

# AN EQUAL OPPORTUNITY GUIDE FOR SMALL BUSINESS EMPLOYERS

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## 1. INTRODUCTION

The goal of this guide is to assist employers in applying Equal Opportunity policies in their businesses. It suggests sound EO business practices to all employers, but especially to small business owners who have at least 15 employees or EO commitments to government agencies or contractors. It should enable these businesses to be more aware of their obligations under the laws prohibiting discrimination.

This guide is not intended to provide legal advice or to be a substitute for legal counsel concerning specific questions or situations. However, applying these general EO guidelines accomplishes important objectives for a business: potential complaints may be reduced; government investigations and litigation may be avoided; and evidence will exist that can limit employer liability.

Adopting positive EO policies also can result in greater work force diversity and a wider clientele for your business; improve recruiting, interviewing and screening techniques; and ensure a more qualified, informed and stable work force.

If a complaint is filed, a record of promoting equal opportunity often provides the best defense. Good faith efforts to implement EO policies can show your intent to comply with EO requirements and distance the company from any errors its employees make. The proverbial "ounce of prevention" can help avoid time-consuming and expensive problems later.

As diversity increases among employees (including women and men performing nontraditional work, and minorities, females and qualified individuals with disabilities working in various departments and job levels), the commitment to EO policies strengthens. Evidence of equal opportunity principles "at work" helps protect any business from serious or frivolous discrimination charges.

## 2. RECOMMENDATIONS FOR ALL SMALL BUSINESS OWNERS

### A. Equal Opportunity Policy Statement

First and absolutely, all employees, applicants for employment and customers should know that your business does not discriminate in employment or in providing goods and services. A good EO Policy Statement makes it clear to everyone that you intend to comply with nondiscrimination requirements in every aspect of your business. A Model EO Policy Statement is attached as [Appendix A](#).

Before writing a policy statement, you must identify the "protected" grounds or bases. The Civil Rights Act of 1964 covers race, color, religion, sex and national origin. Federal statutes also protect individuals from employment discrimination based on disability, age (40 or older), pregnancy and disabled or Vietnam veteran status, for example.

Your company's civil rights obligations will vary based on: your number of employees; whether you do business with federal, state or local government entities or with companies that have government contracts or subcontracts; and what federal, state and local laws apply to your business. State and municipal entities often enforce their own EO statutes. Thus, the list of protected bases applicable to your company depends on the size and location of your business and on what your customers may require. Be sure your policy includes at least all the bases you are legally required to cover.

You may also choose to prohibit discrimination by your company against employees and/or customers based on grounds not covered by federal law, such as ex-offender status, union membership, sexual orientation, marital status, credit history, source of income or citizenship status. Enforcement agencies, federal or state, however, will not accept a discrimination complaint unless it is filed on a basis covered in their regulations.

Your written EO Policy Statement, at a minimum, should state:

- \* That your company does not discriminate in recruitment, applicant selection, terms and conditions of employment (pay, job assignment, provision of benefits, training, promotion, use of facilities, termination, layoff, customer service, etc.) based on (insert the protected bases you identify). Be consistent each time these bases are listed.
- \* That your business prohibits sexual harassment in the workplace and investigates harassment complaints when they are filed. (A separate Model Policy Statement prohibiting sexual harassment is attached as [Appendix B](#).)

- \* That your EO policy covers provision of goods and services to customers and applies to all your business practices. Consider including, as appropriate, pricing; credit decisions; membership, application and admission policies; access to services, facilities and programs; vendor selection; solicitation for bids, etc. (Some of these areas may not be legal requirements applicable to your business.)
- \* The name or title of a company representative responsible for handling alleged violations. Let employees know that you want to fairly resolve any discrimination concerns. Issues resolved before they become formal complaints save money, time and trouble.

Display your EO Policy Statement so employees, applicants, customers, visitors and the public can see it. Various federal, state and local governments require an array of posters, depending on their requirements and your relationship with them. Posters notify employees about such things as minimum wage and other wage-and-hour laws, various nondiscrimination laws, state labor laws, leave requirements, safety information, unemployment compensation benefits, etc. Required posters should be available at no charge from the Agency that enforces the posting requirement.

Ensure managers and supervisors understand and implement your EO policy. Periodically remind them of management's commitment to EO principles and practices. Consider making EO a part of supervisory and managerial performance reviews.

Instruct managers and supervisors that remarks about a person's race, gender, age, disability, etc., including references in casual situations or informal conversations, can provide the basis for an EO complaint. Ethnic, racial, and sexual jokes can cause someone to believe the humor is evidence of a discriminatory attitude or contributes to a hostile work environment. Be watchful for subtle forms of treatment that can assume the guise of corporate "culture" or pressure employees toward conforming to a norm they may view as a hostile environment. Workplace harassment based on race, religion, color and national origin is illegal.

If you have a company newsletter or publication, periodically highlight your EO policy. Ensure protected group employees are featured and pictured among others in your in-house publications and company promotional materials.

## B. Work Force Analysis

An essential part of any plan, including a plan to implement EO policies in your company, is determining baseline data. Periodically review the representation of protected individuals in your work force and their distribution in department and salary categories. Compare your representation data with the availability of potentially qualified applicants in your recruitment area, which may vary by job classification. State employment service offices have statistical information to assist you in determining the protected group representation by job classification according to current labor force data in your area. (Ask for "Affirmative Action" labor market data or an "Order Number 4" packet.)

In reviewing your EO profile, ask yourself: Is there a history of female or minority representation in job categories where they are not currently employed? Does your employee EO profile adequately reflect the diversity among job applicants? Are recruitment methods sufficiently broad to attract a balanced proportion of any underutilized group? Do minority or female concentrations exist in particular departments or job categories? If so, is the concentration based on tradition, applicant flow or job assignment? Does your analysis reflect an equitable distribution of protected employees from your labor force, or are different groups concentrated in separate departments or job classifications? Is there a segregated pattern in the use of facilities which exists by tradition, custom or practice? Are protected individuals among those in higher paid positions, in public contact positions, in supervisory, clerical, sales, managerial and professional jobs? Do training programs include protected individuals?

The key determinant of whether you practice Affirmative Action principles or merely nondiscrimination is how you respond to the results of your work force analysis. Affirmative Action Plans typically are based on projected employee turnover and include hiring goals and timetables to address the underrepresentation of a protected group in one or more job categories. By implementing all the provisions in an AAP, employers endeavor to achieve the hiring goal. Goals should not be confused with hiring quotas. A narrative to help distinguish between a goal and a quota is attached as [Appendix C](#).

## C. Recruitment and Selection

Notify your recruitment resources in writing of your EO policy by sending them a copy of your EO Policy Statement. Based on your self evaluation, a cover letter can and often should explicitly request protected group referrals among other qualified applicants. Keep copies of this notice in your EO file. Notify your regular recruitment resources periodically and others whenever they are contacted.

## 1. Recruitment Procedures and Sources

As much as possible, consolidate and standardize recruitment and applicant screening functions. It is easier to ensure compliance with company EO policies covering recruitment and interviewing when fewer people are responsible.

