Construction Contractors Board

Affirmative Action Plan
July 1, 2023 – June 30, 2025

Chris Huntington, Administrator
201 High St. SE Suite 600
PO Box 14140
Salem, Oregon 97301
503-934-2184

CONSTRUCTION CONTRACTORS BOARD
AFFIRMATIVE ACTION PLAN
2023 - 2025 BIENNIUM

LETTER FROM THE ADMINISTRATOR

I. DESCRIPTION OF AGENCY

II. AFFIRMATIVE ACTION PLAN

Oregon
Kate Brown, Governor

Construction Contractors Board
www.oregon.gov/ccb
Mailing Address:
PO Box 14140
Salem, OR 97309-5052
503-378-4621
FAX 503-373-2007

September 19, 2022

Juliet Valdez
Diversity, Equity & Inclusion
Office of Governor Kate Brown
900 Court Street NE, 254
Salem, Oregon 97301

Dear Juliet:

Attached to this letter you will find the 2023-2025 Affirmative Action Plan for the Oregon Construction Contractors Board (CCB). I am pleased with the notable progress the CCB has made over the past two years and I look forward to working with you as the leadership team and I build on that success.

The CCB is a relatively small agency (only 59 permanent FTE) that has historically maintained a very low rate of turnover. Financial difficulties that pre-date the pandemic have placed considerable limits on agency hiring over the last couple years. These financial challenges may continue or worsen as we enter the 2023-2025 biennium and the possibility of an economic recession.

This plan highlights our focus on continuing to build a more diverse network, expand the understanding of and support for diversity at the management and staff level, and allowing our deeper understanding of the importance of diversity to inform our service delivery to diverse populations.

Our goals for the 2023-2025 biennium include the following:

- Expanded training on diversity topics for CCB mangers and regular communication on diversity topics to agency staff.
- Continuing to broaden our network of external relationships that will support and inform agency diversity efforts.
- Build on the agency's deeper understanding of the needs of diverse populations to drive agency enhancements to service delivery to better serve these populations.

Enhancing diversity and building equity is an ongoing effort. CCB maintains a strong commitment to the Oregonians that we serve. We do so without respect to their social, cultural, racial or other status. We believe the values and principles described in these pages form an appropriate framework for building on past success and continuing that work on an ongoing, everyday basis.

Sincerely,

Chris Huntington
Administrator
Construction Contractors Board

I. Agency Description

HISTORY AND AGENCY OVERVIEW

The Construction Contractors Board is a construction regulatory organization tasked with protecting the citizens of Oregon and promoting a positive business climate for construction contractors. The organization was first established by the legislature in 1971 as the Builders Board. At its inception the board addressed only residential construction issues. Commercial contractors were later brought within the board's regulatory purview. Other changes over the past half century, in particular the creation of the board's dispute resolution program, have contributed to the organization's broad consumer protection mission and its success at leveling the playing field for contractor businesses.

Oregon law requires anyone who works for compensation in any construction activity involving improvements to real property to be licensed with the Construction Contractors Board. As of late 2020, this includes nearly 41,000 construction businesses. The CCB licenses all sizes of construction business from large multi-state firms to sole proprietors. The CCB also licenses every type of construction business from the excavators that prepare the soil for the foundation all the way up to the business that installs the roof and literally everything in between.

The CCB is responsible for preventing and resolving construction contracting problems. This is achieved by:

- Equitable application of statewide contractor license requirements;
- Consistent statewide enforcement of license standards;
- Resolution of contractor and homeowner disputes;
- Extensive consumer outreach and contractor education about the board's mission and services.

The following programs contribute to achieving the agency's mission:

Consumer Education and Outreach

The Consumer Education and Outreach section provides helpful information on how to select a licensed contractor, how to avoid common mistakes and how to respond should a dispute arise. The goal is to educate consumers to act knowledgably and confidently when engaging with contractors. Knowledgeable consumers reward qualified and ethical contractors, reinforcing the market for contractors who focus on the consumer. The agency provides consumer outreach and education by maintaining an interactive website with consumer information and history on all 41,000 contractors. The group also develops printed materials, instructional videos, issues news releases and, in most years, attends more than 20 statewide construction trade shows (this was impacted by COVID-19).

Contractor Education

All contractors are required to complete continuing education, though the requirements differ slightly based on the particular endorsement. Topics for continuing education may include courses on construction law changes, industry practices, safety requirements and other material relevant to their particular line of work. All residential contractors are required to take at least one CCB provided course delivered by the contractor education section. Completion of contractor education is required for license renewal every two years. Since the onset of COVID, more courses are being delivered remotely via webinar.

Contractor Licensing

Licensing ensures a measure of contractor financial accountability and redress for consumers of construction services. This allows consumers to know the history of individuals involved in

construction businesses. It also assists the agency in holding business owners accountable for their company's business activity. The licensing section ensures compliance with all of the requirements to obtain a license including complete information on the entity seeking the license, registration with the Secretary of State (if required by law), proof of a surety bond, and proof of liability and property damage insurance. Applicants must also complete pre-license training and examination. The Licensing Section responds to more than 500 phone calls per day and processes approximately 14,000 documents per quarter.

