawford v. Metro. Gov't of Nashville & Davidson Cty., Tenn.*, 555 U.S. 271, 274 (2009) (noting that the "antiretaliation provision has two clauses . . .. The one is known as the 'opposition clause,' the other as the 'participation clause'"); *Hashimoto v. Dalton*, 118 F.3d 671, 680 (9th Cir. 1997) ("An employer can violate the anti-retaliation provisions of Title VII in either of two ways: '(1) if the [adverse employment action] occurs because of the employee's opposition to conduct made an unlawful employment practice by the subchapter, or (2) if it is in retaliation for the employee's participation in the machinery set up by Title VII to enforce its provisions.'" (alterations in original) (citations omitted)).

When an affirmative defense is asserted, this instruction should be accompanied by the appropriate affirmative defense instruction.

For a definition of "adverse employment action" in the context of retaliation, *see* Instruction 10.10 (Civil Rights—Title VII— "Adverse Employment Action" in Retaliation Cases).

In order to be a protected activity, the plaintiff's opposition must have been directed toward a discriminatory act by an employer or an agent of an employer. *See Silver v. KCA, Inc.*, 586 F.2d 138, 140-42 (9th Cir. 1978) (holding that employee's opposition to a racially discriminatory act of a co-employee cannot be the basis for a retaliation action); *E.E.O.C. v. Crown Zellerbach Corp.*, 720 F.2d 1008, 1013-14 (9th Cir. 1983) (holding that employee's objections to discriminatory practices by warehouse personnel manager, on facts presented, constituted opposition to discriminatory actions of employer).

Informal as well as formal complaints or demands are protected activities under Title VII. *See Passantino v. Johnson & Johnson Consumer Prods., Inc.*, 212 F.3d 493, 506 (9th Cir. 2000).

Regarding the third element, "a plaintiff making a retaliation claim under § 2000e-3(a) must establish that his or her protected activity was a but-for cause of the alleged adverse action by the employer." *Univ. of Tex. Sw. Med. Ctr. v. Nassar*, 133 S. Ct. 2517, 2534 (2013) (rejecting motivating factor test in retaliation claim). The causation element may be inferred based on the proximity in time between the protected action and the retaliatory act; however, if the proximity in time is the only evidence to support plaintiff's retaliatory act, it must be "very close" in time. *See Yartzoff v. Thomas*, 809 F.2d 1371, 1376 (9th Cir. 1987) (holding causation may be inferred from proximity in time between acts); *Clark County Sch. Dist. v. Breeden*, 532 U.S. 268, 273-74 (2001). There is no per se too long or too short period of time that satisfies the causation requirement. *Howard v. City of Coos Bay*, 871 F.3d 1032, 1046 (9th Cir. 2017).

Individuals who violate 42 U.S.C. § 1981 for retaliatory conduct can be held personally liable for punitive damages "1) if they participated in the deprivation of Plaintiffs' constitutional rights; 2) for their own culpable action or inaction in the training, supervision, or control of their subordinates; 3) for their acquiescence in the constitutional deprivations; or 4) for conduct that showed a reckless or callous indifference to the rights of others." *Flores v. City of Westminster*, 873 F.3d 739, 757 (9th Cir. 2017).

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‹ 10.7 Civil Rights—Title VII—Hostile Work Environment Caused by Non-Immediate Supervisor or by Co-Worker—Claim Based on Negligence

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10.9 Civil Rights—Title VII—"Adverse Employment Action" Defined (Comment Only) ›

Appendix D

Travel Information Council
Employee Handbook

Revised April 2022

Table of Contents

General Information

Employee Code of Conduct

TIC's code of conduct establishes guidelines for agency employees and volunteers in the performance of agency business. As a member of a team dedicated to delivering quality service to the public, each employee shall accept certain responsibilities, adhere to accepted business principles and foster the highest standard for personal integrity and honesty in carrying out his or her public duties.

While not a complete list, the following expectations will contribute to your own success, as well as that of your team members and the agency:

- Understand the public trust held in you as an agency employee or volunteer and never compromise honesty or integrity for personal gain or advancement.
- Conduct yourself at all times in such a manner that your words and actions reflect positively on the agency.
- Treat members of the public and co-workers with dignity and respect.
- Communicate collaboratively with your fellow employees and supervisors.
- Understand that the appearance of a conflict of interest may be as damaging as an actual conflict of interest, and that both should be avoided in the performance of your duties.
- Be on time, complete your work, and report any irregularities to your supervisor.
- Focus on and provide excellent customer service. Listen carefully to requests and questions and provide prompt and helpful responses.
- Respect and uphold the confidentiality of individuals and work-related information as appropriate or required by law.
- Report unlawful or unethical work behavior by other employees or volunteers to the appropriate management or law enforcement representative(s).
- Work efficiently and come prepared to do your best.
- Be direct and honest with others when conflict arises – issues that cannot be resolved between individuals should be taken to your supervisor.
- Ask for help when you need it.

Open Door Policy

Employees are expected to bring concerns, problems and issues to management's attention so the agency can address them quickly and at the lowest-possible level for resolution. If you are uncomfortable talking with your supervisor, you may contact Human Resources, or anyone higher in the chain of supervision.

Americans with Disabilities Act

The agency complies with the provisions of the Americans with Disabilities Act of 1990 (ADA), related amendments and applicable federal, state and local laws that protect individuals with physical and mental disabilities from discrimination in the workplace and in our facilities. Reasonable accommodation is a key nondiscrimination requirement under the ADA, and includes accommodations made for pregnancy, childbirth, or a related medical condition including, but not

limited to, lactation. TIC will acknowledge in writing all written requests for accommodations within seven calendar days from the date of receipt. TIC will review and respond in a timely manner to each request for accommodation. Please contact Human Resources for more information and for the ADA Accommodation Request Form.

Safe and Respectful Workplaces

Diversity/Affirmative Action/Equal Opportunity: TIC is committed to a discrimination- and harassment-free work environment. The agency has a complete Affirmative Action Plan as required of State of Oregon Executive Branch agencies. TIC is an equal opportunity employer that recruits candidates for employment without regard to race, color, national origin, sexual orientation, pregnancy, religion, age, disability, marital status, use of protected family medical or military leave, association with anyone in a protected class defined by applicable law or any other consideration than ability to perform the functions of the position. Women, minorities, disabled individuals and veterans are encouraged to apply.

Maintaining a Professional and Respectful Workplace: Employees at all levels of the agency must foster an environment that encourages professionalism and discourages disrespectful behavior. All employees must behave respectfully and professionally, and not engage in inappropriate workplace behavior, or any form of discrimination, workplace harassment or intimidation, sexual assault or sexual harassment.

Examples of **inappropriate workplace behavior** include (but are not limited to): comments, actions or behaviors that embarrass, humiliate, intimidate, disparage, demean or show disrespect for another employee, manager, subordinate, volunteer, customer, contractor or visitor.

Inappropriate workplace behavior does not include actions of performance management such as supervisory instructions, expectations or feedback, or administration of disciplinary actions or investigatory meetings. Inappropriate workplace behavior does not include assigned, requested or unsolicited constructive peer feedback on projects or work.

Discrimination is defined as 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. *(See also Workplace Harassment.)*

Protected Class Under Federal Law: Race; color; national origin; sex (includes pregnancy-related conditions); religion; age (40 and older); disability; sexual orientation; use of FMLA; use of military leave; associating with a protected class; opposing unlawful employment practices; filing a complaint or testifying about violations or possible violations; and any other protected class as defined by federal law.

Protected Class Under Oregon Law: All federally protected classes, plus age (18 and older); physical or mental disability; injured worker; use of OFLA; marital status; family relationship; gender identify; whistleblower; expunged juvenile record; and any other protected class as defined by state law.

Workplace Harassment is conduct that constitutes discrimination prohibited by Oregon laws.

Workplace Intimidation is unwelcome, unwanted or offensive conduct based on or because of an employee's protected class status.

Workplace intimidation 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 intimidation include – but are not limited to – derogatory remarks, slurs and jokes about a person's protected class status.

Sexual harassment is unwelcome, unwanted or offensive sexual advances, requests for sexual favors and other verbal or physical conduct of a sexual nature when submission to such conduct is made either explicitly or implicitly the basis for any employment decision, including the granting of leave requests, promotion, favorable performance appraisals, etc. It also includes unwelcome, unwanted or offensive conduct that has the purpose or effect of unreasonably interfering with an individual's work performance or by creating an intimidating, hostile or offensive work 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 assault is unwanted conduct of a sexual nature that is inflicted upon a person or compelled through physical force, manipulation, threat or intimidation; or a sexual offense has been threatened or committed as described in ORS 163.305 to 163.467 or 163.525.

A report of discrimination, workplace harassment or intimidation, sexual assault or sexual harassment is considered a complaint. A complaint does not have to be made by the person subjected to harassment or discrimination; it could be made by a person affected by the offensive conduct.

Complaints

Employees are expected to report inappropriate workplace behavior they experience or observe. Anyone who is subject to or aware of what he or she believes to be discrimination, workplace harassment or intimidation, sexual assault or sexual harassment should report that behavior to TIC's Designated Individual (HR Manager) or Alternate Designated Individual (Executive Director). If the subject of the complaint is the Executive Director, the employee should report to the Chair of the Travel Information Council.

Those individuals making a report of what they believe to be discrimination, workplace harassment or intimidation, sexual assault or sexual harassment may also report that behavior to their immediate supervisor or another manager. A manager or supervisor receiving a complaint must promptly notify the HR Manager or the Executive Director (if the Executive Director is the subject of the complaint, the TIC Chair should be notified).

A complaint may be made orally or in writing, and should contain all of the following:

a) The name of the complainant and the name of the person that was subjected to the discrimination, workplace harassment or intimidation, sexual assault or sexual harassment.
b) The names of all parties involved, including witnesses.
c) A specific and detailed description of the conduct or action the employee believes constitutes discrimination, workplace harassment or intimidation, sexual assault or sexual harassment.
d) The date or time period in which the alleged conduct occurred.
e) A description of the desired remedy.

All complaints will be taken seriously, and an investigation will be promptly initiated and conducted by the agency or its designee. A complaint should be made within five (5) years of the occurrence; however, failure to report within five years does not remove the agency's responsibility for coordinating and conducting an investigation. To the extent possible, complaints will be dealt with discreetly and confidentially. All parties are expected to cooperate with the investigation and keep information regarding the investigation confidential. Prompt and appropriate action will be taken if the investigation determines that policy has been violated. The complainant and the accused will be informed in general terms of the outcome of the investigation, but not of specific personnel actions regarding anyone but themselves.

Nothing in this policy prevents any person from filing a formal complaint with the Oregon Bureau of Labor and Industries (BOLI) or the Equal Employment Opportunity Commission (EEOC) or from seeking remedy under any other available law, whether civil or criminal.

This policy prohibits retaliation against employees who file a complaint, participate in an investigation or report observing discrimination, workplace harassment or intimidation, sexual assault or sexual harassment. Employees who believe they have been retaliated against for these reasons should report to the employee's supervisor, another manager, Human Resources or the Executive Director as soon as possible. Conduct in violation of policy will not be tolerated. Employees engaging in conduct in violation of policy may be subject to disciplinary action up to and including dismissal.

Whistleblowing

A public employee may report a violation of any federal or state law, rule or regulation by the agency, mismanagement, gross misuse or waste of public resources or funds, abuse of authority in connection with the administration of a public program or the execution of a public contract, or a substantial and specific danger to public health or safety resulting from agency action without discrimination or retaliation by the employer under ORS 659A.203.

It is an unlawful employment practice for an employer to discharge, demote, suspend or in any manner discriminate or retaliate against an employee with regard to promotion, compensation or other terms, condition or privileges of employment because the employee has in good faith reported information that the employee believes is evidence of a violation of a state or federal law, rule or regulation.

Employees who believe the employer has violated the law are authorized to file a complaint with BOLI or file a civil action, and a court may order injunctive relief and other equitable relief, including reinstatement, back pay and reasonable attorney fees (ORS 659A.885).

Violence-Free Workplace

The agency strives to have a safe and pleasant work environment and will not tolerate threats, intimidation or violence of any kind in the workplace, either committed by or directed to our employees. Employees who engage in such conduct will be subject to the full array of discipline, up to and including termination.

If an employee believes he or she has been subjected to threats or threatening conduct by a co-worker, vendor or customer, the employee should notify a manager, Human Resources or the Executive Director. Employees will not be penalized for reporting such concerns.

Weapons

With the exception outlined below, DAS Policy 50-010-05 on Weapons in the Workplace applies to all TIC employees and their vehicles. The policy can be found at: http://www.oregon.gov/das/Policies/50-010-05.pdf.

In no case may any weapon (including self-defense spray) be used while on duty.

Smoke-Free Workplace

Oregon's Indoor Clean Air Act (ORS 433.835-990) prohibits smoking and vaping within 10 feet of any building entrances, exits, windows and air intake vents. Smoking and vaping are prohibited inside any TIC office, rest area building or agency-provided vehicle. Smoking and vaping by field staff should be restricted to official break periods and in a location shielded from public view to the extent possible.

Drug-Free Workplace

TIC follows DAS State HR Policy 50-000-01 regarding Drug-Free Workplaces. TIC is committed to a drug-free workplace that encourages a safe, healthy and productive work environment. The goal of this policy is to create and maintain a workplace free from the use or abuse of drugs and ensure efficient and safe public services. Excerpts include:

- An employee shall not unlawfully possess, use, manufacture, distribute, dispense or be impaired using a controlled substance in the workplace, including marijuana, cannabis, cannabis extract or synthetic cannabis that is otherwise lawful to use under state law. An employee may not possess in the workplace any paraphernalia related in any way to a controlled substance, including marijuana that is otherwise lawful to use under state law.

- The use of prescription and/or non-prescription medications shall not impair an employee's ability to safely perform the duties of their position or compromise the health and safety of others in the workplace.

The full policy is available at: http://www.oregon.gov/das/Policies/50-000-01.pdf.

Political Activity

Oregon law (ORS 260.432) makes clear that the restrictions imposed on your political activities are that "No public employee shall solicit any money, influence, service or other thing of value or otherwise promote or oppose any political committee or promote or oppose the nomination or election of a candidate, the gathering of signatures on an initiative, referendum or recall petition, the adoption of a measure or the recall of a public office holder while on the job during working hours. However, this section does not restrict the right of a public employee to express personal political views." It is therefore the policy of the state and of your public employer that you may engage in political activity except to the extent prohibited by state law when on the job during working hours.