Use the "Equal Opportunity Employer" (EOE) by-line in newspaper or other media recruitment advertisements, in posted job notices and on applicant recruitment signs. Other by-lines that convey your EO policy are also acceptable. Don't invite trouble by advertising for a salesman, waitress, stock boy or a recent college graduate. Always use gender and age neutral language.

Consider expanding your recruitment sources if your applicant flow does not include a representative number of qualified protected class applicants. Sources exist in many areas which are able to refer applicants primarily from the protected groups they represent. Consider contacting groups like the Urban League, the NAACP, NOW, local job training programs, and rehabilitation services or other organizations promoting the employment of individuals with disabilities. Ask your state employment service representative for additional contacts. Even groups that don't offer applicant referrals may be helpful in referring you to resources that can.

Minority community newspapers and radio stations reaching a minority audience can be used if they are available in your area. If you use local high schools, colleges, vocational or technical schools, be sure the enrollment includes a representative number of students from protected groups. Or select several resources that, taken together, achieve a balanced applicant flow. Local military installations are also an excellent resource for recruiting qualified applicants.

State employment services generally accept "affirmative action" job orders. Upon request, they will make an affirmative effort to refer, among others, applicants from an underrepresented group. Don't forget to check on various employment incentives that may be available to subsidize the cost of training or employing individuals targeted for assistance.

If your work force is balanced, consider internal job posting to encourage upward mobility of current employees. Evaluate the qualifications of protected group employees to ensure their skills are being used effectively.

## 2. Application Forms and Interviews

Review your application form for unnecessary or inappropriate inquiries. Many standardized, stationery-store forms include questionable items. The answer to each pre-employment inquiry should help you determine whether the applicant meets job qualification standards. (A guide to employment application forms is attached as [Appendix D](#).)

Ensure an EO notice is prominently displayed on the employment application form. Ask all applicants for a given position the same questions, perhaps in a customized addendum to the application form when recruiting for certain jobs. Do not try to use the completed application form as the employee personnel record form. It is acceptable to request information following an employment decision which should not be requested prior to an employment decision (birth date, marital status, dependents, medical emergency contacts, etc.).

State laws often prohibit an employer from asking applicants for certain information such as race, sex, age, etc. Federal laws do not include such explicit prohibitions, but these kinds of inquiries can still expose employers to liability. Because it is assumed that an employer who asks such a question intends to use the information, it becomes the employer's burden to show that the information was not used for any discriminatory purposes.

Avoid requesting information that courts have found in the past could be used in a discriminatory way: age or date of birth, past worker compensation claims, arrest record, child care arrangements or family plans (if asked of women and not men). Employers may ask, unless it is prohibited by state or local requirements, whether the applicant has ever been convicted of a felony, or whether the applicant meets a minimum age requirement. Seemingly neutral questions have sometimes been found to have an adverse effect on some minority groups. Avoid occupationally unnecessary questions such as asking production job applicants about typing skills. Ideally, applicants should never feel that factors unrelated to job qualifications could be responsible for an adverse employment decision.

Consider drafting your own application form to emphasize factors relevant to working at your business. For example, you may want to design a form that refers to your company's applicant or employee drug and alcohol testing policy, or your policies covering smoking, mandatory overtime, attendance, union membership or equipment safety requirements. Consider including language that covers any "employment at will" policy or other limiting factors (i.e., that the first 90 days of employment is probationary). The application form is an ideal but often wasted opportunity for a company to identify employment standards on a document signed prior to the employment decision. Notifying applicants of legal employment conditions or standards that deter them from pursuing their applications is a very effective screening strategy that not only conserves time and money but also helps avoid future problems, misunderstanding and possible liability.

The Equal Employment Opportunity Commission requires that employers retain for at least one year employment application forms of those not selected for employment. Application forms from applicants you hire may be held in the personnel file, but do not keep information there that should be held in confidence (such as medical records, drug screen results or test scores) unless the information is vital to future personnel decisions.

Do not ask questions about health or questions that would reveal the nature or severity of a disability. Interviews and application forms should focus on job duties, not on health or medical concerns. You can ask if the applicant can perform the essential physical requirements of the job. Carefully describe the physical components of the job and ask if the applicant can, with or without an accommodation, safely perform those essential duties.

Rather than asking about citizenship on the application form, state that as a condition of employment the successful applicant will be required to submit documentation of eligibility to work in the United States. National origin discrimination is prohibited, although U. S. citizenship is occasionally required to work on sensitive government contracts.

With few exceptions, formal EO applicant surveys (unless they are required or covered in a written Affirmative Action Plan) are unnecessary and a potential source of misunderstanding and employer liability. Coding application forms for race, gender or ethnicity is illegal. Avoid making any questionable EO notations on the form.

### 3. Job Requirements

Define a job's essential functions and determine if the applicant can perform them. Carefully determine better or best qualified from among all applicants who meet the requirements. Examine the value of an applicant's "extra" qualifications solely in relation to what skills or experience will be useful in performing the job. A college graduate may not be more qualified than a high school graduate to drive a bus.

If you have written employment standards or job descriptions, ensure they do not overstate minimum qualifications or required physical abilities. Review language carefully to ensure any listed duties or requirements are necessary, especially if they might screen out a disproportionate number of women, minorities or individuals with disabilities. Requirements of minimum height or weight can have an adverse effect on women, as well as on members of some ethnic groups. Apply the same critical analysis to unwritten job qualification standards.

### 4. Employment Testing

A test is a standard device used to measure skills, intellect, personality or other characteristics. The goal of employment testing is to fairly and accurately predict future job performance. Be wary of employment tests unless you are confident they achieve that goal in your business. Some scored tests eliminate protected groups disproportionately or have a questionable relationship to job performance.

Skills tests such as sewing, welding, driving, dexterity and measuring are acceptable when the skill is required to perform the job. General knowledge, honesty, intelligence, personality or job suitability tests, however, often do not meet federal validation guidelines for use in making personnel decisions. Employers can be liable if a discrimination complaint involves the impact of test results on employment decisions, especially if members of the complainant's protected group have lower scores and the test does not accurately and reliably measure the ability to perform job duties.

Employers can use aptitude or other employment tests if they are applied equally to all applicants for a specific vacancy and if they do not unfairly disqualify applicants of any protected group. However, personnel decisions should not be based solely on test results. Federal guidelines require that any test which disproportionately disqualifies a protected group must be formally validated to measure job-related criteria and predict successful job performance. The standards by which the federal government determines the legality of testing and selection procedures have been established as the Uniform Guidelines on Employee Selection Procedures (1978).

Employers evaluating the merits of a particular test should consider these issues: How long has the test publisher been in business and what professional affiliations does it have? Who conducts the publisher's validation studies and what are that person's credentials? Did the sales person determine what test to recommend based on knowing your job requirements? Does the test have an adverse impact on the basis of race, national origin, sex, age, etc. - and how does the company know? Ask to see the evidence. Has the test ever been challenged in court and what role will the publisher play if it is? Do you recognize the names of companies using the test and can you call to check on their level of satisfaction with the publisher and the specific test?