Dispute Resolution Section

The dispute resolution section assists in mediating disputes between homeowners and contractors. When successful, mediation provides a timely and low cost method of resolving construction disputes without costly legal proceedings. It is available to people alleging that contractors have breached a contract or performed improper work. This service employs several alternative dispute resolution techniques to resolve disputes and keep disputes out of the court system. Mediation allows a large portion of disputes to be resolved through voluntary mediation. In the event that a complainant does proceed to court and wins a judgment, the agency can also order payment from the bond if the contractor is unwilling or unable to pay the debt. Failure to pay a construction debt will also lead to sanction.

Field Investigator Section

The Field Investigator Section provides a deterrent to unlicensed construction activity by performing random and assigned unannounced inspections of construction jobsites throughout the state. Investigators determine the CCB license status of all contractors working at a jobsite and assess compliance with other important CCB regulations. The agency will perform approximately 15,000 jobsite inspections in a given year.

Compliance Section

The Compliance Section provides effective deterrent to illegal activity in the construction industry through application of appropriate sanctions and/or threat of sanction. The section enforces laws relating to contractor licensing and business practices by the imposition of formal administrative warnings, civil penalties, probation, and license suspension and revocation. The Compliance program works with field investigators to provide an effective deterrent to unlawful activity in the construction industry. It processes complaints, issues civil penalties, suspends and revokes contractor licenses, and issues formal written administrative warnings.

Mission and Objectives

To protect and serve Oregon consumers, support responsible licensed contractors, and promote a positive business climate.

Construction Contractors Board Administrator

Chris Huntington, Administrator
201 High St. SE
PO Box 14140
Salem, Oregon 97301
503-934-2184

Governor's Policy Advisor

(None Currently Appointed)
Previously – Jennifer Purcell

For issues or questions contact:
Stuty Maskey
503-378-5884

Affirmative Action Representative

Chris Huntington, Administrator
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Human Resource Analyst and Development Coordinator

(Currently Vacant)
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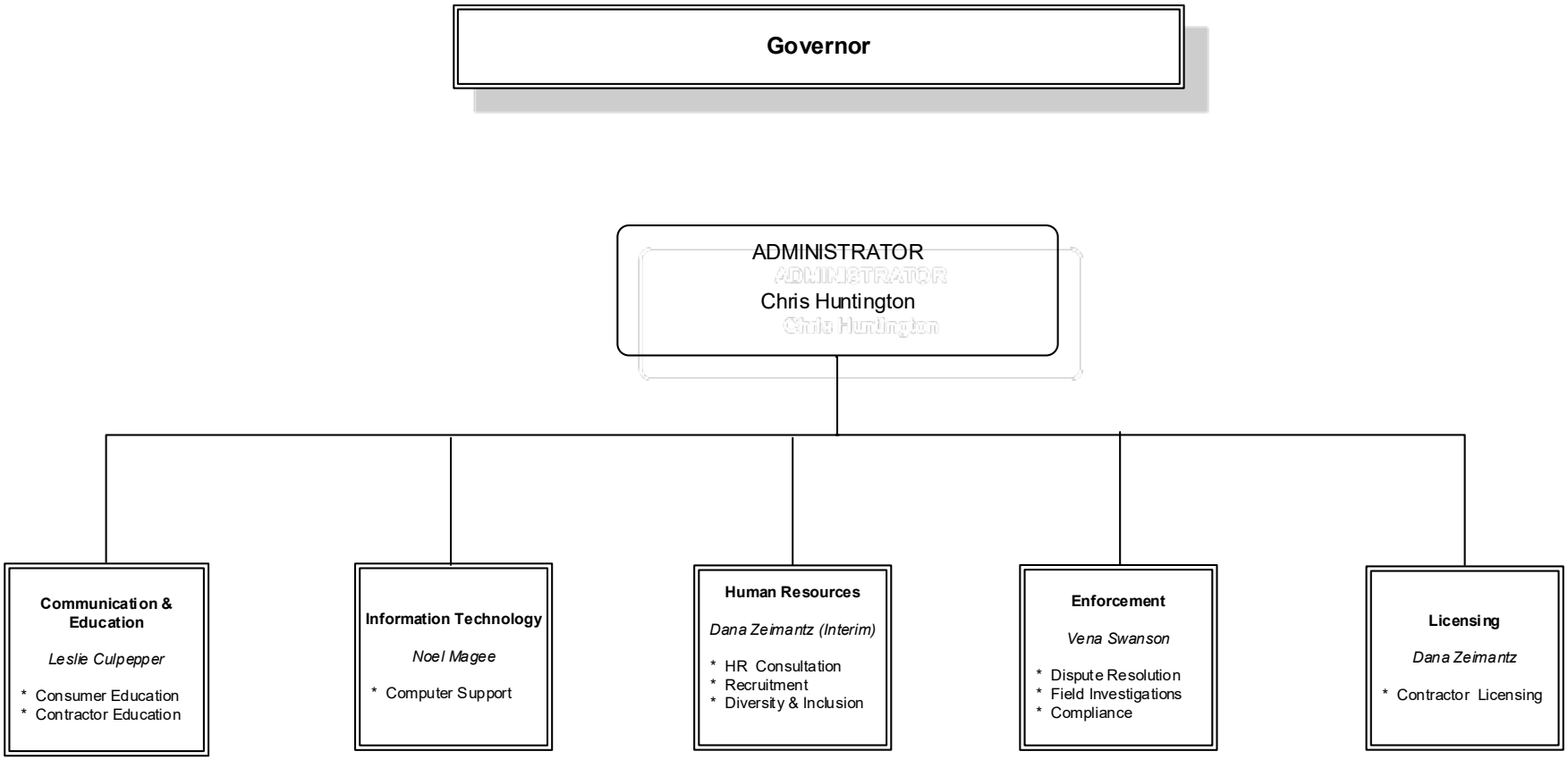
Governor
ADMINISTRATOR
Chris Huntington
Communication & Education
Leslie Culpepper
* Consumer Education
* Contractor Education
Information Technology
Noel Magee
* Computer Support
Human Resources
Dana Zeimantz (Interim)
* HR Consultation
* Recruitment
* Diversity & Inclusion
Enforcement
Vena Swanson
* Dispute Resolution
* Field Investigations
* Compliance
Licensing
Dana Zeimantz
* Contractor Licensing