Workplace Solicitation

To promote a professional and collegial workplace, prevent disruption in business or interference with work, and avoid personal inconvenience, the agency prohibits solicitation of employees by fellow employees during work time on agency property. This prohibition applies to collecting funds, contributions, selling merchandise on behalf of any school, club, organization or non-profit entity. This exclusion does not apply to State of Oregon-sponsored fundraising or drives. The agency also may grant limited exceptions from these rules for charitable purposes at the discretion of the Executive Director.

Ethics Laws and Conflicts of Interest

Travel Information Council members and agency staff are considered "public officials" under Oregon law and must follow all applicable government ethics laws. The restrictions on public officials are different from those placed on private citizens because service in a public office is a public trust.

ORS Chapter 244 provides detailed information but, in general, public officials are prohibited from using or attempting to use their position to gain a financial benefit or to avoid a financial cost for themselves, a relative or their businesses if the opportunity is available only because of the position held by the public official.

Nepotism, as defined in law, also is prohibited. A public official must follow specific procedures to disclose the nature of a real or potential conflict of interest.

Complying with all Oregon government ethics law is your responsibility. The Oregon Government Ethics Commission publishes a Guide for Public Officials that can answer many questions and that you are encouraged to read and understand. The guide is available online at: http://www.oregon.gov/OGEC/Pages/forms_publications.aspx. Please consult with HR or the Executive Director if you have questions.

Media and Public Relations

Inquiries relating to the agency and its services are to be handled within the following guidelines:

- Inquiries by or about legislators must be referred to the Executive Director or designee, who will coordinate the agency's response.
- Employees approached directly by a media representative, reporter or other person with a request outside of your normal job responsibilities should be referred as outlined above. Be respectful and tell the individual that the correct responder will be in touch with them soon. Please get as much contact information as possible, including name, company, phone number, and if they are on a deadline. Convey that information with an overview of your discussion to the Executive Director or designee in the most expedient way feasible, usually by cell phone.

Other State of Oregon Policies

As a semi-independent agency, TIC may choose to adopt by reference certain DAS statewide policies. For guidance and applicability of a particular DAS policy, please consult TIC HR. Statewide DAS policies are found online at: http://www.oregon.gov/das/Pages/policies.aspx.

Employment

At-Will Employment: Unless otherwise required by statute or contract, all agency employees are "at will," which means that employment may be terminated by the employee or TIC at any time for any lawful reason, with or without cause and with or without advance notice. Any contract establishing an employment relationship with TIC other than "at will" must be in writing and signed by the Executive Director and approved by the TIC Executive Committee.

Discipline: As an at-will agency, the purpose of disciplinary action is to correct deficiencies in performance, conduct or violations of policy. Because employment is at will, the agency reserves the right to use whatever legal form of discipline is appropriate to the seriousness of the offense. This may include corrective counseling, verbal warnings documented in the employee's personnel file, written warnings, pay reduction, suspension without pay, demotion or discharge from employment, depending on the circumstances. The agency is not required to use any set number or order of steps prior to discipline or discharge.

Employees should expect that certain behaviors will result in their immediate discharge from employment. Examples include, but are not limited to:

- Failure to correct deficiencies in performance or job-related conduct, or violation of policy after such conduct is brought to the employee's attention.
- Flagrant or serious violation of policy or standards of performance or conduct.
- Possessing weapons or firearms at work or in agency-provided vehicles.

- Possession, consumption, or being under the influence, of intoxicants or controlled substances while on duty or while operating a vehicle on behalf of the agency, or any other violation of any State of Oregon policy on alcohol and drugs.
- Falsifying any agency form or document, including timesheets.
- Unauthorized possession or removal of agency funds, or removal of the funds of customers or other employees.
- Striking, hitting, pushing, forcibly grabbing or verbally threatening another employee or member of the public, regardless of reason, or provoking another employee to commit any of these acts.
- Willfully destroying, defacing or damaging property of the agency, of any customer, or any other employee.
- Conviction of a job-related crime while in the employ of the agency, whether or not committed while on duty.

Other examples that may lead to disciplinary action up to and including discharge include:
- Failure to meet agency performance standards.
- Making false statements, including false claim of injury or illness.
- Unauthorized possession or removal of agency property or the property of a customer, visitor or other employee.
- Insubordination or refusal to follow a supervisor's direction or instruction.
- Unauthorized disclosure of agency business information.
- Sleeping while on duty.
- Excessive absence or tardiness.
- Offensive conduct or language.
- Any criminal conviction that would prevent you from performing your job duties.

Attendance: As an essential job function, every employee is expected to attend work regularly and predictably, and to report to work on time. If you are unable to report to work on time for any reason, contact your supervisor as far in advance as possible, using whatever means you have agreed upon (phone, text or email). Please see specific policies on use of leave for more information.

Appearance: As public employees we represent the State of Oregon and are committed to projecting a professional image to the people we serve, whether we are in an office setting or in the field. Our appearance is guided by common sense. All employees are expected to practice personal cleanliness and to dress in a manner appropriate to their jobs and their day's duties.

Staff working in the field need to wear sensible clothing that provides appropriate work protection. This includes sturdy shoes or boots, full-length pants in good condition, shirts with long or short sleeves, and hats and jackets as necessary. The agency also may provide apparel with the agency logo or State Seal to identify to the public. Office workers spending time in the field should dress according to the duties and tasks they will be performing.

Clothing choices for those working in the office should be guided by common sense and be appropriate to your duties and your meetings for any given day. If you wonder whether your attire is inappropriate, it likely is.

In no case should employees in the office or in the field wear clothing that is torn, dirty, or foul smelling. Do not wear clothing with wording, logos or pictures that may be offensive to others, or that promote businesses, products, weapons, alcohol or drugs. University and sports team logos are acceptable so long as they are not offensive (to the general public, not just to the opposing team's fans).

Regular-Status Employment

Most employees at the agency are either regular full-time or regular part-time status. Primarily for rest areas, the agency also employs fill-in and temporary employees. Because all employment is "at will," there is no formal trial service period for new employees.

Regular-status employees (including those in limited duration positions) who work at least half time (.5 FTE) accrue benefits as outlined in the agency's policies, PEBB and PERS rules and policies.

Insurance Benefits

For purposes of PEBB benefits eligibility, half-time is defined as working or receiving 80 paid regular hours per month.

Employee Assistance Program

Employees and their family members who are PEBB benefits eligible may request services from the Employee Assistance Program (EAP). The EAP is a free and confidential counseling service provided by Cascade Centers (www.cascadecenters.com). Cascade may be reached by phone 24 hours a day, 7 days a week (800-433-2320; Salem: 503-588-0777; text: 503-980-1777) or by email at info@cascadecenters.com.

Fill-in and Temporary Employment

Appointment Type

Fill-in and temporary-status appointments normally will occur for one of the following reasons:

- To provide intermittent coverage for regular employees due to leave or unexpected absence.
- To provide additional labor for special projects when the project duration is short (typically less than one month of full-time work).
- To cover temporarily vacant positions during a pending recruitment.

Fill-in and temporary-status employees have no rights or benefits except as provided by state and federal law and this policy. Fill-in and temporary status do not imply any expectation of future employment with TIC as a regular employee or any special consideration during recruitment.

Recruitment

Fill-in and temporary-status employees may be directly appointed to facilitate and expedite coverage.

An offer for direct appointment to a fill-in or temporary position must be made without a competitive process; if there is no suitable candidate or the offer is declined, the position will be filled by open competitive recruitment.

Direct appointment may not be offered to any person such that any actual, or potential, conflict of interest is created.

Any person who accepts direct appointment to a fill-in or temporary position must pass a background check and be able to fulfill all legal documentation requirements on or before their first day of work.

Conditions of Employment

- Compensation: Fill-in and temporary-status employees are eligible for overtime in accordance with the provisions of the Fair Labor Standards Act (FLSA). Fill-in and temporary-status employees are not eligible for annual performance evaluations and salary adjustments or cost of living allowances (COLAs).
- At-Will Employment: TIC is an at-will employer. As such TIC or the employee may terminate employment at any time and for any reason not otherwise prohibited by law.
- Review of Appointment: Each fill-in and temporary-status appointment will be reviewed twice yearly with the employee's supervisor, in March and September, to confirm the need for continuation of the appointment. If a fill-in or temporary-status employee has not worked any hours for the 12-month period preceding review of their appointment, and has no upcoming hours scheduled, the appointment will be terminated.

Sick Leave

As required by state law, all fill-in and temporary-status employees will accrue one hour of sick leave every 30 hours worked (accrued with TIC at the equivalent rate of 2 minutes of sick leave per hour worked). Sick leave may be used as outlined in the Sick Leave section of this handbook.

Vacation, Holidays, or Other Paid Leave

Fill-in and temporary-status employees do not accrue, and are not eligible to use, vacation or other paid leave except as required by law and are not eligible for holiday leave or pay.

Public Employee Retirement System (PERS)

A qualifying fill-in or temporary-status employee may participate in PERS in accordance with PERS eligibility rules.

Workers' Compensation

A fill-in or temporary-status employee has return rights upon recovery from a compensable job-incurred injury in accordance with ORS 659A.043 and .046.

Family Leave

Fill-in and temporary-status employees may qualify for leave under the Family and Medical Leave Act (FMLA) or the Oregon Family Leave Act (OFLA) when eligibility criteria are met.

Insurance Benefits

Fill-in and temporary-status employees may be eligible for insurance benefits under the Patient Protection and Affordable Care Act (PPACA) and in accordance with Public Employee Benefit Board (PEBB) eligibility rules. A fill-in or temporary-status employee who is or becomes eligible will be notified by Payroll.

Employee Records

Employees are responsible to notify Human Resources of any change in name, address, telephone number or other changes that affect benefits or payroll withholding. This includes divorce, which may affect your PEBB benefits. Failure to timely report may lead to you being required to repay the agency for disallowed benefits paid.

Personnel records are agency property. You may review and make copies of your record upon written request to Human Resources. Most items in the personnel file are public records and exempt from disclosure. Except as required by public records law or court order, information in personnel files will not be released without a release signed by you. Note: Current salary information is a releasable public record.

Emergency Contact Information

Employees should supply contact information for use in an emergency. You are responsible to notify Human Resources of changes in name, address, telephone number or other contact information of those you name as your emergency contacts.

Professional Memberships

Memberships in organizations that are paid for and that benefit the agency will be held in TIC's and/or the appropriate staff member's name. All such memberships will use the TIC address.

Compensation

Each TIC position has an established salary range and initial placement is within that range, and in accordance with pay equity factors.

Cost of Living Adjustment (COLA): When a COLA is approved by Council, it applies to all regular status employees, regardless of hire date. Regular status includes limited duration positions. Fill-in and temporary status employees are not eligible to receive cost of living adjustments.

The COLA is calculated on an employee's base wage. Additional earnings, such as for working out of class, are added to the adjusted base wage.

Merit Increases: Merit increases are tied to the performance evaluation process and are in addition to any COLA that may be approved.

Employee Performance Evaluations

The performance evaluation is a written record of how well you are doing your job and the quality of your work during the fiscal year reporting period. It includes significant events in the prior year's period and progress made since that period. Evaluations are a two-way communication process, allowing you and your supervisor to assess your progress and set goals for the coming year. The evaluation also includes developmental activities and special goals you worked on, as well as documenting outstanding performance or problems.

The Merit Pool: As an agency, we must operate within the limitations of our rest areas' highway funds and the revenues of the sign program. When agency revenues permit, the Council allocates funds for merit-based wage increases. The allocation is currently limited to 3% and the total of all merit increases must stay within the limitations set by the Council.

The Scoring System: A 1 to 5 point scoring system is used, with 3 meaning meets expectations for the position. Scoring higher than 3 in any category means the employee has exceeded expectations; scoring below a 3 means that improvement is needed.

Percentage Increases: Those employees with a total average score of 3 and above may receive merit increases. The exception is those employees at the top of their salary ranges; they receive administrative leave in lieu of salary increases. Hours range from 25 to 40 based on the percent increase the employee would have received.

Performance Evaluation Schedule: The agency Leadership Team has adopted the following schedule and format for performance evaluations:

December: Supervisors meet with their direct reports to informally review progress and goals set in the prior evaluation, or to discuss goals with newly hired employees.

April: Employee self-evaluation forms are sent to all staff and supervisors. Filling out this form is an opportunity for employees and supervisors to discuss performance over the last year and seek input on determining goals for the next year. Employees who are within their first six months with TIC do not complete a self-evaluation; they may do a brief write-up and will set goals.

May: Completed self-evaluations are sent to supervisors. Supervisors complete staff evaluations and submit to HR. For employees within their first six months' employment with TIC at the time of self-evaluation, supervisors do a brief write-up and address goals. No scoring is done.

June: Supervisors meet one-on-one with employees to review completed evaluations. Signed evaluations are submitted to HR where total average scores are used to determine salary increases or administrative leave hours. Employees within their first six months' employment at the time of self-evaluation are not evaluated and are not eligible for a merit increase.

June - July: A Merit Award Notice is sent to each eligible employee.

Expenses and Travel

This paragraph addresses expenses incurred while on overnight travel status. Authorized travel for official agency purposes is reimbursable and includes transportation between places of official

business, temporary lodging, and restaurants and similar establishments as required for the subsistence and health of employees. Supervisors are charged with the responsibility for determining the necessity and method of, and resources available for, any travel. In general, the agency follows DAS travel policies; exceptions may be made by the Executive Director. Use of a personal vehicle for travel on agency business must be approved in advance by your supervisor. Mileage for approved travel will be reimbursed at the current IRS mileage rates.

You must have a current valid driver's license and satisfactory driving record or verify a suitable alternate means of transportation. When driving a state, rental or personal car on agency business, your driving reflects on all state employees. You must comply with all applicable laws, rules, policies, and procedures, avoiding distractions and following safe driving practices. Failure to comply could lead to loss of driving privileges for agency business. You are required to immediately report to your supervisor any driving incidents occurring in an agency-provided vehicle or your own vehicle in the course of your work. You are personally responsible for any traffic and parking citations received.

Personal belongings damaged in a vehicle incident are not insured by the State. They may be covered by your own private insurance. If using your personal vehicle on agency business, your personal insurance will apply if there is an accident or damage to your vehicle. Any physical damage or loss to your private vehicle is not covered by DAS Risk Management, the State's insurer. Please note that using your personal vehicle for work may affect your insurance coverage.

Employee Schedules

Full time employees are generally scheduled to work eight hours a day, 40 hours a week. The workdays are contingent on the duties of the position. A part-time employee's hours are scheduled with the supervisor.