Under the Americans with Disabilities Act, all applicants should be invited to request reasonable accommodation if they need one in the testing (or any other screening) process. The Employee Polygraph Protection Act of 1988 prohibits employers from requiring, requesting, causing or suggesting that an employee or applicant for employment take a lie detector test, except in certain restrictive situations.

#### 5. Medical Exams and Drug Testing

Employers must avoid pre-employment medical inquiries and health history forms unless they are required to screen applicants for specific safety sensitive positions. Although employers remain responsible for all employment decisions, only a medical professional can evaluate the relationship between a health condition or limitation and the ability to perform a job. Individuals with disabilities can often, with job restructuring or a reasonable accommodation, perform all the essential duties of a position. Look beyond the limitation of the prospective employee and focus instead on the applicant's potential productivity.

Find out whether applicants can physically perform the job duties, but avoid using medical or health information to make personnel decisions. A job offer can be conditioned on the results of a medical examination if the examination is required for all entering employees in the same job category. A medical exam cannot be required of a job applicant prior to a conditional offer of employment. However, the conditional offer may be withdrawn if a doctor documents inability to perform the essential job duties (with or without a reasonable accommodation). Be sure the physician approves the new hire's ability to perform the specific physical requirements of the job rather than merely being asked to administer a medical exam.

Drug screening tests are permissible for applicants, but be cautious when testing employees. Medical examinations of current employees must be job-related and consistent with the employer's business needs. Reserve the right to test for drug or alcohol presence in cases where there is a suspicion or evidence that an employee is under their influence. Employers can require drug screens for some positions without requiring them for all positions. If a random testing program is established, be certain it meets required standards. Be prepared to treat all employees who may test positive in the same manner. Testing for illegal drug use is not considered a medical examination under the Americans with Disabilities Act.

Understand the limitations of drug testing. The person who used marijuana last month may test positive while someone who used cocaine or was drunk last week may test negative. Employees generally can challenge test results, especially before a second, confirmatory test is done. Or employees may present some explanation other than drug use to explain a positive result. While applicants who test positive may simply not be hired, employers should determine what responsibilities apply to them in handling an employee who tests positive. Some states have more stringent requirements for employers who administer drug screens. It is generally better to send or drive employees home or to be tested if they report to work intoxicated or impaired rather than firing them on the spot. Document the incident and take appropriate personnel action later.

## 6. Record Keeping

Everyone is "protected" based on his or her race, gender, ethnicity, religion, etc. Some government programs define certain groups as minorities, such as African Americans, Hispanics, Asians and Native Americans. General guidance regarding the definition of these four categories is attached in [Appendix E](#), but each individual is the final authority in identifying what classification applies to him or her.

For record-keeping purposes, a visual survey or personal knowledge is usually a sufficient basis for categorizing individuals as "White" or as a member of one of the minority groups. Although women, people at least 40 years old and people with disabilities are protected from discrimination, they are not typically classified as minorities by the federal government.

Though rarely necessary, employees (but preferably not applicants) may be discreetly queried regarding the classification with which they most closely identify. Be sure to place the question in the context of a reaffirmation of your EO posture, to inform the employee why you need to know, and to indicate that the confidentiality of the information will be protected. Don't ask unless you are confident you have the trust of the employee. Avoid written documentation regarding the classification of any employee by name, especially in personnel records.

Larger companies with regular reporting requirements (more than once or twice each year), very high employee turnover, distant offices or work sites, or written procedures and safeguards to cover EO data collection and use, may consider tracking employee or applicant EO information using computer codes. Ensure the information is only available on a need-to-know basis and that identification records, if maintained, are separated from personnel files and, if possible, an individual's name.

## D. Other Company Policies

### 1. Discipline

Establish written guidelines for discipline and discharge. List and identify specific misconduct that warrants disciplinary action or discharge, but avoid getting trapped into having to adhere solely to the listed examples of misconduct. Also, avoid too much specificity in linking specific disciplinary actions to work-rule violations so you have the flexibility to deal with employees individually based on circumstances that will vary from case to case. For example, state that violations will result in disciplinary action "up to and including termination" depending on the seriousness of an incident and the employee's work and disciplinary record. Disciplinary actions should be appropriate for the offense and consistently applied in all cases. Use the same punishment for similarly serious violations. Making exceptions can appear discriminatory and can establish a precedent that might prevent you from enforcing the rule more strictly in the future.

Work rules and disciplinary guidelines should be posted and included in employee handouts and personnel materials so the rules are known to everyone. Require new employees to read and to certify by signature that they have read and understand the work rules and written company policies.

Use progressive discipline. First, issue a verbal warning and give the employee a chance to correct the problem. Oral warnings should be fully documented and include the date and nature of the warning. Next, issue a written warning, acknowledged by the employee, which states the consequences of continued incidents. Then, move to suspension or termination if the problem continues. Vary this sequence only where rule infractions have the most serious potential consequences.



Standardize your discipline, grievance and internal complaint procedures and adhere to them consistently to minimize misunderstandings, to reduce any opportunity for unequal treatment and to establish clearly your impartiality. Make additions to employee personnel files whenever documentation of a problem is appropriate. Be as scrupulous as possible about documenting personnel problems: attendance; tardiness; disruptive incidents; poor quality work or productivity; disciplinary actions or warnings (verbal or written). Don't wait for an infraction or violation serious enough to warrant formal disciplinary action. File notations can prove important if the employee later claims to have been a model worker.

Try never to act in haste or anger. Before deciding what action to take, obtain statements (preferably written) from the involved parties and, if possible, witnesses. If there is a fight or loud argument, address the emergency, but delay any decision about a final disciplinary action until all the facts are known. Consider the employee's entire record of employment.

## 2. Performance Reviews

Institute a program of written employee performance reviews. Ensure reviews accurately reflect job performance and adequately address problem areas. Do not routinely offer good or excellent ratings as the path of least resistance. It can be difficult to justify terminating "problem employees" if they have satisfactory job performance track records.

Share the employee's performance evaluation with him or her. Ask the employee to sign the evaluation and to include any appropriate comments. This provides the employee an opportunity to improve and documents performance issues and employee responses, especially important if promised improvements then do not occur.

## 3. Probationary Period

Consider identifying an initial period of employment as a trial, introductory or probationary period. The time frame may vary depending on the job and may be extended for marginal performers. Terminations during a formal probationary period are easier to support legally than termination decisions for regular-status employees. Avoid classifying any employee as a "permanent" status employee.

## 4. Seniority

Some seniority systems have been challenged because of their perpetuation of past discrimination. Departmental seniority, especially if it is a consideration in layoffs, promotions or department transfers to better jobs, should be reviewed and perhaps replaced by a system that honors seniority based on the employee's original date of hire. No group of protected employees should be discouraged from seeking upward job mobility by the threat of losing the job security provided by overall length of service.

## 5. Sponsored Activities

If community or company recreational activities are sponsored (like little league teams, picnics, holiday parties, bowling teams or special outings), ensure that protected individuals are welcomed and have the opportunity to participate on an EO basis.