II. Affirmative Action Plan

Introduction

Beginning in the 2019-2021 biennium and continuing into the 2021-2023 biennium agency efforts to promote diversity through the agency's affirmative action plan have resulted in worthy progress. Agency efforts have focused on two broad categories. First, expanding our outreach and hiring network to include a broader and more diverse population. Second, selecting small but achievable improvements that can be implemented in terms of the services and resources available to underserved populations.

Some of the agency's recent successes include:

- Improved the representation of persons of color (POC) on the board to 20% from effectively 0%.
- Improved the representation of women on the board to 55%.
- Maintained representation of women in management roles at 60% through replacement of several key leadership roles.
- Doubled the representation of persons of color in all staff roles from 6 to 12 or approximately 21%.
- Significantly increased the volume of agency materials regularly made available in Spanish through contract with minority-owned translation vendor.
- Continued pilot program with Clackamas Community College Small Business Development Center to continue to provide unique "Guided Pathway" method of pre-license education for non-English speaking CCB applicants.

These achievements have been made during a time when CCB had imposed significant restrictions on hiring. Since early 2020, approximately 10% of positions were held vacant due to financial constraints. Given CCB's relative size and the financial difficulties the agency has endured, the agency is pleased with the progress.

The challenge the agency faces for 2023-2025 will be weathering the significant likelihood for economic downturn, particularly in the development sector, while also continuing to make tangible contributions in the two broad categories of effort noted above – continuing to expand outreach network and continuing to make improvements in services and resources for underserved populations.

Agency Affirmative Action Policy Statement

The Construction Contractors Board (CCB) is committed to protecting all Oregon consumers and promoting a positive business climate for construction. All Oregonians are provided equal access to CCB programs and the agency does not discriminate on

the basis of race, color, ancestry, national origin, age, marital status, gender, sexual orientation, veteran's status, political or religious affiliation, or physical or mental disability. CCB recognizes that a diverse workforce and diverse representation on the membership of the Governor-appointed board is crucial to serve all Oregonians.

CCB enforces a zero-tolerance policy against any form of discrimination or harassment and has adopted the CCB Affirmative Action Plan as one method of helping to eliminate discrimination on the basis of race, color, religion, sex, national origin, physical or mental disability, age, marital status, sexual orientation, gender identity, trans-gender status, veteran status, or political belief.

Implementation of this plan is the responsibility of the CCB Administrator and the Affirmative Action Representative. For questions about the CCB Affirmative Action Policy Statement, contact the CCB Affirmative Action Representative, Chris Huntington, Oregon Construction Contractors Board, 201 High Street SE, Suite 600, Salem, OR 97301 or P.O. Box 14140, Salem, OR 97309-5052, or chris.huntington@ccb.oregon.gov, or 503-934-2184.

CCB Diversity and Inclusion Statement

The Construction Contractors Board is committed to fostering and preserving a culture of diversity and equity. Our employees are the Agency's most valuable asset and our work is deeply informed by the diversity of the populations that we serve. The Agency's culture, reputation and achievements are the result of the individual differences, life experiences, knowledge, self-expression and capabilities that employees invest in our mission of protecting Oregon consumers and supporting contractors.

CCB embraces employees' differences in age, color, disability, ethnicity, family or marital status, gender identity or expression, language, national origin, physical and mental ability, political affiliation, race, religion, sexual orientation, socio-economic status, veterans status, and other characteristics that make our employees unique.

The agency's commitment to these principles is reflected in our efforts to recruit a diverse workforce and promote development of an equitable work environment. These principles are expected to then inform the work we do on behalf of Oregon consumers and contractors.

Every employee of the Construction Contractors Board has a responsibility to treat other people with dignity and respect at all times and to create and maintain an atmosphere that fosters the spirit of this Affirmative Action Plan. All employees are expected to exhibit conduct that reflects inclusion during work, at work functions on or off the work site, and at all other agency-sponsored and participative events.