The agency's office is open Monday through Friday, 7:00 a.m. to 4:00 p.m. Rest Areas are open 24/7, but are generally staffed between 7:00 a.m. and 4:00 p.m., with work schedules established to maximize staff presence to meet traveler needs. (For more information see Hourly Employees: On-Call Status and Travel Time policy.)

Breaks

Breaks and meal periods are established in accordance with statutory requirements to ensure employees have the time to take appropriate breaks in their workdays. Break time is intended to enhance employees' wellness and job focus. Your work schedule may be changed to meet operational requirements, and such changes will be discussed between affected supervisors and employees as soon as feasible; reasonable attempts will be made to maintain a workable and satisfactory schedule.

FLSA-eligible employees receive one 15-minute break for each four hours worked. Breaks should be coordinated with your supervisor to ensure coverage of key duties.

The standard lunch period for FLSA-eligible employees is one hour. TIC's Salem office is closed from noon to 1:00 p.m. Alternate scheduling should be approved by your supervisor. With supervisory approval, an FLSA-eligible employee may take a shorter lunch break, but in no case can the regular lunch period be less than 30 minutes.

Workweek & Overtime

The payroll workweek is Sunday at 12:00 a.m. (midnight) through the following Saturday at 11:59 p.m. Occasionally, employees are asked to work more than 40 hours in a payroll workweek. Overtime must be approved in advance by the employee's supervisor, with limited exceptions such as for emergency work in rest areas by on-call employees.

Approved overtime for employees who are overtime eligible (FLSA eligible) will be paid at the rate of 1.5 times their regular rate of pay. (Please see TIC Holiday Leave regarding holiday work.)

Overtime compensation is based on actual hours worked, not on hours paid. Paid leave time is not included as time worked for calculating overtime. Overtime must be recorded on your timesheet and approved by your supervisor verifying the time worked.

FLSA-exempt employees do not receive additional compensation for working more than 40 hours per week.

Adjusted Work Schedules

With the supervisor's approval and in accordance with agency business needs, the agency will work with employees who request adjustments to the normal work schedule. This may include earlier or later start times or shorter lunch periods. Schedule changes must be pre-approved and accurately recorded on the employee's timesheet.

Flex Time

Occasionally due to business needs, training or conference attendance, or for personal reasons, an employee may need or want to flex their schedule. Flexing means that the employee works their regular number of hours within the workweek, but perhaps starts or ends the workday earlier, or has days off that are different than usual. For example, an employee who normally has Tuesday and Wednesday off may work on Tuesday to attend a conference, and then take Thursday as a day off that week. An FLSA-eligible employee who works beyond their scheduled work hours one day, perhaps to assist a visitor, may need to leave work earlier the following day unless the supervisor approves overtime for that week. Flexing time must be within the established workweek of Sunday through Saturday and must be approved by the supervisor. It is always a good idea to add a note to the ADP timecard stating the reason why hours were different than usual.

Hourly Employees: On-Call Status and Travel Time

"Work time" is all time an employee is required to be on the employer's premises, on duty, or at a prescribed workplace. It includes all time spent performing a principal job activity or performing an activity preparing an employee for work.

Employees <u>must</u> be compensated for all time worked, whether those hours are authorized or not. Supervisors must ensure that hourly employees do not begin work before their paid start times and do not continue work after their paid time ends. Hourly employees are not allowed to remain at work beyond their shifts in any capacity that could be considered work, unless the supervisor has

approved that time for payment. Hourly employees also cannot "volunteer" the time to continue work "on their own time," even if they want to do so.

All hourly employees' time worked must be accurately recorded on the timesheet. The law does not allow informal carrying over of work hours or leave time from one week to another. No exceptions.

Overtime compensation is based on actual hours worked. If an hourly employee works over 40 hours in the workweek, overtime will be paid. Paid leave hours are not included as work hours.

On-Call Status: TIC employees can be required as a condition of employment to be in unpaid "on-call" status outside of regular work hours. On-call time is unpaid if the employee is reasonably able to use the time effectively for his or her own purposes, even though the employee's activities or travel may be limited to being available within a specified response time.

As a matter of policy at TIC, on-call hours are scheduled for the employee. While on call, the employee will be required to carry a cell phone and respond to calls, texts and required emails. On-call status should be structured to ensure the employee has non-on-call time that is fully "off duty."

On-call employees are held responsible for exercising good judgment in determining whether a situation requires immediate attention, referral to another resource, or the involvement of a supervisor.

Commuting Time and Mileage for Call-In Work: On-call hourly employees (regular, fill-in and temporary status) are paid for the time spent actually working when responding to phone calls and texts, answering required emails, and other mandatory work when not required to go to the worksite. When called in to work outside of a regularly scheduled shift, hourly employees will receive a minimum of two hours' pay, including their commute time to the worksite. When called in to work, log into your timecard the spent time commuting to the worksite from your primary residence and time actually worked, or two hours, whichever is greater. ***Note:*** *See the exception below for employees without agency-assigned vehicles.*

Employees with agency-assigned vehicles: When called in, only the travel time to the work location from the employee's residence will be paid. You must log the round trip in your mileage log as a personal commute for tax purposes, whether you are hourly or salaried.

Employees without agency-assigned vehicles: IRS regulations prohibit commuting mileage in personal vehicles to be paid by the agency. To help compensate for unreimbursed personal vehicle use, those hourly employees (regular, fill-in and temporary status) who do not have agency-assigned vehicles will also be paid for the time it takes to commute from the rest area back to their personal residence at the end of their call-in shifts (this is included in the two-hour minimum when applicable).

All hourly employees' time worked (whether in or out of the rest area) must be tracked by the cumulative number of minutes for each day. It is reported on the time sheet in 1/10th hour increments (6 minutes each) and rounded up to the nearest 1/10th hour.

Employees who are neither at work nor on call are not required to carry or answer their cell phones but may choose to do so. There is no prohibition against being available to the employer, but hourly employees may not do unauthorized work during this time. For example, the agency or others may send emails that are not urgent. Unless instructed otherwise, the employee should not respond to emails outside of regular work hours.

Hourly employees who do unapproved agency work – including responding to non-urgent emails – must report that time to the supervisor, enter it in their timesheets and be paid for that time. Failing to do so is essentially fraudulently reporting work hours. Under reporting is as serious as over reporting. In any case, employees may be subject to discipline for working unauthorized time and for insubordination.

In emergencies, an employer may attempt to contact an off-duty employee who is not on call and request that the employee return to work. If the employee is unable or unwilling to return to work before their next scheduled work or on-call period, the employer generally will not compel him or her to do so. However, availability and responsiveness may be considered by the supervisor as a component of the performance evaluation and merit system. Refusing to come to work in an emergency without good reason may result in discipline.

"Volunteer" Status: Employees cannot volunteer to do work for the agency or at the worksite without pay unless all four of the following criteria are met:

- The work must be at the employee's initiative;
- The work must be outside normal or regular work hours;
- The employee must be performing a religious, charitable or other community service without contemplation of payment; and
- The employee must be performing a task outside of the regular job functions performed for TIC.

Volunteer status in the workplace is a complex situation that should be evaluated case-by-case in advance. For example, a Rest Area Specialist may volunteer with a non-profit provider in the coffee program. However, the employee cannot step outside of that volunteer role to do any task they would do as part of the job without the permission of the supervisor and going into paid status. Volunteers may not wear the insignia of the agency, present themselves as TIC employees, or answer questions on behalf of the agency.

Travel Time: Employees may be assigned to specific work locations or a grouping of work locations in a region. If the employee regularly works at more than one location and does not have a fixed official work site, commuting time to and from those assigned locations is not paid, even though one of the locations may be a longer commute.

If an employee is assigned to a single work location, the supervisor has the right to direct the employee to work at an alternate location for special one-day assignments. If the employee's travel to the alternate location is directed to occur during the person's work hours, then that travel time is compensated the same as any other work time.

If the supervisor directs the employee to begin his or her work shift at an alternate location, the commuting time will be paid if the distance is more than 30 miles from one of the employee's regular assigned work locations.

All paid travel time must be tracked on the employee's timesheet and approved by the supervisor and does count toward calculations of overtime.

FLSA-Exempt Employee Time Reporting and Flex Hours

FLSA-exempt employees are salaried and not eligible for overtime. They are expected to work a "professional week," which means a full-time exempt employee may need to work more than 40 hours to complete the position's workload. The regular work schedule of an exempt employee is established with the supervisor to meet the business needs of the agency. Beyond this, the exempt employee may need to work additional hours, on-call assignments, and other time that cannot be readily scheduled.

Unplanned absences generally require the use of accrued leave time. Unless otherwise approved, missed scheduled work hours will be deducted from the appropriate leave balance(s) regardless of whether the number of hours worked equals or exceeds the minimum number of hours required.

Alternate/Flexible Work Schedules and Flexing Hours

The supervisor may permit an exempt employee to regularly work a flexible or alternate work schedule. Flexing of hours also may be granted for single or sporadically recurring needs as the supervisor determines appropriate to balance employee requests with agency needs.

When approved by the supervisor, flexed hours must be within a single work week (12:00 a.m. Sunday through 11:59 p.m. Saturday) except in special situations that are pre-approved by the Executive Director or their designee. Flexing of hours must be approved in advance and accurately recorded in the payroll system, clearly showing when the hours are flexed.

Time Record Entry

In a standard, non-flexed week, full-time exempt employees may choose to enter into their online time reporting system timecard either:

- The actual hours worked and all leave time totaling a minimum of 40 hours for the week; or
- The standard eight hours per day/40 hours per week schedule of worked and leave time (except for those few employees who work in multiple departments or locations and must track and enter their time under multiple department codes, or for exempt employees working on a holiday, which requires the recording of actual hours worked).

Working on Holidays [updated 5-2020}

Except in emergencies, an FLSA-exempt employee may work on a holiday <u>only</u> when required by his or her supervisor. Employees who work on a holiday without supervisory approval may be subject to disciplinary action.

An FLSA-exempt employee who is required to work on a recognized holiday receives, in addition to regular salary, an hourly holiday premium at time and one-half, for a minimum of two hours' time.

To reduce overtime costs, supervisors should not schedule FLSA-exempt employees to work on holidays except for legitimate business reasons.

Time Entry in ADP - User's Guide

Set Up as a New User – Self Registration in ADP:

1. Once you are informed that an ADP administrator has entered you into the system, go to ADP Workforce Now (https://workforcenow.adp.com/public/index.htm).
2. To the right of the screen you should see "First Time User? Register Here." Click on the blue section that says "Register Here."
3. As part of the process ADP will automatically assign a registration code and email the code to you. (If the ADP email doesn't arrive in your inbox, be sure to check your spam/junk folder.) You will be asked if you want to set up an account. Click "Yes." You also will be asked to verify your identity as part of the process. You will enter your first and last names, the last four digits of your Social Security Number, and your birth date. Click "Confirm."
4. User IDs for regular-status employees are their TIC email addresses. Note: Fill-in and temporary employees who don't have TIC-issued email addresses will use their first name and last initial followed by @oregontic.com as their user IDs (e.g., johnd@oregontic.com).
5. Follow the steps to create a password you will remember, and activate your email and/or cell number for recovery of password and user ID. If you are a regular-status employee, use your TIC email address and work cell number (if you have been issued one). **NOTE:** Fill-in and temporary employees must use a personal email address or cell phone number when setting up their user accounts. If you do not have either, you must create an email address where you can receive password/user ID recovery messages. Please keep this information where you can readily find it.
6. Close the window and re-log into ADP using your new ID and password.

Basics of Time Entry

1. Log in to ADP and go to "My Timecard" to enter time.
2. Click and enter the number of hours appropriate for each day of the month in the "Hours" column.
3. As needed, click and enter a pay code for administrative leave, holiday (observed off), holiday worked, personal, sick, vacation, or others.
4. If you are required to track your time by department, click and change the department code as needed. If you need to divide a day into more than one pay code or department code, click on the far left column containing the horizontal lines. Select "add blank row" as many times as needed and fill in those rows appropriately.

5. A good double-check is to see the hour totals for each week at the bottom of the timesheet. If you are an hourly employee eligible for overtime and have entered more than 40 hours in a week, ensure you have your supervisor's approval.
6. Remember you must click "Save" before leaving the time-entry screen for your entries to be recorded.
7. Click "Approve timecard" in the upper right when your timesheet is filled out completely and accurately near the timesheet due date.

Requesting/Cancelling Time Off

When requesting time off:

Enter the desired time off directly onto your timecard. You simply change the pay code to the appropriate time off designation and enter the hours. Once you save changes to your timecard, your supervisor will be notified of your time-off request.

To cancel a time-off request, select the "Myself" menu near the top of the screen, then select "Time off" and select "List of requests." Find the time off request that needs editing or cancelation and click on the blue arrow at the right. From there you can View/Edit or Cancel that request.

Checking Leave Balances

To check your accrued leave balances, select the "Myself" menu near the top of the screen, then select "Time Off," and select "Time Off Balances." This will take you to a screen where you can check your leave balances as of the date listed in the calendar box.

Sequence of Approvals

ADP is set up to operate in a very deliberate, sequential manner. For your own timecard, you must review and approve your own hours by clicking on the "Approve Timecard" button on the upper right side of your timecard.

- Do not approve your timecard if you have leave requests for that pay period awaiting approval by your supervisor. Requests that are pending are displayed in orange with dotted lines surrounding the request on your timesheet. Requests that have been approved are displayed in pink with a solid line surrounding the request on your timesheet.
- If you see pending requests, contact your supervisor to get them approved before the employee due date.
- If your supervisor approves your leave requests in ADP <u>after</u> you have approved your timecard, your prior approval will be removed by the system and you will be required to re-approve the changed timecard, and your supervisor will then have to approve it before payroll can process it.
- To prevent frustration, make sure that all requested leaves have been approved and all changes made before approving your timecard.

Recover Password/ID

1. Go to ADP Workforce Now (https://workforcenow.adp.com/public/index.htm).
2. Click "Forgot Your User ID/Password?"
3. Fill in the required boxes. If you are using the "Mobile phone number" option, the first box is a drop-down where you need to choose "United States +1" and the second box is where you enter your actual cell phone number. Then click "Next."
4. You will be given your user ID if you didn't enter it in the prior screen and will have buttons to either "Log In" if you know your password, or "I Don't Know My Password."
5. If you click to get your password, you will see a box titled "Your security code." You will choose to have your password sent as a text to your entered cell phone number or by email to the email address you entered. If you don't have access to any of these emails/phones (this should be only for fill-in and temporary employees), click the box and choose "Next." You will be sent to a screen where you will be asked to enter the security questions you established when you first set up as a new user in ADP. Answer these questions and click "Next." You will go to a screen where you may reset your password. Please remember it.