## 6. Compensation

Do not be lulled into thinking that salaried employees automatically are not entitled to overtime pay. Whether you are required to pay employees time-and-one-half their regular wages after forty hours of work in a week depends on the kinds of duties they perform. A "salaried" clerk who works fifty hours in a week, for instance, must be paid ten hours of overtime wages (based on the salary divided by forty hours). Contact your nearest U. S. Department of Labor, Wage and Hour Division, for further information regarding the classification of employees as exempt or non-exempt from overtime pay under the Fair Labor Standards Act. Don't permit an employee entitled to overtime pay to work on a voluntary basis. Non-exempt employees must be compensated for the hours they actually work, even if they volunteer not to be paid.

## 7. Medical Leave

The length of any temporary disability leave is based on a doctor's determination of the beginning and the end of disablement, not on an arbitrary calendar period, or on the employee's or employer's opinion. Medical leaves may be approved for an anticipated period of disability and later, upon request, be extended (or shortened) based on the specific situation. Be consistent. By making an exception, you might establish a precedent that could invalidate the application of your policy on another occasion.

Distinguish between childbirth preparation and recovery (medical leave) and the parent's or guardian's desire to provide child care to the newborn (personal leave). Child care leave, if available, cannot be restricted to women. Employers may require employees to submit periodic approvals of fitness for duty and may provide the physician with a description of the physical requirements of the job. Light duty assignments must be provided if they are available to employees in other medical leave situations. Some state laws require covered employers to offer more generous benefits. An employee may be required to return to work when the period of disability ends.

Employers are well advised to establish a maximum term during which an employee may be retained in medical leave status, whatever its cause. Employees who must be terminated because they use the maximum allowable leave can be considered for re-employment when they are again able to meet the job requirements. Review your applicable insurance plans when choosing a maximum leave period.

#### 8. Reasonable Accommodation

Laws require employers to make reasonable accommodations for individuals with a disability or who require accommodation because of their religious practices. An employer is not required to lower quality or production standards substantially to make an accommodation. Nor is an employer generally obligated to provide personal use items such as eyeglasses or hearing aids. You are not required to offer accommodations that change the essential duties of a job. Individuals that cannot perform those essential duties with a reasonable accommodation are not "otherwise qualified." However, what accommodation is "reasonable" is a judgment call that must be made on a case by case basis, taking into account factors such as the size and available resources of the business. Try to avoid any situation where a person with a disability feels you should or could have done more to accommodate a medical condition, possibly motivating a complaint. Consider job tailoring, restructuring or temporary reassignment to afford an individual with a disability an employment opportunity. Check to see if any portion of the cost for an accommodation can be claimed as a credit on your federal income tax return.

Employers are not required to tolerate substandard work or repeated work rule violations. It may be prudent, however, to deal cautiously with employees who raise disability or addiction to legal substances to explain why a violation occurred or a performance problem exists.

#### 9. Immigration Verification Procedures

Complete the most recent [I-9 Form](#) (attached as Appendix F) for all, not some, new hires, regardless of their race, nationality or citizenship. An employer who requests employment verification only from individuals of a particular national origin, or individuals who appear or sound foreign born, may have violated both the Immigration Act and the Civil Rights Act.

It is a good idea to maintain [I-9 Forms](#) separate from individual personnel files. Copying work eligibility documents is optional, but be sure the procedures you adopt are the same for all new hires. Employers must accept any of the documents listed on the I-9 Form (or others listed in the more complete IRCA Handbook for Employers) as evidence of eligibility for employment. Keep the I-9 Form for at least three years, or one year after the employee is separated, whichever is later.

Note that some employers are still not in compliance with this law even though it has been a requirement since 1986. They run the risk of substantial fines per violation for not having completed and retained an I-9 Form even if the employee was legally eligible for employment. Fines may also be assessed for failing to complete all necessary items on the [I-9 Form](#). Attaching the eligibility documents in lieu of completing the I-9 Form is unacceptable. Consider consulting legal counsel about how best to "catch up" if you do not use the I-9 Form.

#### 10. Terminations

Before initiating any wide-ranging terminations, job eliminations or lay offs, consider if there will be any adverse impact on a protected group that might invite a class action suit. For example, are all those affected over 40 years old or were they selected because of their eligibility for retirement?

Consider carefully before you interfere with a former employee getting a job. Bad employment references can lead to allegations of libel and litigation. Charges may be found valid unless you have incontrovertible evidence to support your statement. Even good references have helped complainants show there was no cause for the original dismissal actions. A policy of simply confirming employment information is safest, especially if your reference is adverse.

Treat a dismissed employee with courtesy and respect. Give as much warning as you can, suggest other employment opportunities and try to show as much compassion and understanding as you can. Listen to extenuating circumstances and be helpful. Your actions may prevent a complaint from being filed. When possible, conduct an exit interview. Exit interviews can also provide information you can use about workplace issues and people.

### **3. LAWS AND LEGAL REQUIREMENTS**

#### **A. Title VII of the Civil Rights Act**

Employment discrimination based on race, color, religion, sex or national origin is prohibited by Title VII of the Civil Rights Act of 1964. Title VII covers private employers, state and local governments, and educational institutions that have 15 or more employees. The federal government, private and public employment agencies and labor organizations also must abide by the law.

It is illegal under Title VII to discriminate in:

- \* Hiring and firing;
- \* Compensation, assignment or classification of employees;
- \* Transfer, promotion, layoff or recall;
- \* Job advertisements;
- \* Recruitment;
- \* Testing;
- \* Use of company facilities;
- \* Training and apprenticeship programs;
- \* Fringe benefits;
- \* Pay, retirement plans and disability leave; or
- \* Other terms and conditions of employment.

Title VII prohibits retaliation against a person who files a charge of discrimination, participates in an investigation or opposes an unlawful employment practice. Title VII also protects applicants and employees from sexual, racial, religious and national origin harassment. Employees have the right to work in an environment free from discriminatory intimidation, ridicule and insult, whether based on race, sex, religion or national origin. Employers have a responsibility to maintain a bias-free working atmosphere and to investigate and correct any discriminatory situations they are or should be aware of.

Employment agencies may not discriminate in receiving, classifying or referring applications for employment or in their job advertisements.

Labor unions may not discriminate in accepting applications for membership; classifying members; job referrals; training and apprenticeship programs ; or in advertising for jobs. It is illegal for a labor union to cause or try to cause an employer to discriminate. It is also illegal for an employer to cause or try to cause a union to discriminate.

Employees who may request special considerations based on their religious beliefs or practices are covered by Title VII. Ensure individuals are treated respectfully and accommodated unless the accommodation would impose an undue hardship on the business. As a rule, employer defenses based on undue hardship have been difficult to sustain.

#### **1. Sexual Harassment**

Sexual harassment is unwelcome verbal or physical conduct of a sexual nature. The courts have determined that Title VII prohibits sexual harassment in the workplace as a form of sex discrimination. Sexual harassment, in addition to being a set of specific prohibited actions that make it illegal to demand sexual favors in return for favorable employment considerations, may be almost any behavior that, in the eye of the beholder, is viewed as sexually harassing. It occurs when unwelcome conduct of a sexual nature unreasonably interferes with an individual's job performance or creates an intimidating, hostile or offensive working environment, even in the absence of any tangible or economic job consequences. Maintaining a work environment hostile to women, for instance, constitutes illegal harassment. Evidence could include sexually provocative calendars in the workplace, gender-based jokes or name-calling. Harassment by and against males, females and/or between members of the same sex employees may be alleged.