Training, Education, Developmental Plan (TEDP)

Employees: The CCB recognizes that its employees are its greatest resource. The agency is committed to the principle that training and development of employees is

crucial to work performance and is tied to our mission of quality services to Oregonians. All CCB training supports respect and inclusion of a multicultural, multigenerational, and multi-able workforce. Agency leadership ensures that employees are aware of the statewide policies on “Discrimination and Harassment-Free Workplace” and “Maintaining a Professional Workplace” policies.

The CCB strategic plan recognizes three priorities – Sustainable Financial Management, Accountable Service Delivery and Operational Maturity. The latter two priorities each incorporate elements of training, education and development so that the agency can adequately meet the needs of our diverse customer base. This includes both consumers and contractors that are persons of color or have otherwise been historically disadvantaged. The focus of the work is on remaining accountable to the recipients of our services, monitoring data about the efficacy of our services, and continuously improving our ability to deliver services that meet the needs of our customer base.

> *Action Item:* The Agency plans to use the newly created Human Resource Analyst (currently unfilled) to support these strategic initiatives by identifying and developing training, tools and resources for CCB staff. The goal of these development measures will be to promote individual development opportunities for staff but also to empower staff to more capably serve historically underserved populations within the agency’s customer base.

Volunteers: The Construction Contractors Board provides does not regularly utilize volunteers in the regular course of business.

Contractors/Vendors: All contractors and vendors must understand and adhere to all relevant agency and state policies, including CCB’s Affirmative Action Plan and DAS policy 50.010.01.

Programs

NOTE: As discussed in the Introduction, agency programs have been severely limited by financial and budget considerations over the past two years. While COVID-19 was a contributing factor, the agency has also been working to address significant pre-existing financial difficulties that were identified by new leadership earlier in 2020. While the agency has made substantial progress toward financial sustainability it has not been without sacrifice, nor is this effort concluded. The ongoing and projected challenges in the economy, which are particularly acute in the development sector, will continue into the next biennium and will weigh heavily on decisions around whether and when to fill positions. This will necessarily have some impact on agency efforts described in this plan.

Overview of Agency Affirmative Action Efforts

The agency recognizes the benefit that diverse voices and experience provide at the board, staff and stakeholder level. A broad and diverse network of partners and stakeholders help to support agency’s diversity efforts and ensure that agency efforts

are not primarily internally focused but are informed by the interests of the people we serve.

The agency operates on the principle that reaching out beyond our narrow focus and including an increasingly diverse pool of perspectives will encourage diversity. This can and should exhibit itself in more diverse recruitment and hiring for management, staff and board positions. It will also support a more equitable workplace. Finally it is expected that regular communication and collaboration with a more diverse network will inform agency strategic initiatives that are responsive to the needs of underserved populations.

CCB works to achieve and maintain diversity, equity and inclusion in hiring and service delivery through the following:

- Continuing to expand the agency's network used for outreach, education, hiring communication and collaboration to include more diverse populations.
- Continue to consider the particular needs of historically underserved populations when selecting and implementing agency initiatives.
- Holding all managers and employees accountable for creating an environment that promotes the benefits of diversity and inclusion and that is free from hostility or unwelcome behavior.
- Regularly communicate with staff about the progress the agency is making on its affirmative action initiatives and diversity goals. This includes maintaining a copy of the CCB Affirmative Action Plan on its website, posted in public areas, and including information about the plan in each new employee packet.

CCB is relatively small and relies on many people fulfilling multiple roles in order to make agency programs and initiatives work. The agency's diversity, equity and inclusion program is no different. The program is based on the combined efforts of managers and staff, throughout the organization, informed by our network of stakeholders and partners to move the organization forward.

The CCB also expands our own capacity by relying on agency and community partners to learn best practices, broaden our recruiting network and learn about the unique needs of underserved populations from those who work most closely with them. These partners include:

- **Department of Consumer and Business Services**: DCBS has robust recruitment, diversity and inclusion programs to learn best practices and supplement our limited capacity as a small agency.
- **Department of Justice:** DOJ promotes and supports consumer protection through sponsorship of scam avoidance workshops focused on elderly and underserved communities.
- **Minority Focused Industry Associations:** The agency has gained additional perspective and leadership through outreach efforts, most demonstrably with LatinoBuilt. Directly through these outreach efforts the agency has successfully increased the POC representation on the board.

- **Expanded hiring network:** The agency has utilized the expanded recruiting network developed by DCBS to increase the reach or our recruiting efforts. This extended network includes organizations such as Asian Pacific American Network, Blacks in Government, Easter Seals, Global Diversity and Inclusion Network, Hispanic Services Roundtable, Latino Business Alliance, and NAACP.

Internship Programs

The agency does not have a formal internship program and has not historically made use of interns to supplement agency staffing. While there is a possibility that this may be a future avenue for improving diversity there are no immediate plans to make use of this tool at this time.

Mentorship Programs

While the agency does not have a formal mentorship program, the agency has encouraged and promoted a significant effort to improve the development and education of staff and to provide ongoing cross-training, skill-building and development throughout the organization and across various functions. This effort is focused on two goals – continuity and succession planning as well as development and promotional opportunities for staff. This effort is supported by leadership and has been implemented and carried out in each section. To date the program has been ad hoc, but it is anticipated that the Human Resource Analyst will provide support for developing a more formal mentorship and development program to provide structure around the agency's efforts.