Tips & Tricks

- ADP doesn't like zeros. To avoid the use, you can delete a row using the far left column containing the horizontal lines and select "Delete Row" then "Save" at the bottom of the screen. ADP will repopulate that date on the timesheet, as it doesn't like missing days either.

- Laptop users: For a better view of your timesheet while in ADP, you can click anywhere in the timecard and hit the function (FN) button and the 2 at the same time. It will show you the whole month.

- FLSA-exempt employees must code any paid time off to their designated home department. This is the department that ADP will, by default, enter in the department column (an employee's home department is also listed under your name and picture at the top of the screen).

- In general, anytime you see text or a button in ADP in bright blue, you can click on it for more information or to take an action.

Printing Your Timesheet (to submit corrections)

When you have corrections to your previously submitted timesheet for the month, you need to print the timesheet for your supervisor's approval. Select the correct pay period in the section just below your name and photo. Click on the three horizontal lines next to "Timecard" just below that. Click on "Print Timecard" and make sure the box is checked for "Signature Lines" then click "Print."

Time Records; Payroll Review & Approval

The agency uses an online payroll system and each employee is responsible to accurately and timely enter all time worked and leave taken, including documenting protected leaves.

The agency deducts all state and federal taxes and assessments required by law from employees' paychecks. No deduction other than those required by law or authorized by the employee will be made, unless the agency is required to recover overpayments, or receives orders of wage garnishment.

The accuracy of paychecks and payroll-related payments – as well as the data integrity of leave balances and associated accounting transactions and records – depends on the accuracy of the time and attendance records. The agency must ensure the proper review and approval of the data that becomes the basis for – and the documentation of – the payroll expenditure, regardless of the system used.

Time Record Entry

Employees are required to prepare and present accurate and timely documentation of their time and attendance dependent upon their status under the Fair Labor Standards Act (FLSA). This includes documenting leave time under the proper designations, including FMLA and OFLA. If you have questions regarding the proper designation of leave time, please contact Human Resources.

Tampering with, falsifying, or altering time records is prohibited.

To ensure integrity of time records and the payroll system, employees may not share their system password with anyone including supervisors. Requests to share system passwords should be reported immediately to the agency Executive Director.

Payroll is processed based on a forecast of the hours the employee is expected to work. State and federal laws require that even if an employee does not submit a timecard, the employer must still pay the employee for their time, ensuring that no more than 35 days elapse between pay days.

All leave requests should be submitted through the online time entry system as early as possible to avoid delays in approval and payroll processing.

Employees should record all worked and leave time in the online timecard system at the end of each shift. When this is not possible, entering accurate worked and leave time at least weekly is the best practice. At the latest, employees will enter all worked and leave time and click the approval button on or before noon on the Employee Due Date each month.

Employees are expected to comply with agency standards for timecard entry by using the time and attendance system and resources available. Employee assistance in connecting to resources for access to the time and attendance system is the responsibility of the immediate supervisor or next-level manager in the supervisor's absence.

Approval Roles

Employees: You must review and approve your own timecard entries as being accurate and

complete by noon on the designated monthly due date (see chart on page 32). Clicking the "Approve Timecard" button is the equivalent of your signature. Any changes to the timecard after the supervisor's approval will require a timecard correction form that will be processed the next month.

Supervisors: Generally, it is the employee's direct supervisor who will verify and approve the completed timecard so it can be processed by payroll. When the direct supervisor is not available, the timecard must be verified and approved by the next-level supervisor or higher.

Supervisors are encouraged to review employee timecards at the end of each shift. When this is not possible, supervisors shall review employee timecards at least weekly to ensure that employee timecard entries are timely in accordance with the agency's payroll processing calendar. All employee leave requests for the pay period must be approved or denied by the supervisor before the Employee Due Date and before the employee approves the timecard.

Supervisors must approve subordinates' timecards by noon on the Supervisor Due Date. Timecards should be approved as close as possible to the supervisor due date to ensure the most-accurate forecast of hours is entered. In some cases timecards may need to be approved before the employee or supervisor due dates to allow for business needs. Timecards may not be approved before the 15th of the month to ensure that all prior pay period timecard corrections have been entered by payroll staff. If the supervisor is not available to approve, the next-level supervisor or higher is responsible for doing so. Supervisors should communicate their availability with their managers to ensure timely verification and approval of employee timecards.

Payroll transactions are no different than any other agency expenditure and require the application of the same standards of internal control. Timecards that have not been properly reviewed and approved may introduce erroneous data into the agency payroll and accounting systems and cause unauthorized expenditures of agency funds.

Clicking "Approve Timecard" in the online time entry system is equivalent to the supervisor's electronic signature and is tracked in the system. Failure to review and authorize timecards is an inappropriate action by a person responsible for authorizing the expenditure. Agency management will apply the same standards and penalties for failure to review and authorize timecards as those for other expenditure authorizations and take appropriate action.

Unusual Circumstances and Corrections

Because payroll is processed before the completion of work hours for the month, employees pre-enter their approved work and leave hours that will occur after the timecard due date.

When unusual circumstances prevent an employee from entering or correcting and approving their own time in the time entry system, their supervisor (or next level supervisor) will enter and approve the time to the best of their ability. In this situation, the supervisor will immediately notify the employee and payroll staff by email. This notification is important so payroll processing can proceed. The timecard will be printed and signed by the employee and supervisor and submitted to the payroll staff. This provides proof that the employee approves the timecard changes.

Any deviations from recorded hours after timecards are processed will require submission of a corrected paper timecard to payroll, signed and approved by both the employee and the supervisor.

The completed corrections must be received by payroll by the Corrections Due Date (noon on the 7th day of the next month). Corrections may be submitted by email or fax to ensure timely receipt.

Approved corrections will be entered as adjustments by payroll staff and will appear in the employee's timecard on the first day of the next pay period. Those corrections will be reflected in the employee's next paycheck and/or leave accrual balance transactions. Employees should retain a copy of their approved corrected paper timecards for their records.

If good-faith attempts by an authorized supervisor or administrator to resolve errors in the timecard results in an incorrect paycheck or leave balance, corrections will be made by payroll staff during the next pay period.

Authorized Approvers

Sign Program**:**

- Sign Program Techs: Sign Program Manager/Construction Inspector
- Sign Program Assistant: Sign Program Administrator
- Sign Program Manager/Construction Inspector: Sign Program Administrator
- Sign Program Administrator: Executive Director or designee

Rest Area Program**:**

- Rest Area Specialists and Technicians: Rest Area Supervisor
- Rest Area Supervisors: Rest Area Program Manager
- Rest Area Program Manager: Rest Area Program Administrator
- Rest Area Program Administrator: Executive Director or designee

Business Services**:**

- Finance/Accounting Staff: Accounting Manager
- Accounting Manager: Executive Director or designee
- Heritage & Community Assets: Executive Director
- Human Resources Manager: Executive Director
- Systems Analyst: Executive Director or designee
- TIC Support Specialists: Rest Area Program Manager
- Executive Assistant: Executive Director
- Executive Director: Human Resources Manager

Summary

- Employees are responsible for recording their own time in the time entry system each week and must review and approve their timecards by the Employee Due Date each month. Your clicking

the “Approve Timecard” button is your electronic signature verifying accuracy.

- Supervisors are responsible for reviewing and approving employee timecards by the Supervisor Due Date each month as authorization for the expenditure of agency funds.
- Approved timecard corrections are due to payroll processing staff by the Corrections Due Date each month.
- Failure to abide by this policy and to follow the procedures outlined above may result in disciplinary action.
- Employee questions regarding this policy or time entry procedures should be directed to the immediate supervisor. Supervisors should consult with Human Resources for clarification or special situations. Responses to all non-routine questions will be provided to the supervisor by email and copied to payroll processing to ensure consistent application.
- All employees must report unauthorized deviations from the above policy or procedures to the Executive Director or their designee without delay.

Payroll Due Dates (Generally)

Note: Business days do not include weekends and holidays.

DUE DATE	**ACTION**	**RESPONSIBILITY**
7th of each month - Noon	Corrections Due Date: Timecard corrections approved and submitted for prior pay period must be received by payroll staff	Employee and Supervisor
6 business days before payday - Noon	Employee Due Date: Employees review and approve their own timecards and ensure accuracy of their record of all worked and leave time (your supervisor may require an earlier date for business reasons)	Employee
5 business days before payday - Noon	Supervisor Due Date: Supervisors review and approve employee timecards. If the supervisor is unavailable, review and approval responsibility move up to the next-level supervisor available	Supervisor
4 business days before payday	Payroll processing staff prepares data for review and transmission	Payroll Clerk
3 business days before payday	Payroll data transmitted for processing	Payroll Manager
Final business day of the month	Payday	

Emergency Payroll Advances to Employees

Payroll advances are made to regular status employees to provide access to earned compensation in emergency situations prior to the next scheduled payday. Providing payroll advances is administratively costly and will be granted only in allowed emergency situations. Requests are limited to twice in any 12-month period (the Executive Director or their designee may make limited exceptions for documented severe circumstances). Employees who abuse this privilege may be subject to disciplinary action.

Salary advances may not exceed 60% of the employee's gross earnings to date (of the request), minus any garnishments or other involuntary wage attachments. The salary advance will be deducted in its entirety from the employee's next payroll check.

Emergency Situations

An emergency situation is defined as an unusual, unforeseen event or unavoidable condition that requires immediate financial resources by the employee. Emergencies include, but are not limited to, the following circumstances:

- Death in family necessitating unforeseen expenditures or travel.
- Major car repair such as engine, transmission, or catastrophic failure.
- Theft of cash representing major portion of most recent pay.
- Automobile accident leading to loss of vehicle use.
- Accident or sickness (self or family) requiring immediate substantial cash outlays *(if documentation contains confidential medical information, consult HR or the Executive Director prior to submission).*
- Destruction or major damage to home requiring immediate substantial cash.
- New employee lack of funds (maximum one draw).
- Unreimbursed employment-related moving expenses due to transfer or promotion.
- Other legitimate emergencies may be approved by the Executive Director or their designee on a case-by-case basis.

Requesting an Advance

To request an emergency payroll advance, complete the Emergency Payroll Advance Form located on TIC's Share drive, TIC's Google drive, and by request from HR or Payroll. Follow the instructions attached to the form.

Leaves

Holiday Leave

Holidays

The following are paid recognized holidays:

- New Year's Day on January 1
- Martin Luther King Jr. Day on the third Monday in January
- President's Day on the third Monday in February
- Memorial Day on the last Monday in May
- Juneteenth on June 19
- Independence Day on July 4
- Labor Day on the first Monday in September
- Veterans Day on November 11
- Thanksgiving Day on the fourth Thursday in November
- The Day After Thanksgiving on the fourth Friday in November
- Christmas Day on December 25
- Every day appointed by the Governor as a holiday

Holiday Observance

When a holiday falls on Sunday, the State recognizes the following Monday as a holiday, and when a holiday falls on Saturday, the preceding Friday as a holiday. When a paid holiday falls on an employee's regularly scheduled day off, other than Saturday or Sunday, the employee may schedule their holiday leave day off with pay for another day in the same pay period.

A day appointed by the Governor as a holiday is observed on the appointed day.

Holiday Leave Application and Time Records

A full-time regular-status employee receives eight hours of time off with pay for each paid holiday. If a full-time regular-status employee on leave without pay has worked any hours within the pay period, the employee receives pro-rated time off with pay for any paid holiday within that pay period. A part-time regular-status employee receives pro-rated time off with pay for each paid holiday.

Employees record the time off with pay as holiday leave on their timecards. If an employee is on vacation or sick leave when a holiday occurs, that day is coded as holiday leave in the employee's timecard for payroll purposes. Fill-in and temporary employees are not eligible for time off with pay on a legal or recognized holiday.

Regardless of FLSA status, an employee who is required to work on a paid holiday receives 2.5 times the employee's regular straight hourly rate.

An employee may work on a holiday <u>only</u> when required by his or her supervisor. Employees who work on a holiday without supervisory approval may be subject to disciplinary action. As a rule, FLSA-exempt employees are not scheduled to work on holidays. Except in emergencies, any FLSA-exempt employees who are scheduled to work on a holiday must have their supervisor's permission to work on the holiday.

Employees who are required to work on a paid holiday will not reschedule the holiday time off. Time worked on a holiday is coded as holiday worked (HOLWRK) in the employee's timecard for payroll purposes. Fill-in and temporary employees required by management to work on a holiday receive straight time pay and do not record any special coding on their time record.

Unusual circumstances and/or emergency situations not covered by this policy will be considered on a case-by-case basis, consistent with past practice, documented, and approved by rest area and HR management.

Holidays and Alternate Work Schedules

Supervisors may adjust an employee's irregular or flexible work schedule for the hours of paid holiday leave.

Transfer, Hire, or Separation and Holidays

When an employee moves between State of Oregon agencies without separation and a holiday occurs between the separation date in one agency and the subsequent hire date in the other agency, the gaining agency is liable for compensation for the holiday. If an employee is hired or terminated on a holiday, the employee receives pay for the holiday.

Working on a Holiday?

- **Yes, because it was approved by my supervisor:** You will be paid at a total of 2.5 times your regular hourly rate for each hour worked, regardless of your FLSA or full-time/part-time status. You must have your supervisor's approval to work any holiday. Enter actual hours worked with the pay code HOLWRK. Do not enter a second HOLIDAY line.

- **No, because it is my regular day off:** You do not enter this day on your timecard. Schedule alternate paid time off with your supervisor <u>to be taken in the same pay period (month) as the holiday.</u> Enter the time off hours with the pay code HOLIDAY on your timecard.

- **No, because I was granted it as a holiday by my supervisor:** Enter the hours on your timecard with the pay code HOLIDAY.

- **No, because I was sick or on vacation:** Enter the time off hours on your timecard with the pay code HOLIDAY. You will not use sick or vacation leave for this day.

- **Yes, but I am a fill-in or temporary employee:** You are not eligible for holiday paid leave and will be paid at your straight hourly rate. Enter the worked hours on your timecard with no special pay code.

Sick Leave

Accrual

Full-time employees accrue sick leave at a rate of eight hours each full calendar month employed.

Part-time employees accrue pro-rated sick leave at the rate of the sum of the number of hours the employee worked or used paid leave during the month, divided by the number of available work hours for a Monday through Friday, eight hours a day schedule for the month, multiplied by eight hours (up to a maximum of eight hours) each full calendar month employed.

Fill-in and temporary employees accrue sick leave at a rate of two minutes for each hour worked (one hour of sick leave accrued for every 30 hours worked).