After any internal complaint of sexual harassment is filed, a company is required to undertake an investigation and impose a remedy if a problem is found. An employer can be held liable for actions of its employees and even its customers or vendors if it knew or should have known of the harassment and failed to take appropriate action. Failure to address an employee complaint creates an employer liability independent of the alleged harassment itself.

## 2. The Pregnancy Discrimination Act of 1978

Under Title VII, pregnancy, childbirth and related medical conditions must be treated the same as any other non-pregnancy-related illness or disability. Similarly, employers must cover maternity leave as any other medical disability leave. Employers should also check state laws, which may require more generous benefits, before making decisions on childbirth or child care leave.

### **B. The Americans with Disabilities Act (ADA)**

Title I of the Americans with Disabilities Act of 1990, enforced by the EEOC, prohibits private employers and state and local governments with 15 or more employees, employment agencies, and labor unions from discriminating against qualified individuals with disabilities in job application procedures, hiring, firing, advancement, compensation, fringe benefits, job training, and other terms, conditions and privileges of employment.

An individual with a disability is a person who:

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

A qualified employee or applicant with a disability is an individual who satisfies skill, experience, education, and other job-related requirements of the position held or desired, and who, with or without reasonable accommodation, can perform the essential functions of that position without endangering their own health and safety or that of others.

State and local laws may define disability somewhat differently or may obligate smaller employers to comply. The ADA covers physical and non-physical disabilities - not only sight, hearing and mobility impairments, but also, if they arise in an employment or customer service context, conditions such as mental retardation, diabetes, emphysema, AIDS, allergies, heart disease, a history of cancer, medically diagnosed depression, emotional illness, etc. Individuals who have a disability and who are otherwise qualified, with or without an employer-provided accommodation, are people entitled to protection under the law. ADA also protects people who are perceived (and therefore treated) as though they have a disability. For instance, not hiring an otherwise qualified person whom you believe is HIV positive (whether true or not) would be illegal. Employment actions must be based on job performance issues, not on unrealistic fears of contagion or on employee or customer pressures.

Reasonable accommodation may include, but is not limited to:

- \* Making existing facilities used by employees readily accessible to and usable by persons with disabilities;
- \* Job restructuring, modification of work schedules, reassignment to a vacant position; or

- \* Acquiring or modifying equipment or devices, adjusting or modifying examinations, training materials or policies, and providing qualified readers or interpreters.

An employer is required to make a reasonable accommodation in order to provide an equal employment opportunity to a qualified applicant or employee with a disability, unless this would impose an "undue hardship" on the operation of the employer's business. Undue hardship is defined as an action requiring significant difficulty or expense when considered in light of factors such as the size of a business, financial resources and the nature and structure of its operation.

Employees and applicants currently engaging in the use of illegal drugs are not covered by the ADA, when an employer acts on the basis of such use. Also, occasional use of drugs or alcohol by someone who is not addicted is not treated as a disability. Employees whose use of alcohol or drugs prevents them from carrying out their duties or threatens the property or safety of others are not protected by the ADA. Employers may hold individuals who are using illegal drugs, and alcoholics, to the same performance standards as other employees. The ADA does protect individuals participating in legitimate drug or alcohol rehabilitation programs.

Accessibility is not only an issue in employment, but also in customer service and public accommodation. Are your facilities accessible to and usable by individuals with disabilities? Survey the physical accessibility of your business from the parking lot into and throughout your building. Are there any avoidable architectural barriers within your facility? Think about what accommodations you could make, for instance, to meet or serve a customer who is blind, deaf, home bound or in a wheelchair.

### **C. The Equal Pay Act (EPA)**

The Equal Pay Act of 1963, enforced by the EEOC, is an amendment to the Fair Labor Standards Act. It prohibits employers from discriminating on the basis of sex in the payment of wages where men and women perform substantially equal work under similar working conditions in the same establishment. For equal pay to be required, the work must be substantially similar in terms of skill, effort (mental and physical), responsibility, and working conditions. The law also prohibits employers from reducing the wages of either sex to comply with the law.

A violation may exist where a different wage is paid to a predecessor or successor employee of the opposite sex. Labor organizations may not cause employers to violate the law.

As is generally the case with other civil rights laws, retaliation against a person who files a charge, participates in an investigation or opposes an unlawful employment practice also is illegal.

The law protects virtually all private employees, including executive, administrative, professional and outside sales employees who are exempt from minimum wage and overtime laws. The law does not apply to pay differences based on factors other than sex, such as seniority, merit or systems that determine wages based upon the quantity or quality of items produced or processed.

Many EPA violations may be violations of Title VII of the Civil Rights Act of 1964, which also prohibits sex-based wage discrimination. Such charges may be filed under both statutes.

### **D. The Age Discrimination in Employment Act of 1967 (ADEA)**

As amended, all persons 40 years of age or older are protected by the ADEA. The law applies to private employers with twenty or more workers, employment agencies and labor organizations with twenty-five or more members. Labor organizations that operate a hiring hall or office that recruits potential employees or obtains job opportunities also must abide by the law.

The ADEA prohibits age discrimination in hiring, discharge, pay, promotions and other terms and conditions of employment. Generally, mandatory retirement based on reaching a certain age is prohibited. The law is enforced by the EEOC.

Retaliation against a person who files a charge of age discrimination, participates in an investigation or opposes an unlawful practice also is illegal.

It is unlawful to cease or reduce the rate of pension benefit accruals or allocations because of age for employees who have at least one hour of service in pension plan years beginning on or after January 1, 1988. Limitations on the amount of benefits, years of service or years of participation may be permissible, if the limits are imposed without regard to age.

## **E. The Immigration Reform And Control Act (IRCA)**

The Immigration Reform and Control Act of 1986, in effect since Nov. 6, 1986, requires employers to be able to prove that all employees hired after Nov. 6, 1986, are legally authorized to work in the United States. All employers, no matter how small, must comply with this law. An "Employment Eligibility Verification" document, generally known as an I-9 Form, must be completed and retained by employers for each new hire (but not for applicants).

Citizenship requirements, preferences or rules requiring that employees be fluent in English or speak only English at work may be unlawful if they disproportionately exclude individuals of a particular national origin and are not justified by business necessity.

## **F. Executive Order 11246 and Affirmative Action Plans (AAP)**

Presidential Executive Order Number 11246 mandates nondiscrimination and affirmative action by federal contractors and subcontractors if their federal contracts exceed \$10,000 annually. The Executive Order contains a standard, seven paragraph text that is used to certify that covered contractors agree to comply with Executive Order 11246 during the performance of the contract. Affirmative action is a remedy designed to eliminate systemic discrimination against members of protected classes. Employers who are required to adopt written AAPs are those with at least 50 employees who hold federal government contracts or subcontracts exceeding \$50,000 annually. Other circumstances prompting the need to develop and maintain an AAP include situations where evidence of discrimination is found by a court, a federal or state compliance agency or by an employer's own self-audit. Ensure that the implementation of an AAP, especially trying to achieve voluntary employment goals, does not result in discrimination against other individuals.