Community Outreach Programs

A broad range of agency staff from multiple programs regularly meet with consumers, contractors and industry representatives. The purpose of these meetings is to make Oregonians more aware of CCB programs and services as well as protections available through agency programs. These outreach opportunities break down barriers, establish connections, and broaden the agency's network of contacts. Established connections can then be called upon when recruiting for staff positions, board member positions, committee and workgroup membership, and soliciting feedback on agency programs, proposals, rules and other matters.

Ongoing agency outreach opportunities and efforts include the following and generally include at least some direct outreach to every region of Oregon:

- **Field Outreach**: Agency field personnel live and work in every region of the state and conduct daily contacts through both construction site checks and consumer/contractor mediations. These contacts provide an opportunity to reach a wide variety of populations throughout Oregon and to provide information, education and resources about agency programs and resources. Field personnel also build connections with state and local government agencies in their area, attend community meetings in areas touched by disasters (wildfire, flooding, etc.)

and provide an on-the-ground resource and contact that can be responsive to the needs of the community.

- **Education Outreach**: CCB Education programs focus on education to contractors and consumers. The CCB has significantly increased access to CCB education by moving to a webinar format for many CCB contractor training classes. CCB also reaches consumers through sponsored events such as Fix-It Fairs, Senior Fairs, Scam Jams, and other community events focused on the needs of populations that are often targeted by unscrupulous businesses. CCB Education works with both industry partners and education partners to meet the needs of a diverse contractor applicant pool and to ensure that limited-English speaking applicants have available resources. The agency's partnership with Clackamas SBDC for delivery of Spanish language pre-license education is an example of successful agency partnership in this area.

  Action Item: Expand outreach to additional industry associations and community organizations that have not previously had strong connections directly with CCB and who broaden the agency's exposure to specific needs of these communities. Specific targets include National Association of Minority Contractors, Oregon Association of Minority Entrepreneurs, and additional SBDC centers that served the unique needs of historically underserved populations.

  Action Item: Continue effort to improve the pass rate on the CCB license exam for Spanish language applicants through coordination with industry and educational partners and revision of the pre-license education program to reflect the successes of the Clackamas SBDC pilot program that was initiated by CCB.

<u>Diversity Awareness Programs</u>

Agency leadership supports efforts to promote diversity in hiring and in delivery of agency programs and resources. When identifying and implementing agency priorities, agency leadership considers the plight of underserved populations and the potential for these groups to be affected by past discrimination. The agency seeks to find ways to ensure that programs account for these effects.

Ongoing methods of demonstrating and communicating leadership's commitment include:

- Ongoing support from leadership of an environment of inclusion, which values differences and addresses negative and hostile behavior.

- Sharing of staff resources during all-staff meetings (Employee Assistance Program, Oregon Savings Growth Plan) and promotion of development opportunities with staff (Career Fairs and Diversity Fairs).

- Disseminate the CCB Affirmative Action Plan goals throughout the agency and encourage managers to conduct targeted recruitment in support of these goals.

- Train managers and supervisors in their affirmative action/equal employment opportunity responsibilities as well as educating them with the existing personnel and administrative tools to help them carry out their responsibilities in these areas.

  Action Item: Communicate at least quarterly with all staff via email or as part of all-staff meetings agency progress and initiatives related to the agency's affirmative action plan, programs and initiatives to support diversity, equity and inclusion.

Leadership Development/Training Program

To date agency leadership has not engaged in formal training related to diversity, equity and inclusion. However, the agency leadership regularly discusses broadening our outreach to include underserved populations and how our programs can address these needs. The agency has also supported managers attending the statewide diversity fair and encouraged information sharing with the leaders who were not able to attend.

Moving forward the agency plans to utilize the tools available through Workday to provide more formal structure to this effort, including regular training for managers on diversity, equity and inclusion as well as incorporating the results of the training into quarterly manager check-ins.

> *Action Item:* Build a quarterly schedule for training to be completed by all managers on diversity and equity topics. Incorporate the topics covered in training into quarterly manager check-ins. Work with individual mangers to develop topical goals for building understanding, knowledge and support for diversity.

Status of contracts for minority businesses

CCB directly awards a very small number of contracts in a given biennium. In addition, the agency does not have a sophisticated system for tracking information related to contracts awarded.

The agency has experienced repeated vacancies in its contract and procurement position over the past two biennia. A candidate was recently hired who is undergoing training in contracts and procurement. The agency hopes that staff continuity and implementation of Oregon Buys (early 2023) will both enhance the agency's capacity to track the limited contracts the agency awards and provide tools for ensuring opportunities for these contracts to be awarded to eligible minority-owned small businesses.

III. Roles for Implementation of Affirmative Action Plan

Responsibilities and Accountabilities

Responsibility for achieving the Affirmative Action objectives is shared by all managers and employees at CCB. The following individuals will provide the leadership for CCB to have a workforce rich in diversity and free of discrimination while fostering a welcoming, inclusive environment:

Administrator

The Administrator plays a leadership role in dedicating the agency to a policy of equal employment opportunity and conveying a sense of commitment both within and outside of the organization. The Administrator has overall responsibility for implementing and monitoring the Affirmative Action Plan and for ensuring compliance with all applicable federal and state laws, rules, and regulations.