Sick leave accrual for a partial month worked for full-time or part-time employees due to hiring, termination, or leave without pay is pro-rated using the same method of calculation as for a part-time employee, defined above.

Sick leave is credited to the employee and is usable on or after the first day of the calendar month after the leave was earned.

Donated Sick Leave

Donated sick leave is paid sick leave that has been converted from vacation leave donated by other employees.

An employee is eligible to request donated leave:

- To recover from or seek treatment for a serious health condition or for parental leave, or to care for a family member with a serious health condition; AND
- The employee's absence is expected to last at least 15 consecutive calendar days after all accumulated leave has been used; AND
- The employee's total absence is expected to last at least 30 consecutive calendar days.

An employee who meets the eligibility requirements and would like to receive donated leave must make a written request to HR.

- If the employee is unable to submit a written request, it may be submitted by a family member or other responsible party.
- The request must include the specific amount of time requested based on projected need.
- Certification from the employee's health care provider must accompany the request, verifying a qualifying medical need, and the estimated amount of time the employee will need to be away from work. Medical certification obtained for FMLA or OFLA may also be used for verifying eligibility to receive donated leave.

- If the employee needs more leave than initially requested, they may submit additional requests for donated leave and updated medical certification.
- An employee may not request donated leave when they are eligible to receive, or are receiving, workers' compensation.

After receiving the employee's written request for donations and the medical certification, HR will verify the employee's eligibility and send a donation request to all employees. HR will track all donations received and provide a spreadsheet to Payroll showing conversion of vacation hours at the donor's hourly wage rate to sick hours at the recipient's hourly wage rate.

Donated hours transfer from the donor's accrued leave as needed by the recipient. If total leave donated exceeds the total amount of leave accepted, the unaccepted leave remains in the donor's accrued vacation leave balance.

An employee receiving donated leave may only use such leave in accordance with agency sick leave policy.

Donated leave can impact long-and short-term disability benefits. Before requesting donated leave while receiving disability benefits, employees should consult HR for more information.

Accumulation

Sick leave accrues without limitation.

Use of Accrued Sick Leave

An employee may request, and must be allowed to use, available sick leave for any of the following reasons:

- The employee's own mental or physical illness, injury, or health condition; need for medical diagnosis, care, or treatment of a mental or physical illness, injury, or health condition; or need for preventative medical care;
- To care for a qualifying family member with a mental or physical illness, injury, or health condition; to care for a qualifying family member who needs medical diagnosis, care, or treatment of a mental or physical illness, injury, or health condition; or to care for a qualifying family member who needs preventative medical care;
- Any family leave qualifying purpose;
- Emergency repair of personal assistive devices that are medically necessary for the employee to perform assigned duties;
- Dental or vision care;
- In the event of a public health emergency as defined in 2015 SB 454;
- Or for any other statutorily required reason.

Qualifying Family Member

Qualifying family member for the purposes of this policy includes the employee's spouse or domestic partner, and the following for the employee and spouse or domestic partner (including step, adoptive, and foster):

- Parent, including one who stood *in loco parentis* (in place of a parent) when the employee was a child.
- Child (and child's spouse or domestic partner), including a child for whom the employee or the employee's spouse or domestic partner stood *in loco parentis*.
- Sibling (and sibling's spouse or domestic partner).
- Grandparent.
- Grandchild.
- Member of the immediate household.

Notification

It is the employee's responsibility to notify the immediate supervisor of the need to use sick leave. If the employee's absence is unanticipated, the employee or the employee's personal representative must contact the employee's immediate supervisor at or before the beginning of each missed day's regularly scheduled work time unless other arrangements have been approved by the supervisor. In emergency situations, the employee or the employee's representative must contact the employee's supervisor as soon as possible. If the employee's need to be absent is known in advance, the employee must schedule sick leave with the supervisor with as much advance notice as possible. If the immediate supervisor is not available, the employee or representative must contact the next higher supervisor available in the chain of command.

Medical Verification

Unless otherwise limited by law, management may at any time require an employee to submit substantiating evidence for the use of sick leave. This evidence includes, but is not limited to, a health care provider's certification. If management does not find the evidence adequate, they may disapprove the request for sick leave. TIC will reimburse out-of-pocket costs incurred by the employee for required medical verification for these purposes as required by law.

Light Duty in Lieu of Sick Leave

Unless otherwise limited by law, if an employee is able to perform light duty instead of using sick leave, and there are appropriate duties available, the employee may be allowed to work light duty instead of using sick leave. Medical verification of the employee's need to perform light duty and a description of the job functions that the employee is allowed or restricted from performing may be required. Because the employee has the option to perform regular duties or be on sick leave instead of requesting light duty, any out-of-pocket costs incurred by the employee for medical verification of the need for light duty in these situations are the employee's responsibility.

Use of Other Leave in Lieu of Sick Leave or When Sick Leave is Exhausted

Other paid leave (e.g., vacation) in lieu of sick leave or when sick leave is exhausted must be granted for the reasons listed above if required by law and may be granted by management if TIC's operational needs allow.

Coordination with Workers' Compensation

An employee may choose to use sick leave to make up the difference between workers' compensation time loss payments and the employee's regular salary. In such instances, TIC prorates charges against the employee's accrued sick leave. An employee who exhausts sick leave may choose to use other accrued leave to equal the difference between workers' compensation time loss and the employee's regular pay. In such instances TIC prorates charges against the accrued leave. Using leave while receiving time loss benefits is not required.

Employees Rehired

An employee who is rehired by TIC within two years of separation for a regular-status employee, or within 180 days of separation for a fill-in or temporary-status employee, will have unused sick leave restored unless the employee retired, and the sick leave was used as part of the employee's calculated retirement benefit.

Employees Hired from Another State of Oregon Agency

An employee from another State of Oregon agency who is hired by TIC within two years of separation from that other agency, if a non-temporary employee of that state agency, or within 180 days if a temporary employee of that state agency, shall have previously accrued unused sick leave transferred, unless the employee retired, and the sick leave was used as part of the employee's calculated retirement benefit.

Sick Leave Upon Separation

Sick leave is not paid out upon separation from the agency. TIC will report any unused sick leave to the Public Employee Retirement System (PERS).

FMLA and OFLA

The Family and Medical Leave Act (FMLA) and the Oregon Family Leave Act (OFLA) protect an eligible employee's absence from work under certain conditions. Federal and state laws determine eligibility, whether your absence qualifies as FMLA or OFLA and how much leave time you may take.

Under FMLA and/or OFLA, your qualified absences include:

- Leave for your serious health condition
- Leave for the serious health condition of your family member
- Parental leave
- Bereavement leave
- Sick Child Leave (OFLA only)
- Time off to care for children whose school or childcare provider has been closed by a public official for a public health emergency (OFLA only)

Other FMLA and OFLA leave types include FMLA Military Caregiver Leave, FMLA Qualifying Exigency and OMFLA Military Leave.

If your absence is foreseeable, you need to notify TIC's HR Manager as soon as possible. If your absence is unforeseen (sudden, emergency leave) your supervisor will notify the HR Manager.

HR will determine whether you are eligible for FMLA and/or OFLA (based on length of service and hours worked) and whether your reason for absence is eligible (e.g., whether it meets the criteria for "serious medical condition").

You will receive a FMLA/OFLA eligibility notification from HR. If your reason for absence is eligible for FMLA and/or OFLA, you will also receive information regarding how much leave is available to you, whether certification from a treatment provider is required, and how to designate FMLA only, OFLA only, or FMLA/OFLA on your timecard.

Employees are required to use paid leave balances (e.g., sick, vacation, personal leave) while on FMLA and/or OFLA. When all leave balances are exhausted, the balance of the leave is unpaid.

The information here does not attempt to address the details of FMLA and OFLA. Please contact TIC's HR Manager with any questions you have.

Vacation Leave

Accrual Rates

A regular-status employee accrues vacation leave based on the recognized service date, which is established upon initial appointment to state service. The following types of state service are used to determine an employee's recognized service date:

- Actual hours worked in, or time spent employed by, any branch of state service, or any entity with an intergovernmental agreement with the Department of Administrative Services that addresses the transfer of an employee's recognized service date;
- Time spent in paid leave status;
- Time spent as a seasonal employee;
- Time spent on approved leave without pay in the Peace Corps; on protected military, family and medical leaves; or on leave under worker's compensation.

When leave does not occur for the reasons listed above, the agency will adjust the recognized service date to reflect leave without pay over 15 consecutive calendar days. The adjustment will reflect the actual number of days on leave without pay.

Upon reemployment within two years of separation, the agency adjusts the recognized service date to reflect the break in service by showing the actual number of days separated. If the separation lasts longer than two years, the date of rehire becomes the new recognized service date.

Employees accrue vacation based on their status and recognized service date as follows:

Months Worked	Non-Management Employee	Management Employee
1st through 60th	8 hours per month	10.00 hours per month
61st through 120th	10 hours per month	11.34 hours per month
121st through 180th	12 hours per month	13.34 hours per month
181st through 240th	14 hours per month	15.34 hours per month
241st through 300th	16 hours per month	17.34 hours per month
After 300th month	18 hours per month	19.34 hours per month

A part-time regular-status employee, a full-time regular-status employee on leave without pay, or a regular-status employee beginning work after the first working day of the month will accrue pro-rated vacation leave. The agency will include actual time worked and all leave with pay in determining the pro-rated accrual of vacation leave each month.

Use & Approval

An employee may use accrued vacation leave with the prior approval of the employee's designated supervisor. Vacation requests of less than 40 hours should be made at least one week in advance; requests of 40 hours or more should be made as far in advance as feasible. Supervisors will strive to accommodate all vacation requests but must take agency business needs into consideration; not all leave requests can be granted. An employee is also eligible to use accrued vacation leave hours for absences that qualify under state or federal family and medical leave laws.

Cancellation

The agency may cancel previously approved time off to meet workload needs and can direct an employee to return from vacation leave if an emergent need arises. In the event the agency must revoke previously granted vacation leave, the Executive Director or designee may approve reimbursement to the employee for non-refundable or non-exchangeable travel expenses. Non-refundable and non-exchangeable travel expenses include, but are not limited to, deposits and purchases such as airline tickets, vacation packages, and hotel or rental deposits. Reimbursements will be based solely on documented non-refundable or non-exchangeable out-of-pocket costs for the employee only. Any expenditure incurred prior to the date of leave approval or after revocation of the vacation leave is not reimbursable.

Maximum Accumulation

Employees may accumulate a maximum of 350 hours of vacation leave. An employee who has earned 310 or more hours of vacation leave may ask to use leave time or may request a cash payout. An employee will immediately lose any vacation leave in excess of 350 hours if he or she fails to use the excess hours before reaching the maximum allowable accrual. An individual who has accrued more than 310 hours may request a cash payout of up to 60 hours. Cash payout for accrued vacation is subject to normal withholding and is allowed no more than once each fiscal year.

Annual Cash Out Option

A regular status employee may make a one-time request to cash out and receive payment for up to 40 hours of vacation leave once per calendar year. Employees must have a remaining balance of at least 60 hours of vacation leave to be eligible for the cash-out option.

Relocation Within TIC

Employees who are physically relocating their household due to a change of job position or job location within TIC may request a cash payout of up to 60 hours of accrued vacation leave. Cash payout for accrued vacation is subject to normal withholding.

Donation

An eligible employee may voluntarily donate any amount of vacation leave to an individual agency employee for whom a donated leave bank has been established. Donations must be made in whole hours.

Separation

An employee who separates from state service will be paid for all unused vacation leave up to 300 hours at the time of separation. When an employee accepts appointment to a position in a different State of Oregon agency, the employee may elect to transfer a maximum of 100 hours of accrued vacation leave hours to the new agency. TIC pays the employee for accrued vacation leave hours not transferred to the new agency, up to a maximum of 300 hours.

Other Leaves

In addition to leaves specifically outlined in this handbook, TIC complies with all leaves required by law including, but not limited to:

Court Appearance; Court, Legislative Committee or Quasi-Judicial Body Witness Leave (ORS 659A.230 and 659A.236)

Leave to Address Domestic Violence, Harassment, Sexual Assault, Stalking and Human Trafficking (ORS 659A.272)

Crime Victim Leave (ORS 659A.192)

Military Leave (ORS 408.290 and 659A.086)

Oregon Military Family Leave Act (OMFLA) (ORS 659A.090-099)

Peace Corps Leave (ORS 236.040)

Each type of leave has its own eligibility and documentation requirements. Please contact HR for more information.

Administrative Leave

The Executive Director may award up to 40 hours per fiscal year of administrative leave with pay to an employee in recognition of exceptional performance. The leave may be awarded to any employee, regardless of FLSA status, whose achievement or demonstrated performance is deemed by the Executive Director as an outstanding contribution to agency goals and objectives.

Administrative leave is not an entitlement and is awarded judiciously. Records must be maintained that show the reason for awarding such leave and the amount of time awarded and used. Use of administrative leave generally follows the same policy as vacation leave, requiring a request for leave time and the supervisor's approval.

Unused administrative leave expires on June 30 of each fiscal year and is not compensable upon separation from service.

Day of Leave

When authorized by the Governor, the state grants eight hours of paid leave to full-time regular-status employees. The agency will pro-rate the amount of leave for part-time regular-status employees.

Day of Leave may be taken any day during the calendar year, subject to supervisor approval.

Day of Leave cannot be taken in hourly increments; it must be taken in one block of time.

Personal Business Leave

Full-time, regular-status employees are granted 24 hours of personal business leave with pay each fiscal year. Hours granted to a new employee are pro-rated based on hire date within the fiscal year. Full-time, regular-status employees hired in the months of July – October receive 24 hours of personal business leave for the first fiscal year, November – February hires receive 16 hours, and March – June hires receive 8 hours. The agency pro-rates the amount of leave for part-time regular-status employees.

Unused personal business time expires on June 30 of each fiscal year and is not compensable in pay upon separation from service. With the supervisor's approval, an employee may use personal business leave for any purpose. An employee is also eligible to use personal business leave for any absence qualifying under state or federal family and medical leave laws.

Bereavement Leave

A full-time employee may request up to 24 hours of paid bereavement leave per occurrence to discharge customary obligations when a family member dies (pro-rated for part-time employees). "Family member" means the employee's spouse or registered domestic partner and the following for the employee and his or her spouse or registered domestic partner:

- Parent (includes one who stood in loco parentis (in place of a parent) when the employee was a child)
- Child (and the child's spouse) (includes a child for whom the employee stood in loco parentis)
- Sibling (and sibling's spouse)
- Grandparent
- Grandchild

- Aunt, uncle, niece and nephew
- The above include step, adoptive and foster
- Members of the immediate household

The employee may use this leave intermittently or in a block of time. The agency will review the use of intermittent leave without pay and the use of leave under this section on a case-by-case basis in coordination with Human Resources.