When an AAP is prepared, there must be a careful review and evaluation of every employment process to assure that barriers to EO are identified and eliminated. Specific steps are developed and implemented to achieve and document equal opportunity. The mission of an effective AAP is to ensure that all employment practices, including but not limited to position requirements, recruitment procedures, hiring standards and methods of selection and placement, do not discriminate, but instead, contribute toward achieving affirmative action goals. The U. S. Department of Labor, Office of Federal Contract Compliance Programs, is responsible for ensuring federal contractors and subcontractors comply with the requirements of Executive Order 11246.

Federal procurement agencies and federal government contractors often seek written assurances that companies will comply with these requirements as a condition of bidding on federal contract work. Information about writing an AAP or specific contractor requirements, however, is available from OFCCP offices.

In addition, the Rehabilitation Act of 1973, as amended (Section 503) and the Vietnam-era Veterans Readjustment Act of 1974, as amended (38 USC 4212) require federal contractors and subcontractors with contracts exceeding \$10,000 not to discriminate against and to take affirmative action to employ and advance in employment qualified individuals with disabilities (Section 503) along with disabled veterans and Vietnam era veterans (38 USC 4212). Covered contractors are required to list all suitable employment openings with the state employment service office. OFCCP can also provide further information about complying with these laws.

## **G. The Family and Medical Leave Act (FMLA)**

The Family and Medical Leave Act applies to companies with 50 or more employees during at least 20 workweeks in the current or previous calendar year. Covered employers must grant an employee who has been employed at least one year (who worked at least 1,250 hours during the previous year) and who is employed at any location where at least 50 company employees work within a 75 mile radius, up to 12 weeks of unpaid leave within any 12-month period if the leave is requested for any of the following reasons:

- \* The birth of the employee's child or to care for the newborn;

- \* The adoption of a child or to care for a foster child placed with the employee;
- \* To care for the spouse, child or parent of the employee if that individual has a serious health condition (the employer is not obliged to cover the employee's in-laws);
- \* A serious health condition that renders the employee unable to perform the duties of his or her job.

If the employer provides paid leave for less than 12 weeks, the additional required weeks are uncompensated. An employer may require, or the employee may choose, to substitute any kind of personal leave, vacation time or other available leave to comprise part of the required 12- week maximum in a 12- month period. The employer may require the employee to use any accrued sick leave if the leave is requested for the employee's own medical condition or to care for a covered family member.

If the need for leave is foreseeable, the employer can require at least 30 days advance notice. The employer must maintain the employee's health benefits just as if the employee had continued working. Thus, the employee can be asked to pay the usual employee portion of the premium during the leave period. An employee taking leave under the Act is entitled to return to the same position or to an equivalent position with equal pay, benefits and other terms and conditions of employment. The taking of leave cannot result in any loss of benefits accrued prior to the beginning of the leave period.

Covered employers should modify their existing leave policies to conform with the Act. Covered employers no longer have the discretion of not approving the leave or not holding the employee's position open if the leave requested is covered by the FMLA.

#### **4. DISCRIMINATION COMPLAINT PROCEDURES**

When an authorized agency contacts you regarding a complaint, cooperate and promptly provide information as requested. Keep documentation. Ask witnesses and involved parties for information pertinent to the situation as soon as possible, not when the investigation begins. Consider the potential benefits and drawbacks of working directly with the complainant to resolve the allegation(s) before a formal investigation. Do not retaliate against the complainant. Charges of retaliation can be upheld even when the original complaint is found invalid.

Designate one person to be the company's official contact with the investigating agency. Analyze the initial letter and the complaint. Evaluate the case by listing strengths and weaknesses in the company's position. Think about occasions when the company took a similar action with someone unlike the complainant and when someone like the complainant was treated differently. These examples tend to support the claim that whatever occurred was not based on membership in the complainant's group.

If an agency rules against your position, there are often decision appeal channels if you can support your position with facts. If you are unhappy that a law (as distinct from a decision) requires you to comply with certain standards or that a law covers your business, there is usually little purpose served in expressing your displeasure to enforcement officials. Government agencies often do not control what requirements they enforce. Let lawmakers know of your discontent rather than uselessly taking your frustration out on the individuals enforcing the law.

As a rule, the cost of solving a problem - even compromising in advance - is much less than the cost of resolving a complaint filed with a government agency. Remain fair to your policies and other employees, but also try to visualize an issue from a complainant's perspective. If your intuition suggests the possibility of a formal complaint or protracted dispute, perhaps erring on the side of leniency can avoid it.

#### **5. COVERAGE AND OBLIGATIONS OF SBA RECIPIENTS**

The following minimum actions, taken from the "Notice to New SBA Borrowers" (SBA Form 793), are required to establish that a recipient of SBA financial assistance is complying with the requirements of SBA Non Discrimination Rules and Regulations:

- A. Preparation and dissemination to all employees and applicants for employment, of a written statement outlining the employer's policy of extending equal opportunity to all persons without regard to race, color, religion, sex, marital status, age, disability, or national origin in such matters as customer service and benefits of employment.

- B. Specific designation of responsible officials to coordinate and implement the equal employment opportunity program.
- C. Development of procedures for the dissemination and feedback of equal opportunity information to supervisory personnel and to their subordinates.
- D. Posting of SBA EO posters in conspicuous places, visible to the public, to employees and to applicants for employment, indicating that the company is an equal opportunity firm.
- E. Utilize "An Equal Opportunity Employer" in all help-wanted advertisements and job orders.
- F. Where applicable, written notifications to unions of your company's equal opportunity policy; seek incorporation of such policies in union agreements. Request written acknowledgment of receipt of your notice to the unions.

In addition to the minimum actions, SBA policy requires that all recipients of SBA financial assistance take necessary steps to assure equal opportunity is afforded the public, employees and applicants for employment or services. Although SBA recipients are encouraged to adopt positive steps to address potential problem areas, written AAPs are not required.

During the life of a loan, an on-site compliance review may be conducted. Complaints of discrimination lodged against an SBA recipient and filed with SBA are investigated by the SBA Office of Civil Rights Compliance or referred to another but appropriate federal or state agency.