- Foster and promote the importance of a diverse and respectful workplace to all employees and managers.
- Ensure managers and supervisors understand their role and responsibility to promote affirmative action activities and a welcoming environment. Include in performance reviews how effective the managers and supervisors have been in achieving CCB affirmative action objectives, and their contribution to promoting a welcoming and respectful work environment.
- Direct managers that conduct performance reviews for subordinate managers include ratings on the manager's support and effectiveness of CCB's Affirmative Action Plan objectives and their contribution to promoting a welcoming and respectful work environment.
- Encourage the participation of subordinate managers and employees in events supporting multicultural education and celebration.
- Meet with the affirmative action officer to review progress and approve strategies for meeting objectives.

Managers and Supervisors

- Foster and promote to subordinate managers and employees the importance of a diverse, discrimination and harassment free workplace. Assure managers and employees understand their responsibilities in achieving a welcoming and inclusive work environment.

- Conduct performance reviews for subordinate managers, include ratings on the manager's support and effectiveness in working toward the CCB Affirmative Action Plan objectives, and their contribution to promoting a welcoming and respectful work environment.

- Inform employees of the goals and objectives for the CCB Affirmative Action Plan.

- Display the CCB Affirmative Action Policy Statement and CCB Diversity and Inclusion Statement in prominent areas and on the website.

- Attend, and encourage staff to attend, diversity-related activities and training. Share information received with managers and staff who were unable to attend.

- Follow the procedures outlined in DAS 50.010.01, Discrimination and Harassment Free workplace, and follow reporting requirements outlined in the policy.

Affirmative Action Officer and/or Designee:

- Foster and promote to managers, supervisors and employees the importance of a diverse, respectful, welcoming, and discrimination and harassment free workplace.

- Present quarterly workforce representation report to CCB management.

- Ensure recruitments include outreach to marginalized or underserved groups through representative websites, community agencies and organizations to attract and encourage people of color, people with disabilities, veterans, and women to apply for CCB positions.

- Coordinate with agency human resources representative to train managers in interviewing skills, including having diverse interview panels, developing job related interview questions, and applying veteran's preference.

- Coordinate with agency human resources representative to provide career development assistance to CCB employees, including mock interviews, application material reviews, and career exploration as requested.

- Attend, and encourage managers and staff to attend, diversity related activities and training. Share information received with managers and staff who were unable to attend.

- Attend and support statewide meetings with the Governor's Diversity and Inclusion Office and other agency representatives.

IV. July 1, 2021 – June 30, 2023 Accomplishments and Progress

Note: See Note on page 7. The agency has endured considerable financial difficulty over the past several years, and anticipates that economic turmoil in the upcoming biennium may continue to prove a factor in agency progress during the 2023-2025 biennium.

Accomplishments and Progress

Notwithstanding financial difficulties, the agency has made considerable progress in affirmative action and diversity, equity and inclusion goals.

Agency efforts have focused on two broad categories of efforts. First, expanding our outreach and hiring network to include a broader and more diverse population. Second, selecting small but achievable improvements that can be implemented in terms of the services and resources available to underserved populations.

Some of the agency's recent successes include:

- Improved the representation of persons of color (POC) on the board to 20%.
- Improved the representation of women on the board to 55%.
- Maintained representation of women in management roles at 60% through replacement of several key leadership roles
- Doubled the representation of persons of color in all staff roles from 6 to 12 or approximately 21%.
- Significantly increased the volume of agency materials regularly made available in Spanish through contract with minority-owned translation vendor.
- Continued pilot program with Clackamas Community College Small Business Development Center to continue to provide unique "Guided Pathway" method of pre-license education for non-English speaking CCB applicants.

The agency attributes our success to maintaining connections with organizations that advocate for and serve the interests of diverse populations. The underlying principle behind the agency's approach is that by engaging and working with industry associations and other partners that serve these needs, diversity is encouraged and enabled. The agency is exposed to a broader spectrum of individuals and experiences and these connections inform the way the agency performs its work and the initiatives that we choose to pursue.

Likely Challenges

The challenge the agency faces for 2023-2025 will be weathering the significant likelihood for economic downturn, particularly in the development sector. The CCB is supported virtually 100% by license fees. When the economy takes a downturn, as virtually all economists expect either in late 2023 or early 2024, agency revenue falls and the agency must make often difficult decisions related to staffing, including holding positions vacant until sufficient revenue exists to support filling the positions.

This type of challenge can place a limit on progress toward internally-focused diversity goals. That is particularly why the agency has adopted a focus that includes building our interconnectedness to external organizations that can support and inform our staff's approach to our work and the way in which we serve marginalized communities.

V. 2023-2025 Goals and Strategies

CCB will continue to pursue available opportunities to enhance diversity and equity through recruiting and hiring. We will increase the likelihood of success by continuing to build and expand our network to be more inclusive. CCB is of the firm belief that in order to increase representation, we must expand and make more inclusive the network of relationships that support our work and help to inform the way in which we serve our diverse customers.

CCB will continue to build a work environment that is respectful and accepting of employees' differences, making it attractive not only to our current employees, but to a diverse pool of future applicants as well.