"Customary obligations" is a term that means making funeral arrangements, meeting with representatives of a mortuary or funeral service, buying items for a funeral service, and attending the funeral and burial. "Customary obligations" does not include visiting relatives, handling estate issues, selling property, etc.

An employee may request bereavement leave once per occurrence (i.e., one leave request for any single occurrence of death). If more than one death occurs in a family at the same time, the agency will allow only one 24-hour entitlement. If an employee needs additional leave, they may ask to use vacation, sick, personal business leave, compensatory time, or leave without pay. Refer to the applicable leave policies for further information that applies to such circumstances.

An OFLA-eligible employee may take up to two weeks of leave to deal with the death of a covered family member, including grieving, attending the funeral or alternative to a funeral, and making arrangements necessitated by the family member's death. Bereavement leave under OFLA runs concurrently with paid bereavement leave (see above) until paid bereavement leave is exhausted; then other available paid leave (e.g., vacation, personal leave) would be used. If other paid leave is exhausted, the remainder of the two weeks would be leave without pay.

Job Interview and Testing Leave

Management may grant a reasonable amount of time for an Oregon state government job interview or test.

Pre-Retirement Planning Leave

Management may grant up to 28 hours of pre-retirement planning leave with pay within three years of an employee's chosen retirement date for retirement planning activities.

Jury Duty

If called for jury duty, you will be paid by TIC for the time you are required to spend at the courthouse, whether for orientation, waiting for jury selection, or serving on a jury. Code these hours in ADP as "JURY". You must decline the court's per diem rate (usually approximately $10 per day).

Drive your personal vehicle to court and accept the court's mileage and other direct reimbursements. Agency vehicles should not be used except in special circumstances approved by your supervisor; if using an agency vehicle you would not accept the court's mileage reimbursement.

If your day in court is not a full workday, work with your supervisor to determine whether you will return to work or take the rest of the day off. Employees taking the rest of the day off may use accrued vacation or personal business leave or take leave without pay (hourly employees). If

returning to work you will be paid for commute time from the courthouse to your workplace, or to where your agency vehicle is located.

If called for jury duty on a day you would regularly have off, and you would like to take a different day off, talk with your supervisor, who will accommodate your request if coverage is available.

Note: Jury duty hours paid by TIC do not count toward hours worked for overtime calculation.

Leave Without Pay and Paid Leave Accruals

An employee on leave without pay for part of a month accrues pro-rated paid leave benefits based on the number of hours worked or on paid leave; if an employee is on leave without pay for a full month they do not accrue any paid leave benefits for that month. This includes employees who are receiving income replacement benefits from a source other than TIC payroll, such as short- or long- term disability or workers' compensation insurance. This also includes employees on unpaid military leave of absence and unpaid leave under FMLA and/or OFLA.

Hazardous Conditions/Inclement Weather

The Salem TIC office will generally follow the agency closure/curtailment decisions made by the Department of Administrative Services for the Salem area. Salem office employees should rely upon major and local media outlets for information about unplanned curtailment of agency operations or closures. Additional information about curtailments and closures is on the DAS website: http://oregon.gov/DAS/Pages/bldg_close/index.aspx.

As a semi-independent agency, the Executive Director may make a determination regarding closure or curtailment in conditions that would interfere with the safety and health of employees in emergency, hazardous or inclement weather conditions.

Any rest area closures will be decided on a case-by-case basis by the Rest Area Program Administrator in consultation with the local Rest Area Supervisor.

When the agency is open, employees are expected to report for work. If an individual employee will be late, is unable to report to work, or needs to leave work before the end of the workday because of inclement weather/hazardous conditions, the employee will notify his or her direct supervisor and use appropriate accrued leave with pay or leave without pay for those absences.

If a regular-status employee reports to work and is directed to leave, the employee is paid Miscellaneous Paid Leave for the remainder of the scheduled shift. Fill-in and temporary employees are paid only for actual time worked.

If the agency opens but then closes later in the day, an hourly regular-status employee who did not report to work or who left work prior to the end of the shift and before the closure will use appropriate accrued paid leave or leave without pay for the day. FLSA-exempt employees who did not report to work use appropriate accrued paid leave or leave without pay prior to closure; then use Miscellaneous Paid Leave for the remainder of their shift after the closure.

If the agency has a delayed opening, an FLSA non-exempt employee may use Miscellaneous Paid Leave for up to one-half of the delay. The amount of MPL may not exceed more than one-half of the employee's regular work shift. The employee uses accrued paid leave or leave without pay for the other half of the delay. FLSA-exempt employees use Miscellaneous Paid Leave for the time between beginning of shift and time agency opens. If employee does not work at all on delayed opening day, employee uses appropriate accrued paid leave or leave without pay.

Sign Program Note: If Sign Program employees are in Salem, but are unable to travel for field work, they will report to the Salem office. If they are already in the field and are prevented from working by inclement weather or other hazardous conditions, they should contact the Sign Program Administrator for instructions.

Temporary Interruption of Work

When the Salem office or a rest area is officially closed, employees do not report to work unless directed to report by the supervisor. This is referred to as a "temporary interruption of employment." In such cases:

1. With prior approval, regular-status hourly employees will work from home or an alternate work location for at least one half of their regular workday. If no work is available or employee is unable to work from home or an alternate work location, the employee uses appropriate accrued paid leave or leave without pay for one half of their shifts. Employee uses Miscellaneous Paid Leave for the remainder (up to one half) of their regular workday, not to exceed 40 hours in a biennium. At the discretion of the agency, the employee may adjust his or her work hours to make up time within the same work week.

2. Salaried employees (FLSA-exempt) receive "Miscellaneous Paid Leave" for periods of less than one full work week. If the closure lasts for the employee's full work week, the employee uses his or her appropriate accrued paid leave or leave without pay.

A temporary interruption of employment caused by curtailment of agency operations or closure is not considered a layoff when the interruption does not exceed 15 calendar days and all employees are returned to work.

Definitions:

- Curtailment: A temporary change in agency operations due to extreme conditions. Curtailment may involve continuing some but not all of the agency's services.
- Closure: A temporary stoppage of agency operations due to extreme conditions.
- Essential personnel: Individuals assigned by the Executive Director or their designee as essential to operations during curtailment or closure.
- Hazardous conditions: Internal or external environmental conditions having natural or manmade causes. Examples include presence of hazardous chemicals, flood, fire, earthquake, tsunami, or contagious illness.
- Inclement weather: Extreme weather conditions that interfere with normal agency operations.

Required Trainings

Required Annual and New Employee Trainings

Regular employees are required to complete several trainings annually. Employees will receive training reminders from HR and report completion dates to HR. New employees will be given instructions for setting up a Workday Learning account and accessing the trainings available in the Workday Learning System. Fill-in and temporary staff are required to view TIC's Respectful Workplace videos within 30 days of hire. Supervisors of new rest area employees record the training date on the Orientation & Onboarding Checklist and submit it to HR.

First Aid, CPR & Bloodborne Pathogens

All agency field staff are required to have valid, agency-accepted certification in First Aid and CPR. Rest Area staff are also required to be certified in bloodborne pathogen training. Bloodborne pathogens are pathogenic micro-organisms that are present in human blood and can cause disease in humans. These pathogens include, but are not limited to, hepatitis B virus (HBV) and human immunodeficiency virus (HIV).

First Aid/CPR Training

All field staff are required to obtain and maintain a valid Red Cross Approved First Aid and CPR certification. This applies to regular-status, fill-in and temporary employees in rest areas. Because this certification is required by Oregon OSHA, employees failing to timely obtain and maintain certification may be subject to suspension from duties and disciplinary action.

Regular-Status Employees

Regular-status employees must obtain certification within one month of their initial hire date, unless a deferral is granted by Rest Area Program or Sign Program administration (as applicable) for scheduling reasons. You will work with your supervisor to schedule your training. If outside of your regular work hours, you will be paid your regular pay for time spent in this training. If the selected course includes an online component, that will be done during work hours, on agency computers. For the in-person portions of classes, you will drive your agency vehicle (if assigned) or receive mileage reimbursement at the regular agency rate if you do not have a vehicle assigned.

Fill-In and Temporary-Status Employees

Fill-in and temporary-status employees must obtain certification within three months of their initial hire date, unless a deferral is granted by Rest Area Program administration. You will work with your supervisor to schedule your training and you will be paid your regular pay for time

spent in this training. If the selected course includes an online component, that will be done during work hours on agency computers as scheduled by your supervisor. Fill-in and temporary employees are not eligible to receive mileage reimbursement for certification classes.

Safety

Employees are required to observe all OSHA safety requirements and regulations. The TIC Safety Committee has more information, and all OSHA publications can be found at: http://osha.oregon.gov/pubs/Pages/index.aspx

Employees are to report all accidents, injuries, potential safety hazards, safety suggestions and health and safety related issues immediately to a supervisor or to a Safety Committee member. If you or another employee is injured, contact your supervisor or a senior manager immediately. Seek help from outside emergency response agencies if needed.

As soon as possible after an injury, the employee must complete an Employee Report of Accident form, even if the injury does not require medical treatment. The employee's supervisor must complete a Supervisor Report of Accident form. These are done in case medical treatment is needed later and to ensure that any safety hazards are corrected. You must also complete an Employee's Claim for Workers' Compensation Benefits form if you have an injury that requires medical attention. The federal Occupational Safety and Health Act (OSHA) requires the agency to keep records of all accidents and illnesses that occur on the job. OSHA also provides for your right to know about health hazards that might be present on the job.

The state Workers' Compensation Act requires that TIC report any injury occurring within or caused by the workplace. If you do not report an injury, you may jeopardize your right to collect workers' compensation payouts and health benefits. Please contact Human Resources or a Safety Committee representative with any questions.

Safety Committee

It is the policy of TIC to establish and maintain a safety committee in compliance with ORS 654.176 and OAR 437-001-0765 to improve and promote the occupational safety and health of personnel at each worksite.

TIC is firmly committed to protecting the safety, well-being, and health of all TIC personnel. In keeping with this commitment, TIC recognizes that a safety committee plays an important role in accident prevention by helping to find and eliminate hazards before they cause accidents or injuries. Employee involvement in such a committee contributes significantly to a healthier and safer work environment.

Committee Purpose and Authority

The purpose of the safety committee is to bring individuals at all levels, and representing all TIC locations, together to promote safety and health in the workplace. The safety committee has the

authority to make recommendations on ways to improve and promote the safety and health of TIC personnel at any or all work sites.

Committee Membership

Committee Size: The committee must have at least one representative for each work location, with a minimum membership of at least four members if there are more than 20 employees of TIC, and at least two members if there are less than 20, but more than 10, employees of TIC.

Committee Composition: The committee will be composed of at least an equal number of employer-selected and employee-selected representatives or volunteers and must have a majority of non-management members. If the parties agree, the committee may have more employee-selected or volunteer members. A supervisor may serve as an employee-selected representative if so chosen.

Membership Terms: Committee members must serve a minimum term of one year, when possible. Members may be reappointed or continue to volunteer indefinitely.

Compensation: Members must be compensated for committee meetings as they would be for their regular duties.

Committee Chairperson: The committee chairperson will be elected by a majority of committee members.

Committee Meetings

Frequency: Safety committee meetings must be held at least once every month, except for months in which quarterly safety inspections are performed.

Meeting Minutes:

- The committee chairperson must ensure written minutes of each safety committee meeting are prepared. Written records must include the following:
  - Names of attendees;
  - Meeting date;
  - All safety and health issues discussed, including tools, equipment, work environment, and work-practice hazards;
  - Recommendations for corrective action and a reasonable date by which management agrees to respond;
  - Person responsible for follow-up on any recommended corrective action; and
  - All reports, evaluations, and recommendations made by the committee.

- The committee chairperson must ensure copies of the minutes are distributed to committee members and management.
- The committee chairperson and members must ensure that copies of the minutes of the last meeting held are posted in a location readily accessible to all affected TIC personnel at each work site.
- Management must retain a copy of the minutes of each meeting for a period of three years, available for inspection by representatives of OR-OSHA.

Committee Responsibilities

- Train all committee members in the principles of accident and incident investigation and hazard identification.
- Establish procedures for conducting workplace safety and health inspections.
- Establish procedures for investigating all safety-related worksite incidents of illness or injury. This may include investigations conducted by TIC personnel other than those on the safety committee.
- Establish procedures for reviewing inspection reports and for making recommendations to management.
- Evaluate all accident and incident investigations and make recommendations on ways to prevent similar events from occurring.
- Establish a system that allows TIC personnel an opportunity to report hazards and make safety- and health-related suggestions.
- Establish a system for reviewing past recommendations that have not been acted upon and record the reason(s) why no action has been taken.
- Evaluate work-site accountability systems for safety and health and offer suggestions and recommendations for improvement.

Use of Publicly Owned Equipment

Definitions

De Minimis Additional Cost.....The equipment use results in:

(a) no additional tangible cost, or

(b) a cost for which a compensable rate is not practical to set.

Economic Benefit.....ORS 244.040(1) prohibits using one's official position or office for personal financial gain or cost avoidance, such as reducing personal costs by purchasing goods or services at a "state rate" or using publicly owned equipment instead of personal equipment.

Improper Use .....Illegal, unethical, inappropriate, or unauthorized use of publicly owned equipment.

Personal Use.....Using equipment for purposes other than authorized TIC work.

Publicly Owned Equipment .....Any and all publicly owned property and other resources. This includes vehicles, equipment, workspace, systems, services, and supplies provided for work purposes.

Reimbursement Cost.....Tangible cost to the agency that an employee may reimburse in accordance with TIC policy (such as for making a personal photocopy or driving a work vehicle a small additional distance for lunch). The reimbursement rate must not be so low as to result in economic benefit, and use must be limited to occasional and appropriate use at low volume.

Work Time .....For purposes of this policy, work time is defined as follows:

- For overtime-eligible employees, work time is the individual's designated paid hours of work, excluding paid break time, unpaid mealtime, and approved leave time.
- For overtime-exempt employees, work time usually means normal TIC public business hours of operation or the individual's designated work hours, if different, excluding paid break time, unpaid mealtime, and approved leave time.

It is the policy of TIC to comply with all statutory and ethical standards of use of publicly owned equipment, and to provide for allowable personal use on a limited and defined basis.