## 6. TECHNICAL ASSISTANCE RESOURCES

The following is intended as an "Easy Reference Guide" to assist the reader in identifying the relevant government agency for several areas of interest:

<b>FOR QUESTIONS PERTAINING TO:</b>	<b>YOU MAY CONSULT THESE GOVERNMENT AGENCIES:</b>
<p>Title VII of the Civil Rights Act of 1964, as amended</p> <p>Sexual Harassment Prohibition</p> <p>The Pregnancy Discrimination Act of 1978</p> <p>The Age Discrimination in Employment Act of 1967, as amended</p> <p>The Equal Pay Act of 1963</p> <p>The Americans with Disabilities Act Title I (employment)</p>	<p>Equal Employment Opportunity Commission 1801 "L" Street, N.W. Washington, D.C. 20507 1-800-669-3362 (Publications) 1-202-663-4900 (Direct Inquiries) <a href="http://www.eeoc.gov">http://www.eeoc.gov</a></p>
<p>The Americans with Disabilities Act Title II (public services) and Title III (public accommodations)</p>	<p>U.S. Department of Justice Disability Rights Section, Civil Rights Division P.O. Box 66738 Washington, D.C. 20035-6738 (202) 514-0301 (Voice) (202) 514-0383 (TDD) <a href="http://www.usdoj.gov/crt/ada/asahom1.htm">http://www.usdoj.gov/crt/ada/asahom1.htm</a></p>
<p>The Immigration Reform and Control Act of 1986</p>	<p>U.S. Department of Justice Immigration and Naturalization Service 425 "I" Street, N.W. Washington, D.C. 20536 1-800-375-5283 1-800-767-1833 (TTY) <a href="http://www.usdoj.gov/graphics/services/NCSC.htm">http://www.usdoj.gov/graphics/services/NCSC.htm</a></p>
<p>Executive Order 11246, as amended (and Affirmative Action Plans)</p> <p>Section 503 of the Rehabilitation Act of 1973, as amended</p> <p>38 USC 4212 – The Vietnam Era Veterans' Readjustment Assistance Act of 1974 (VEVRAA)</p> <p>Immigration Reform and Control Act of 1986</p> <p>Title 1 of the Americans with Disabilities Act of 1990</p>	<p>U.S. Department of Labor Employment Standards Administration Office of Federal Contract Compliance Programs Room S-3325 200 Constitution Avenue, N.W. Washington, D.C. 20210 (202) 693-0023 <a href="http://www.dol.gov/dol/esa">http://www.dol.gov/dol/esa</a></p>

The Family and Medical Leave Act of 1993	Wage and Hour Division, Rm. S-3325 200 Constitution Avenue, N.W. Washington, D.C. 20210 (202) 693-0023 <a href="http://www.dol.gov/dol/esa">http://www.dol.gov/dol/esa</a>
Small Business Administration Nondiscrimination Rules and Regulations	U.S. Small Business Administration Office of Equal Employment Opportunity and Civil Rights Compliance 409 Third Street, S.W. Washington, D.C. 20416 (202) 205-6751 <a href="http://www.sba.gov">http://www.sba.gov</a>
Section 504 of the Rehabilitation Act of 1973	U.S. Department of Education Rehabilitation Services Administration Mary E. Switzer Building, Room 3028 330 "C" Street, S.W. Washington, D.C. 20202-2531 (202) 401-2000 (Voice Only) <a href="http://www.ed.gov/offices/OSERS/RSA/rsa.htm">http://www.ed.gov/offices/OSERS/RSA/rsa.htm</a>
<b>FOR QUESTIONS PERTAINING TO DISABILITIES:</b>	<b>YOU MAY CONSULT THESE AGENCIES:</b>
Provides technical assistance on employment provisions of ADA directly and through its Governors' Committee on Employment of People with Disabilities.	President's Committee on Employment of People with Disabilities 1331 "F" Street, N.W., Suite 300 Washington, D.C. 20004 (202) 376-6200 (Voice) (202) 376-6219 (FAX) (202) 376-6205 (TDD) <a href="http://www.dol.gov/pcepd">http://www.dol.gov/pcepd</a>
Assists businesses interested in developing supported employment programs in obtaining necessary support services.	Association of Persons in Supported Employment 1627 Monument Avenue Richmond, Virginia 23220 (804) 278-9187 (Voice) 804-278-9377 (FAX) <a href="http://www.apse.org">http://www.apse.org</a>
Free service for those seeking information on how to accommodate particular functional limitations; has database with information on over 16,000 specific reasonable accommodations.	Job Accommodation Network (JAN) West Virginia University P.O. Box 6080 Morgantown, West Virginia 26506-6080 1-800-526-7234 in the U.S. (Voice or TT) 1-800-526-2262 in Canada (Voice or TT) <a href="http://www.jan.wvu.edu">http://www.jan.wvu.edu</a>
Assists businesses interested in obtaining guidelines for making modifications to newly constructed facilities and alterations to existing buildings in compliance with accessibility requirements and standards.	The Access Board U.S. Architectural & Transportation Barriers Compliance Board 1331 F Street, NW, Suite 1000 Washington, DC 20004-1111 1-800-872-2253 (Voice) 1-800-993-2822 (TTY) 1-202-272-5447 (FAX)

<b>FOR INFORMATION ON:</b>	<b>YOU MAY CONSULT THESE AGENCIES:</b>
The National Urban League Job Placement Service	The National Urban League 120 Wall Street New York, New York 10005 (212) 558-5300 (Voice) <a href="http://www.nul.org">http://www.nul.org</a>
The SBA Answer Desk: a toll-free information and referral service to assist small business owners in matters relating to government and their businesses.	U.S. Small Business Administration The SBA Answer Desk 1-800 U ASK SBA (1-800-827-5722) <a href="http://www.sba.gov">http://www.sba.gov</a>
Federal Information Centers	Check your local telephone directory under U.S. Government
City and State equal employment opportunity and human rights agencies	Check city or state telephone numbers for Equal Opportunity, Human Rights or Fair Employment Practices
Your Congressional Representative	Contact your congressional representative's local district office or write to him or her c/o U.S. Capitol Washington, D.C. 20515 (202) 224-3121
Special Emphasis Employee Referral, Job Training Programs and Labor Market Information	Contact your State Employment Services Office

**APPENDIX A**

**EQUAL OPPORTUNITY POLICY STATEMENT**

TO:           Department Managers           Recipients of Services  
              Supervisory Personnel       Customers/Clients  
              Employees                    Recruitment Sources  
              Applicants for Employment   Vendors

SUBJECT:     Equal Opportunity

OBJECTIVE:   To obtain qualified employees consistent with position requirements: to seek, employ, promote, and treat all employees and applicants for employment without discrimination as to race, color, religion, sex, marital status, disability, national origin or age. To have all business practices conform to equal opportunity requirements.

It is the policy of \_\_\_\_\_ to give equal opportunity to all qualified persons without regard to race, color, religion, sex, marital status, disability, national origin or age.

All individuals will be recruited, hired, assigned, advanced, compensated and retained on the basis of their qualifications, and treated equally in these and all other respects without regard to race, color, religion, sex, marital status, disability, national origin or age.

It shall be considered the responsibility of supervisory employees to further the implementation of this policy and ensure conformance by their subordinates.

Supervisory personnel as well as those responsible for hiring new employees must take all necessary action in the elimination of possible discrimination toward applicants and employees of \_\_\_\_\_ in all categories and levels of employment and employees relations.

It shall further be the policy of \_\_\_\_\_ to provide services/ merchandise/products to customers/clients/the public on an equal opportunity basis. All credit decisions, vendor choices and other business decisions shall be made on the basis of merit, without regard to race, color, religion, sex, marital status, disability, national origin or age.

It is also the policy of the Company to maintain a working environment free of sexual harassment and intimidation. Verbal or physical conduct of a sexual nature which interferes with an individual's work performance or creates an intimidating, hostile, or offensive working environment, constitutes sexual harassment. Employees who violate this policy will be subject to disciplinary action.