Action Items, Strategies and Timelines
In the 2023-2025 biennium, CCB will pursue the following goals:

1. Diversity Tools and Resources for Staff: CCB will utilize the newly created Human Resource Analyst (HRA – currently unfilled) to support diversity initiatives by identifying and developing training, tools and resources for CCB staff. The goal of these development resources will be to promote individual growth opportunities for staff, but also to empower staff to more capably serve historically underserved populations within the agency's customer base.

    a. Strategies: Upon hire of HRA, provide strong leadership support for making development a significant focus of their role. Establish HRA as affirmative action coordinator. Utilize tools and resources that are already available – don't "reinvent the wheel." Provide forums for HRA to communicate regularly with staff on diversity and development topics.
    b. Timeline: Hire position in early 2023. Begin implementation of diversity training and development strategy Spring of 2023, then ongoing.

2. Regular Communications with Staff on Diversity Topics: At least quarterly, communicate with all staff via email or as part of all-staff meetings agency progress and initiatives related to the affirmative action plan as well as programs and initiatives to support diversity, equity and inclusion.

    a. Strategies: Establish schedule for Administrator to regularly communicate to staff on diversity topics and agency diversity initiatives. Use communication to build awareness of diversity initiatives and communicate successes. Provide talking points for managers to reinforce key points in their sections.

    b. Timeline: Establish schedule by October 2023. Begin communication schedule prior to end of 2023, then ongoing.

3. Establish regular leadership training for managers on Diversity topics: Build a quarterly schedule for training to be completed by all managers on diversity and

equity topics. Incorporate the topics covered in training into quarterly manager check-ins. Work with individual mangers to develop topical goals for building understanding, knowledge and support for diversity.

   a. Strategies: Identify available trainings. Establish schedule for completion of trainings. Align deadlines with quarterly management check-ins. Discuss topics and progress on initiatives during quarterly management check-ins.

   b. Timeline: Establish schedule prior to end of 2023. Carry out schedule beginning in 2024.

4. Continue to Expand Outreach to Diverse Organizations: Expand outreach to additional industry associations and community organizations that have not previously had strong connections with CCB. Focus will be on organizations that broaden CCB's exposure to specific needs of diverse communities. Specific goals include the National Association of Minority Contractors, Oregon Association of Minority Entrepreneurs, and additional SBDC centers that serve the unique needs of underserved populations.

   a. Strategies: Establish connections with staff at organizations. Pursue opportunities to attend meetings or build connection with organizations. Attend meetings and speak about CCB programs and efforts to ensure diversity and equity in our service delivery.
   b. Timeline: Conduct research during fall of 2023, make connections during "outreach season" in late winter and spring of 2024.

5. Improve Pass Rate on Spanish Language CCB Exam: Continue effort to improve the pass rate on the CCB license exam for Spanish language applicants through coordination with industry and educational partners and revision of the pre-license education program to reflect the successes of the Clackamas SBDC pilot program that was initiated by CCB.

   a. Strategies: Continue outreach with test vendor and Clackamas SBDC program to gather information on reasons for success. Establish a work group to develop a list of proposed changes to the pre-license education program that build on the success of the CCB/SBDC pilot program. Incorporate work group proposals in changes proposed to the board.

   b. Timeline: Establish workgroup in late 2022. Develop proposals by mid-2023. Propose changes to board by October 2023. Implement changes by mid-2024.

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.

State of Oregon
DEPARTMENT OF ADMINISTRATIVE SERVICES
Human Resource Services Division

State Policy: 50.045.01 **Employee Development and Implementation of Oregon Benchmarks for Workforce Development**

APPLICABILITY: Classified (where not in conflict with the collective bargaining contract), management service, executive service and unclassified unrepresented employees

REFERENCE: ORS 240.145(3)(4); 240.250; Oregon Benchmarks

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(1) **Policy:** Oregon state government shall be a leader in achieving or exceeding the Oregon workforce development benchmarks of developing the best trained workforce in the U.S. by the year 2000 and in the world by the year 2010.

(a) For each biennium, an agency head shall develop a written agency training plan to require a minimum of 20 hours of education and training related to work skills and knowledge for at least 50% of their permanent employees in each fiscal year.

(b) Supervisors, in discussion with their employees, shall develop and update annually a written development plan for each employee that provides for the continuous improvement of the employee's job related knowledge and skills.

(c) An agency head shall maintain written documentation of agency workforce development hours and expenditures per instructions from Department of Administrative Services regarding expenditures and account numbers related to training and travel.

(d) When opportunities permit, agencies shall invite other state agencies to fill staff development openings and share training facilities and other employee development resources.

(e) An agency head may provide educational assistance to employees when it directly relates to their job responsibility and can be accommodated within the agency budget:

(A) When an employee is assigned to attend courses, the agency shall reimburse all of the costs of course registration fees, course materials, and necessary travel.

(B) When an employee makes a request to attend a class(s), either during or after working hours, the agency may reimburse all or part of the costs attendant to the class(s).

(C) Educational assistance to employees may include paid leave. Provisions of the paid leave agreement between the agency and the employee shall be documented and maintained in the agency file.