TIC provides publicly owned equipment for official business use. State law defines ethical and appropriate use. In addition, TIC must keep systems and internal controls secure and provide for the productivity of the workforce. It is therefore TIC's general policy to use publicly owned equipment for business purposes only, and only in a cost-effective manner.

At the same time, TIC provides a supportive work environment for our employees and recognizes that situations exist where limited personal use is allowable and appropriate.

Allowable Personal Use

Personal use of publicly owned equipment is allowed during non-work time only if ***ALL*** of the following conditions are clearly met:

- The use is not improper (see below);
- The use does not result in economic benefit;
- The use results in no cost, or de minimis additional cost (excluding reimbursement cost) to TIC; and
- The use is minimal and insignificant in terms of time or quantity.

Improper Use

Improper use at any time (work time or non-work time) includes:

- Violating any law or TIC policy or other applicable State of Oregon policy;
- Conducting any illegal activity or unlawful communication;
- Use for economic benefit (including operating or supporting a personal business);
- Revealing or publicizing confidential information;
- Representing personal opinions as those of TIC;
- Exposing TIC to unnecessary risk or liability of any kind;
- Personal, non-work-related publishing or posting to internet-based media;
- Creating, downloading, storing, copying, or transmitting any unprofessional, false, indecent, lewd, tasteless, or discriminatory materials (unless there is a legitimate business requirement);
- Creating, downloading, storing, copying, or transmitting any pornographic, sexually explicit, or sexually oriented materials (unless there is a legitimate business requirement);
- Gambling (including legal gambling), placing a wager of any kind, or playing games of chance;
- Playing computer games;
- Causing congestion, overload, or disruption of service to any TIC system or equipment;
- Using file sharing services;

- Uploading or downloading files in any manner in violation of copyright;
- Personal lobbying; soliciting; recruiting; or selling or persuading for or against any commercial or noncommercial venture, product, organization, religion, or personal cause ***except*** for authorized charitable drives or in space designated for personal use (such as an employee bulletin board, break room, etc.) ***and*** where participating is clearly voluntary.
- Use that, in any way, results in an appearance of impropriety or discredit to the agency.

This list is intended to provide examples of improper use; it is not exhaustive or complete.

Privacy Expectations

Use of equipment, particularly computers, cell phones, and networks, is subject to monitoring and audit. Any file or record, including electronic, associated with use of publicly owned equipment is subject to public records law and may be disclosable. This policy explicitly denies any expectation of privacy by any user for business or personal use; however, TIC will preserve confidentiality as required by law.

Authorized TIC personnel may access or inspect any publicly owned equipment (or space) and may remove an individual's access to publicly owned equipment (or space) for administrative or operational reasons, with or without advance notice to the user.

Violation

Use of publicly owned equipment is a privilege, not a right. Any employee of TIC who violates this policy is subject to appropriate sanctions including loss of use or limits on use of equipment (which may lead to termination for inability to perform the essential functions of their position) as well as disciplinary action, up to and including termination of employment.

Use of Agency Equipment and Vehicles

You may not use agency property for personal purposes. Removal of any agency property from TIC locations requires prior approval or direction from your supervisor. When using TIC property, including computer equipment and electronics, tools and vehicles, you must exercise care, perform required maintenance, and follow all operating instructions, safety standards and guidelines. Careless or intentional misuse of equipment may result in disciplinary action including discharge, depending on the severity of the incident. Agency vehicles should be kept as clean and tidy as feasible, as they represent the agency to the public.

Notify a supervisor of any equipment or machine that appears to be damaged, defective or in need of repair. This prompt reporting could prevent the equipment's deterioration and help prevent injury to you or others. If you see a dangerous situation, immediately report it to your supervisor or the Safety Committee.

Use of Vehicles

Employees who operate a motor vehicle on State business must have a current valid motor vehicle operator's license and a satisfactory driving record or verify a suitable alternative means

of transportation. An employee's driving record will be checked before permission is given to drive on TIC business, including travel to training, even if you are using your personal vehicle. In addition, you will be required to certify annually that you have a valid driver's license, and to list any driving violations you have received over the past year.

In most cases, State-owned, or rental, vehicles are available to employees for work-related travel, and they are the recommended source of transportation. Obtain your supervisor's approval and follow State procedures if you need to reserve a vehicle.

Use of a personal vehicle for travel on TIC business must be approved in advance by your supervisor. Mileage for approved travel will be reimbursed at the current IRS mileage rate. Personal use of an agency assigned vehicle is a taxable fringe benefit and commuting to your regular work location is considered personal mileage. According to the IRS, the employee will be taxed on commuting miles in an agency assigned vehicle when the "transportation is between your home and your main or regular place of work". If you are assigned to multiple locations, then all locations within your work group are considered your regular place of work. If you are required to travel to a work location that is not in your work group, then the miles driven are logged as business miles.

Whether driving a State-owned, rental or personal vehicle on TIC business, remember that your driving reflects on all State employees. You must comply with all applicable laws, rules, policies and procedures. You must avoid distractions and follow safe driving practices. Failure to comply with laws, rules, policies and procedures could lead to loss of driving privileges for TIC business. Law violations and citizen complaints are usually reported to the Department of Administrative Services, Risk Management Division, which in turn reports to TIC's Executive Director, who will review complaints about your driving. You are personally responsible for any traffic and parking citations received.

You must immediately, but no later than the end of the day, report to your supervisor any driving incidents occurring during work hours. This applies even if you are using your personal vehicle for work-related travel.

Insurance Coverage

Personal belongings damaged in a vehicle incident are not insured by TIC or the State. They may be covered under your own homeowner, renter or auto insurance.

If using your personal vehicle for work-related travel, your personal insurance will apply if there is an accident or damage to your vehicle. Damage or loss to your personal vehicle is not covered by State insurance. Please note that using your personal vehicle for work-related travel may affect your insurance coverage.

Information on State insurance coverage for state-owned vehicles or losses to third parties is available upon request.

Additional Information

TIC abides by the State of Oregon's rules for vehicle use. For additional information, see Oregon Secretary of State Administrative Rules, Department of Administrative Services, Chapter 125, Division 155, "State Vehicle Use and Access".

Agency Communications, Electronics and Computer Systems

Agency office, communications and computer systems and the information contained in them are the property of the agency, subject to full access and control by the agency. Employees should have no expectation of privacy when using agency facilities, vehicles or equipment of any kind, or in the storing or transmission of information using agency resources.

Software Policies

You may not duplicate any licensed software or related documentation for use, either on agency premises or elsewhere, unless expressly authorized to do so in writing by the licensor. You may not provide licensed software to anyone outside the agency. Illegal duplication of software may result in the filing of criminal copyright charges and can subject both the employee and the agency to liabilities.

All software must be approved by senior management in consultation with the System Analyst. Upon delivery, software must be registered and properly installed by the System Analyst/Network Administrator or their designee.

Internet Use

The agency is subject to the requirements of all applicable State of Oregon laws, policies and executive orders related to computer systems and information security. Internet use increases the risk of exposing the agency's information assets to security breaches. The agency can accept this risk only for acceptable business use. Business use includes accessing information related to employment with the State, including PEBB, PERS, EAP, Oregon Savings Growth Plan, DAS management and employee information, authorized work-related social media, and weather conditions. This includes streaming video/audio for business purposes such as training or legislative hearings.

Please respect the agency's bandwidth, and don't stream music or videos not related to your work. Employees may access personal email accounts on agency assets providing this does not cause congestion, delay or disruption of service to any agency system or equipment (i.e., no mass mailings), the employee does not represent him or herself as acting in an official capacity, and the messages do not contain partisan political messages.

Employees are allowed limited, incidental and lawful personal use of agency computers so long as there is no cost or de minimis cost to the agency and that use does not violate the following guidelines:

- Do not click on links that might expose the agency to malware, viruses, spam or other attacks on agency systems.
- Use of agency computing resources are not private, and all emails and other communications produced on agency devices are subject to public information request laws and may be disclosed.
- The following activities are strictly prohibited on any agency-controlled computer or device:
  - Gambling.
  - Visiting or downloading material from pornographic web sites. If you believe you have received inappropriate material to your agency email account or equipment through no fault of your own, it is your responsibility to notify your supervisor and IT immediately.

- Lobbying the legislature or any government entity, campaigning or other political activity.
- Online stock trading activities, real estate actions, or other activities connected with any type of outside work or commercial transaction.
- Endorsements of any products, services, businesses or organizations.
- Fundraising for external organizations or purposes.
- Any type of continuous audio or video streaming from commercial, private, news or financial organization that is not related to your employment.

Violation of this policy can result in limitation, suspension or revocation of access to agency information assets and can lead to other disciplinary action up to and including dismissal from service. Knowingly violating this policy may also constitute "computer crime" under Oregon and federal law.

Use of Cell Phones and Mobile Communication Devices (MCDs)

Agency employees may use agency telephones only as authorized. They may use phones for personal calls and texts when necessary, as long as there are no additional costs to the agency. Calls may not adversely affect the performance of official duties or the employee's work performance and must be of a minimal duration and frequency outside of authorized break and meal periods.

Cell phones and radios are assigned to individual employees in carrying out their work while conducting agency business. Radios are exclusively for official duties. Cell phones are primarily for business, but may be used for occasional personal use, with the understanding that there is no expectation of privacy for calls or texts, which are subject to public records laws and policies. Monthly charges will be monitored for excessive or irregular use, including when talk minutes, data use or text limits are exceeded.

Hand-held use of any cell phone or other electronic device while driving or stopped in traffic is illegal in Oregon. Further, employees should use their phones in hands-free mode judiciously. Safety is more important than any call; if you must make or receive a call, find a safe place to pull over.

Separation from Service

At the time of separation from employment with the agency for any reason, all assigned items including equipment, uniforms or logo wear, phones, computers, credit cards and keys must be accounted for and returned to TIC.

Attachment to Employee Handbook – Supervisory Information

The following pages provide information for supervisors and are not a part of the Employee Handbook given to each new employee.

This information includes:

Higher Standard – Safe and Respectful Workplaces

Documenting Employee Performance

Monitoring Time Off Balances

Standards for Timecard Review

Supervising Hourly Employees

Safe and Respectful Workplaces

Higher Standard: Managers and supervisors are held to a higher standard and are expected to be proactive in creating and maintaining a discrimination and harassment free workplace. Managers and supervisors must exercise appropriate measures to prevent and promptly correct any discrimination, workplace harassment or sexual harassment they know about or should know about.

The rest of this section is also in the handbook for all employees:

Diversity/Affirmative Action/Equal Opportunity: TIC is committed to a discrimination- and harassment-free work environment. The agency has a complete Affirmative Action Plan as required of State of Oregon Executive Branch agencies. TIC is an equal opportunity employer that recruits candidates for employment without regard to race, color, national origin, sexual orientation, pregnancy, religion, age, disability, marital status, use of protected family medical or military leave, association with anyone in a protected class defined by applicable law or any other consideration than ability to perform the functions of the position. Women, minorities, disabled individuals and veterans are encouraged to apply.

Maintaining a Professional and Respectful Workplace: Employees at all levels of the agency must foster an environment that encourages professionalism and discourages disrespectful behavior. All employees must behave respectfully and professionally, and not engage in inappropriate workplace behavior, or any form of discrimination, workplace harassment or intimidation, sexual assault or sexual harassment.

Examples of **inappropriate workplace behavior** include (but are not limited to): comments, actions or behaviors that embarrass, humiliate, intimidate, disparage, demean or show disrespect for another employee, manager, subordinate, volunteer, customer, contractor or visitor.

Inappropriate workplace behavior does not include actions of performance management such as supervisory instructions, expectations or feedback, or administration of disciplinary actions or investigatory meetings. Inappropriate workplace behavior does not include assigned, requested or unsolicited constructive peer feedback on projects or work.

Discrimination is defined as 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. *(See also Workplace Harassment.)*

Protected Class Under Federal Law: Race; color; national origin; sex (includes pregnancy-related conditions); religion; age (40 and older); disability; use of FMLA; use of military leave; associating with a protected class; opposing unlawful employment practices; filing a complaint or testifying about violations or possible violations; and any other protected class as defined by federal law.

Protected Class Under Oregon Law: All federally protected classes, plus age (18 and older); physical or mental disability; injured worker; use of OFLA; marital status; family relationship;

sexual orientation; whistleblower; expunged juvenile record; and any other protected class as defined by state law.

Workplace Harassment is conduct that constitutes discrimination prohibited by Oregon laws.

Workplace Intimidation is unwelcome, unwanted or offensive conduct based on or because of an employee's protected class status.

Workplace intimidation 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 intimidation include – but are not limited to – derogatory remarks, slurs and jokes about a person's protected class status.

Sexual harassment is unwelcome, unwanted or offensive sexual advances, requests for sexual favors and other verbal or physical conduct of a sexual nature when submission to such conduct is made either explicitly or implicitly the basis for any employment decision, including the granting of leave requests, promotion, favorable performance appraisals, etc. It also includes unwelcome, unwanted or offensive conduct that has the purpose or effect of unreasonably interfering with an individual's work performance or by creating an intimidating, hostile or offensive work 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 assault is unwanted conduct of a sexual nature that is inflicted upon a person or compelled through physical force, manipulation, threat or intimidation; or a sexual offense has been threatened or committed as described in ORS 163.305 to 163.467 or 163.525.

A report of discrimination, workplace harassment or intimidation, sexual assault or sexual harassment is considered a complaint. A complaint does not have to be made by the person subjected to harassment or discrimination; it could be made by a person affected by the offensive conduct.

Complaints

Employees are expected to report inappropriate workplace behavior they experience or observe. Anyone who is subject to or aware of what he or she believes to be discrimination, workplace harassment or intimidation, sexual assault or sexual harassment should report that behavior to TIC's Designated Individual (HR Manager) or Alternate Designated Individual (Executive Director). If the subject of the complaint is the Executive Director, the employee should report to the Chair of the Travel Information Council.

Those individuals making a report of what they believe to be discrimination, workplace harassment or intimidation, sexual assault or sexual harassment may also report that behavior to their immediate supervisor or another manager. A manager or supervisor receiving a complaint

must promptly notify the HR Manager or the Executive Director (if the Executive Director is the subject of the complaint, the TIC Chair should be notified).

A complaint may be made orally or in writing, and should contain all of the following:

a) The name of the complainant and the name of the person that was subjected to the discrimination, workplace harassment or intimidation, sexual assault or sexual harassment.
b) The names of all parties involved, including witnesses.
c) A specific and detailed description of the conduct or action the employee believes constitutes discrimination, workplace harassment or intimidation, sexual assault or sexual harassment.
d) The date or time period in which the alleged conduct occurred.
e) A description of the desired remedy.