(2) **Policy Clarification:**

(a) The written agency training plan is intended to relate individual employee development plans and agency workforce development priorities to the agency mission.

(b) Training or education related to work skills and knowledge includes formal instructions or a structured learning plan related to:

(A) employee's competence to perform a specific job,

(B) employee's state government career, or

(C) Employee's work environment.

(c) Modes of training delivery may be formal education, on the job training, supervised learning activities, and other specific training approved by the employee's supervisor as job related.

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(1) **Performance Measure:** Percentage of agency employees who received 20 or more hours of job related training in each fiscal year.

Performance Standard: 50%

(2) **Performance Measure:** A current, completed written agency training plan for each biennium.

Performance Standard: 100%

(3) **Performance Measure:** Percentage of agency employees with current written individual development plans.

Performance Standard: 100%

State Personnel Relations

ORS 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]

Location: `https://oregon.public.law/statutes/ors_240.145`

Original Source: Section 240.145 — Duties of administrator; rules, `https://www.oregonlegislature.gov/bills_laws/ors/ors240.html` (last accessed Jun. 26, 2021).

State Personnel Relations

ORS 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]

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.

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.

29 USC 621: Congressional statement of findings and purpose
Text contains those laws in effect on September 15, 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 .)

Statutory Notes and Related Subsidiaries

Effective Date; Rules and Regulations

Section 16, formerly §15, of Pub. L. 90–202, renumbered by Pub. L. 93–259, §28(b)(1), Apr. 8, 1974, 88 Stat. 74 , provided that: "This Act [enacting this chapter] shall become effective one hundred and eighty days after enactment [Dec. 15, 1967], except (a) that the Secretary of Labor may extend the delay in effective date of any provision of this Act up to and additional ninety days thereafter if he finds that such time is necessary in permitting adjustments to the provisions hereof, and (b) that on or after the date of enactment [Dec. 15, 1967] the Secretary of Labor is authorized to issue such rules and regulations as may be necessary to carry out its provisions."

Short Title of 1996 Amendment

Pub. L. 104–208, div. A, title I, §101(a) [title I, §119], Sept. 30, 1996, 110 Stat. 3009 , 3009-23, provided in part that: "This section [amending section 623 of this title, enacting provisions set out as notes under section 623 of this title, and repealing provisions set out as a note under section 623 of this title] may be cited as the 'Age Discrimination in Employment Amendments of 1996'."

Short Title of 1990 Amendment

Pub. L. 101–433, §1, Oct. 16, 1990, 104 Stat. 978 , provided that: "This Act [amending sections 623, 626, and 630 of this title and enacting provisions set out as notes under this section and sections 623 and 626 of this title] may be cited as the 'Older Workers Benefit Protection Act'."

Short Title of 1986 Amendment

Pub. L. 99–592, §1, Oct. 31, 1986, 100 Stat. 3342 , provided that: "This Act [amending sections 623, 630, and 631 of this title and enacting provisions set out as notes under sections 622 to 624 and 631 of this title] may be cited as the 'Age Discrimination in Employment Amendments of 1986'."

Short Title of 1978 Amendment

Pub. L. 95–256, §1, Apr. 6, 1978, 92 Stat. 189 , provided that: "This Act [amending sections 623, 624, 626, 631, 633a, and 634 of this title and sections 8335 and 8339 of Title 5, Government Organization and Employees, repealing section 3322 of Title 5, and enacting provisions set out as notes under sections 623, 626, 631, and 633a of this title] may be cited as the 'Age Discrimination in Employment Act Amendments of 1978'."

Short Title

Pub. L. 90–202, §1, Dec. 15, 1967, 81 Stat. 602 , provided: "That this Act [enacting this chapter] may be cited as the 'Age Discrimination in Employment Act of 1967'."

Severability

Pub. L. 101–433, title III, §301, Oct. 16, 1990, 104 Stat. 984 , provided that: "If any provision of this Act [see Short Title of 1990 Amendment note above], or an amendment made by this Act, or the application of such provision to any person or circumstances is held to be invalid, the remainder of this Act and the amendments made by this Act, and the application of such provision to other persons and circumstances, shall not be affected thereby."

Congressional Finding

Pub. L. 101–433, title I, §101, Oct. 16, 1990, 104 Stat. 978 , provided that: "The Congress finds that, as a result of the decision of the Supreme Court in Public Employees Retirement System of Ohio v. Betts, 109 S.Ct. 256 (1989), legislative action is necessary to restore the original congressional intent in passing and amending the Age Discrimination in Employment Act of 1967 (29 U.S.C. 621 et seq.), which was to prohibit discrimination against older workers in all employee benefits except when age-based reductions in employee benefit plans are justified by significant cost considerations."

Executive Documents

Transfer of Functions

Functions vested by this section in Secretary of Labor or Civil Service Commission transferred to Equal Employment Opportunity Commission by Reorg. Plan No. 1 of 1978, §2, 43 F.R. 19807, 92 Stat. 3781, set out in the Appendix to Title 5, Government Organization and Employees, effective Jan. 1, 1979, as provided by section 1–101 of Ex. Ord. No. 12106, Dec. 28, 1978, 44 F.R. 1053.

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]*

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.

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.

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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