All complaints will be taken seriously, and an investigation will be promptly initiated and conducted by the agency or its designee. A complaint should be made within five (5) years of the occurrence; however, failure to report within five years does not remove the agency's responsibility for coordinating and conducting an investigation. To the extent possible, complaints will be dealt with discreetly and confidentially. All parties are expected to cooperate with the investigation and keep information regarding the investigation confidential. Prompt and appropriate action will be taken if the investigation determines that policy has been violated. The complainant and the accused will be informed in general terms of the outcome of the investigation, but not of specific personnel actions regarding anyone but themselves.

Nothing in this policy prevents any person from filing a formal complaint with the Oregon Bureau of Labor and Industries (BOLI) or the Equal Employment Opportunity Commission (EEOC) or from seeking remedy under any other available law, whether civil or criminal.

This policy prohibits retaliation against employees who file a complaint, participate in an investigation or report observing discrimination, workplace harassment or intimidation, sexual assault or sexual harassment. Employees who believe they have been retaliated against for these reasons should report to the employee's supervisor, another manager, Human Resources or the Executive Director as soon as possible. Conduct in violation of policy will not be tolerated. Employees engaging in conduct in violation of policy may be subject to disciplinary action up to and including dismissal.

Documenting Employee Performance by Supervisors

An important part of supervising employees is the work you do to document employee performance all year long. It is challenging when you are already busy with day-to-day work and emergencies. However, it will always be an important part of our jobs as supervisors at TIC to take the time to note and document the excellent, good, bad and questionable that happened with your staff...daily if possible.

As we do our work under a merit-based pay system, we have an even greater need for documentation of performance to ensure all employees are rated equitably about their performance across the entire year. There will be individuals who will not receive a merit increase. We need to be able to explain our reasons, including why the agency found that a given employee's performance was not at the "better than average" or "exceptional" level. Be sure to write down the excellent actions of your employees as well as any problems...the times they went "above and beyond," your appreciation for their reliability and willingness to take on new challenges...all of these things will lead to effective and fair performance management.

Documentation builds our credibility as supervisors. We must be especially vigilant in writing down problems as soon as they happen. It presents a real risk to the agency if management cannot document and defend its actions against tort claims or other actions by former employees if we must separate someone from the agency for cause. Even as an "at-will employer," we may need to document the reasons an individual should not receive unemployment or other compensation. Documentation also helps ensure equitable treatment across the agency.

Following is an excerpt from BOLI's *Documentation, Discipline and Discharge Manual* that is an excellent guide for what to document, when, and how:

"Documentation of personnel matters is often one of management's least favorite activities, but it is critical for a number of reasons and should be a part of every supervisor's daily to-do list. Problems often arise when supervisors choose to wait and allow an employee's performance issues to accumulate. The employee may be unaware that his or her performance is not meeting expectations and, without guidance from management or other sources, may be heading further and further off target.

Although at-will employers aren't obligated to give ongoing feedback to employees, supervisors should still strive to do so as a matter effective management and of fairness. It's never good management practice to deliver a poor performance appraisal after six months or one year, when the employee didn't understand the expectations or didn't know his or her performance was unsatisfactory.

Also, supervisors who aren't contemporaneously providing feedback, counseling employees, and documenting performance issues will have a much more difficult time reconstructing events later, and the documentation will not be as accurate or helpful as if it was completed when events were still fresh in the employer's (and employee's) mind. The purposes of effective documentation are twofold: to develop employee potential, fixing problems as they arise, and building a provable case to defend a termination if things don't improve.

When to document

- Every time you meet with an employee for significant work-related reasons;
- Every time you discipline an employee (even if you merely give a verbal warning);
- Every time a personnel action is taken;
- Every time you discuss policies and procedures;
- Every time an employee has a grievance;
- Every time an investigation is conducted, even if the complaint is ultimately unfounded;
- Every time significant events or discussions occur.

How to document

- Document in a neutral, objective fashion;
- Use specific language;
- Document employees consistently in terms of detail, tone, and frequency;
- Document primarily facts (who, what, where, why, when and how) more than just opinions.

Documentation should be similar to a newspaper article as opposed to an editorial. For example, if an employee has used objectionable language in the workplace, quote that actual language rather than writing that the employee was rude and vulgar or used profanity.

- Document the event as soon as possible, so that details are fresh in your mind;
- Identify any behavior or conduct that must change and reiterate the standard to be met;
- If change is needed, identify the timeline (immediately is an option);
- If termination is imminent unless dramatic improvement happens, state that is the case.

To comply with Oregon and federal disability laws, keep any medical information obtained in a separate, confidential medical file and make sure the reason for any discipline is unrelated to the employee's protected class status, such as a disability, workers' compensation claim or use of family leave." *[**NOTE:** TIC supervisors must not keep any medical information locally. Send it to Human Resources for the employee's confidential file in HR.]*

Supervisor's Daily Report: As a supervisor, you are expected to email a daily report to the email address provided, answering the following three questions:

1. Who was scheduled to work since your last report, did they complete their assigned duties, and what is your evaluation of their work?
2. Did anyone do something out of the ordinary, positive or negative?
3. As the supervisor, is there anything else of note for your daily log?

These emails will be in your "Sent Items" folders for your own reference and will be readable by your supervisor and available to HR in the event documentation is needed. Do not use these emails to report specific issues that require separate notice but do note those unusual events in your daily report.

Documenting employee performance will help you build a solid supervisory file. This can be a time-challenging work habit to develop, but one that will serve you well in your career as a supervisor.

Management Procedure: Monitoring Time-Off Balances

Purpose of Procedure

This procedure explains ADP's tools to help you monitor the time-off balances for the members of your team. This is a valuable tool set. Agency payroll procedures make individual employees and their managers responsible to monitor time off totals and planning to ensure that employees do not lose available time off. Accounting and human resources staff will not send notifications of time that is about to be lost.

Log In to ADP

Once you have logged into ADP, you can review your team member's time off balances by clicking on the "My Team" tab at the top of the screen. This opens a box with choices. Next click on "Time Off." Then on the right side of the box click on "Time Off Balances."

This opens a screen that displays the time off balances for the employee that you have selected.

The system will automatically show the balances as of the current day. To change this, click on the calendar in the date box next to "Balances As Of" and a calendar will open that you can use to select the date you would like to show balances as of.

To look at additional detail of the changes in the employee's balances, click on the "Time Off Policy" listed type that is highlighted in blue. Then click on "Transactions."

As a supervisor, you should review the "Time Off Balances" for your team at least once a month. Monthly pay stubs also list an employee's time-off balances as of the pay date; this ensures the employee is aware of what time they have available and when they are at risk of losing leave. For more information, refer to OTE's "Vacation & Special Leaves" policy and procedure.

Type of leave	Maximum accrual	Date of loss
Sick	No maximum	Banked for two years after separation from State of Oregon service, then forfeited
Vacation	350	Any hours over 350 at the end of the pay period
Personal business	24 hours	June 30 of each year
Administrative leave	40 hours, when granted by the Executive Director	June 30 of each year

Leave Without Pay (LWOP)

The supervisor of an employee who requests or who may be moving into "Leave Without Pay" status must immediately contact Human Resources for guidance to ensure proper reporting, recording of any protected leave situations, and payroll processing accuracy.

Standards for Timecard Review

Supervisors must review all entries on the employee's timecard. The review should consider each time element reported as well as considering time elements not reported. If errors are detected on the timecard, the supervisor must coordinate with the employee to correct the timecard. The supervisory review should consider:

Worked Hours: Verify the time that the employee is actually on the job has been accurately entered for non-exempt employees, including the appropriate departmental coding. In a standard professional work week, full-time exempt employees may choose to enter into their timecard either the actual hours worked and all leave time totaling a minimum of 40 hours for the week, or the standard eight hours per day, 40 hours per week schedule of worked and leave time, including appropriate departmental coding. [**Note:** FLSA-exempt employees who work a holiday must record the actual hours worked that day.]

Vacation: Review the timecard for the presence or absence of vacation leave hours consistent with actual hours the employee may have taken or neglected to record. Review to ensure the time off was approved and for consistency with agency vacation leave policies and practices.

Sick Leave: Review the timecard for the presence or absence of sick leave hours consistent with actual hours the employee may have taken or neglected to record. Review this time to ensure consistency with agency sick leave policies and practices. (For protected medical or family leave see: Other Situations, below).

Holidays: The time entry system does not automatically display holiday leave based on the agency's adopted holiday schedule. Review entries to ensure that those employees authorized to work on a holiday have accurately recorded their time, and that no employees have reported holiday time worked without supervisory approval. An FLSA-exempt employee who is scheduled to work a holiday must have supervisory approval. Additional information is detailed in the agency Holiday Leave policy regarding legal holidays and other related days of leave, including the appropriate recording of holiday leave time off and worked time in the employee timecard.

Special Days of Leave: When awarded, special days of leave are generally limited to a specific time period. Review this time to ensure consistency with agency leave policies and practices.

Personal Business Leave: Review the timecard for the presence or absence of these leave hours consistent with actual hours the employee may have taken or neglected to record. Review this time to ensure consistency with agency leave policies and practices.

Administrative Leave: When awarded to the employee, Administrative Leave requires supervisor approval for use. Review this time for the presence or absence of these hours consistent with actual hours the employee may have taken or neglected to record.

Leave Without Pay: Any hours that an employee does not work that cannot be supported by sick or vacation leave balances or other available leave time becomes leave without pay and may reduce an employee's pay and benefits. Review this time to ensure the presence of these hours when applicable, and consistency with the agency's leave without pay policies and practices. Report all occurrences of leave without pay to Human Resources as soon as possible.

Overtime: All overtime for FLSA-eligible employees must be pre-authorized by the supervisor.

Review the timecard for the presence or absence of these hours to ensure consistency with agency overtime practices and policies.

Other Situations: Supervisors should coordinate with Human Resources for assistance and clarification of the appropriate use of accrued leave and pay codes in situations or occurrences of bereavement leave, military leave, jury duty, job interview leave, retirement planning, workers' compensation claims, family and medical leave (FMLA/OFLA), employees returning to work on modified duty, employees whose hours are supported under a return to work agreement, situations of paid leave pending an investigation, or other unusual situations.

Timecard review should include pay codes and hours, and special situations that require coordination with Human Resources. Protected family and medical leaves must be accurately coded on the timecard. When in doubt, consult with Human Resources in advance.

Supervising Hourly Employees: On-Call Status and Travel Time

"Work time" is all time an employee is required to be on the employer's premises, on duty, or at a prescribed work place. It includes all time spent performing a principal job activity or performing an activity preparing an employee for work.

Employees <u>must</u> be compensated for all time worked, whether those hours are authorized or not. It is your responsibility as a supervisor to ensure that your employees do not begin work before their paid start times and do not continue work after their paid time ends. You must not allow employees to remain at work beyond their shifts in any capacity that could be considered work, unless you have approved that time for payment. They cannot "volunteer" the time to continue work "on their own time," even if they want to do so.

As a supervisor, it is your responsibility to ensure that all hourly employees' time worked is accurately listed on the timesheet. The law does not allow informal carrying over of work hours or leave time from one week to another. No exceptions.

On-Call Status: TIC employees can be required as a condition of employment to be in unpaid "on-call" status outside of regular work hours. On-call time is unpaid if the employee is reasonably able to use the time effectively for his or her own purposes, even though the employee's activities or travel may be limited to being available within a specified response time.

As a matter of policy at TIC, on-call hours will be scheduled for the employee. While on call, the employee will be required to carry a cell phone or pager and respond to calls, texts and required emails. On-call status should be structured to ensure the employee has non-on-call time that is fully "off duty."

On-call employees are held responsible for exercising good judgment in determining whether a situation requires immediate attention, referral to another resource, or the involvement of a supervisor.

The on-call employee is paid only for the time spent actually working, including responding to phone calls and texts, answering required emails, and other required work. If the employee is called in, the travel time to the work location will be paid, but not the return trip when off duty. All time worked must be tracked by the cumulative number of minutes for each day. It is reported on the time sheet in $1/10^{th}$ hour increments (6 minutes each) and rounded up to the nearest $1/10^{th}$ hour.

Employees who are neither at work nor on call are <u>not</u> required to carry or answer their cell phones but may choose to do so. There is no prohibition against being available to the employer, but hourly employees may not do unauthorized work during this time. For example, the agency or others may send emails that are not urgent. Unless instructed otherwise, the employee should not respond to emails outside of regular work hours.

Hourly employees who do unapproved agency work – including responding to non-urgent emails – must report that time to the supervisor, enter it in their timesheets and be paid for that time. Failing to do so is essentially fraudulently reporting work hours. Under reporting is as serious as over reporting. In any case, employees may be subject to discipline for working unauthorized time and for insubordination.

In emergencies, an employer may attempt to contact an off-duty employee who is not on call and request that the employee return to work. If the employee is unable or unwilling to return to work before their next scheduled work or on-call period, the employer generally will not compel him or her to do so. However, availability and responsiveness may be considered by the supervisor as a component of the performance evaluation and merit system. Refusing to come to work in an emergency without good reason may result in discipline.

"Volunteer" Status: Employees cannot volunteer to do work for the agency or at the worksite without pay unless all four of the following criteria are met:

- The work must be at the employee's initiative;
- The work must be outside normal or regular work hours;
- The employee must be performing a religious, charitable or other community service without contemplation of payment; and
- The employee must be performing a task outside of the regular job functions performed for TIC.

Volunteer status in the workplace is a complex situation that should be evaluated case-by-case in advance. For example, a Rest Area Specialist may volunteer with a non-profit provider in the coffee program. However, the employee cannot step outside of that volunteer role to do <u>any</u> task he or she would do as part of the job without the permission of the supervisor and going into paid status. Volunteers may not wear the insignia of the agency, present themselves as TIC employees, or answer questions on behalf of the agency.

Travel Time: Employees may be assigned to specific work locations or a grouping of work locations in a region. If the employee regularly works at more than one location and does not have a fixed official work site, commuting time to and from those assigned locations is not paid, even though one of the locations may be a longer commute.

If an employee is assigned to a single work location, the supervisor has the right to direct the employee to work at an alternate location for special one-day assignments. If the employee's travel to the alternate location is directed to occur during the person's work hours, then that travel time is compensated the same as any other work time.

If the supervisor directs the employee to begin his or her work shift at an alternate location, the commuting time will be paid if the distance is more than 30 miles from one of the employee's regular assigned work locations.

All paid travel time must be tracked on the employee's timesheet and approved by the supervisor, and does count toward calculations of overtime.