Responsibility for seeing that this policy is continuously followed has been assigned to (designated official). The designated official shall work with each department manager and supervisor in furthering its implementation, monitoring the progress being made and representing the company if anyone wants to make inquiries concerning potential violations of this policy.

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President/Owner Signature

## APPENDIX B

### SEXUAL HARASSMENT POLICY STATEMENT

#### POLICY:

It is the policy of (name of company) to provide a productive and comfortable working environment, free from harassment or intimidation which is connected to offensive sexual conduct. All employees have rights and protection under the law. Any employee who has experienced sexual harassment will be able to pursue corrective action without fear of adverse consequences.

#### RESPONSIBILITY:

- \* All employees are accountable for their own actions.
- \* All managers and supervisors are responsible for promoting working conditions free of sexual harassment.
- \* All those in line of delegated authority are responsible for seeing that employees in their department comply with the company policy and take action when sexual harassment is alleged to have occurred. When blatant or gross misconduct has occurred this may include discharging an employee found to have violated this policy.

#### SCOPE:

This policy applies to every aspect of the employment relationship throughout the organization, and to the dealings of our employees with vendors and customers.

#### DEFINITION:

**SEXUAL HARASSMENT** is any suggestion that any person's promotion, employment, compensation or treatment is in any way contingent upon or related to an employee's participation in or rejection of conduct of sexual nature. Harassment includes unwanted advances, suggestive comments, or physical contact, if they create an intimidating, hostile or offensive working environment. Examples of sexual harassment include: unwanted sexual advances, use of unwanted sex related jokes, slurs and innuendoes; and explicit or implied threats aimed at getting an employee to agree to sexual activity.

#### WHAT SHOULD HARASSED EMPLOYEES DO?

The first step is to talk to the offender. That person may not realize that certain behavior offends or annoys you. If the behavior continues after the offender has been warned, or if the employee believes that a warning would be ineffective or would result in a reprisal, report the conduct to your supervisor or the Personnel Department.

Any report of sexual harassment will be handled quickly, cautiously by the Personnel Department and/or an appropriate manager, restricting the information about it to only those who need to know. The first attempt will be to resolve each situation among the parties directly involved. If this is not possible or does not appear likely to happen, the findings and recommendations of the Personnel Representative will be reported to Senior Management for appropriate action.

## APPENDIX C

### QUESTIONS AND ANSWERS ABOUT AFFIRMATIVE ACTION

1. WHAT IS AFFIRMATIVE ACTION?

Affirmative Action is a set of specific, result-oriented procedures designed to increase the utilization of minorities and females at all levels of the work force.

2. WILL AFFIRMATIVE ACTION RESULT IN 'REVERSE DISCRIMINATION'?

No. Discrimination based on race, color, religious creed, national origin, ancestry, sex and age is illegal. An Anglo-Caucasian has the right to file a complaint if he or she believes an opportunity has been denied because of discrimination. Unfortunately, as long as there are more applicants than there are the number of jobs to be filled, those not selected tend to feel they have been "discriminated against." Any form of discrimination is an abuse of affirmative action and conflicts with the intent of the program. However, there are instances of individuals deliberately trying to undermine an affirmative action program by falsely telling unsuccessful candidates they were not chosen because "they needed a minority."

3. IS AFFIRMATIVE ACTION A FORM OF PREFERENTIAL TREATMENT?

All "selection" is a form of "preferential treatment". In every employment decision, a preference is exercised when more than one candidate is being considered. It is acceptable to undertake special efforts to bring into the work force those who have been previously excluded on a class basis. One purpose of affirmative action is to assist in the placement of qualified minority and female applicants in underutilized areas; it is not designed to prefer minorities and females to the exclusion of other groups.

4. DOES AFFIRMATIVE ACTION MEAN LOWERING STANDARDS?

No. But affirmative action does mean changing standards when it is found, for example, that minimum qualifications which screen out a disproportionate number of minorities are unduly stringent, are not job related, and do not predict job performance. Affirmative action also means developing selection devices which measure the skills required for the job instead of using artificial measurements which serve only to reduce the number of applicants and frequently screen out valuable talent. Such changes result in an improved personnel system.

5. ARE EMPLOYERS EXPECTED TO HIRE THE 'LESS QUALIFIED' OVER THE 'MORE QUALIFIED' TO MEET AFFIRMATIVE ACTION GOALS?

Employers are not expected to establish any hiring practices that conflict with the principles of sound personnel management. No one should be hired unless there is a basis for believing the individual will perform successfully. However, looking at any work force, it is obvious that the state of the art is not yet developed to the point where it is possible to predict who among candidates is certain to give the best performance once hired. The "best" or "most qualified" applicant is not necessarily the one with the most advanced degree or the most prior experience. The "best" or "most qualified" applicant may be the one who is highly motivated and has the ability to learn; and it may be the one that meets the employer's need to bring ethnic diversity into the work force. The assumption that hiring minorities automatically means sacrificing quality is fallacious.

6. IS THERE REALLY ANY DIFFERENCE BETWEEN 'GOALS' AND 'QUOTAS'?

Yes. There is a tendency among those who feel threatened by affirmative action to insist on introducing the word "quota" where it does not belong. Quotas are rigid and exclusionary; they infer, "This is what you must achieve, no matter what." Goals are flexible and inclusionary; they infer, "This is what we think you can achieve if you try your best." Goals are simply program objectives translated into numbers. They provide a target towards which to strive and a vehicle for measuring progress.

## APPENDIX D

### GUIDE TO PRE-EMPLOYMENT INQUIRIES

The rationale for all pre-employment inquiries, whether asked on the application form or during the pre-hiring interview, should be evaluated based on the following questions:

1. Is the requested information relevant to judging the individual's ability or competence to perform the job (with or without reasonable accommodation)?
2. Is the question job related (necessary for the performance of a particular job - a bona fide occupational qualification) or is the information requested a matter of legitimate business necessity?
3. Are all applicants for the position asked the same questions?

Consideration should also be given to the following:

1. Does the question tend to have a disproportionate effect in screening out minorities, individuals with disabilities, and/or females?
2. How is the information used and what impact does or will its use have upon an individual?
3. Are employment decisions (hiring, promotion, discharge) based, in part, on physical appearance factors, hair style or dress unrelated to job performance? The interviewer should avoid any line of questioning or discussion that may reveal his/her personal prejudices, assumptions or stereotypes.

This guide will assist you in understanding and applying the law. It is not an exhaustive compilation of all acceptable and inadvisable pre-employment inquiries. The questions considered inadvisable, unless justified by legitimate job qualification standards, may constitute evidence of unlawful discrimination. Please note that an exception is permitted when making pre-employment inquiries of persons with disabilities for the purpose of increasing the representation of individuals with disabilities in the employer's workforce. However, the individual with disability **MUST** be informed (1) of the reason for the inquiry; (2) that all responses are voluntary; (3) that failure to respond will not result in adverse treatment; and (4) that the information provided will be kept confidential, except for relevant information needed by supervisors, safety personnel or government compliance officials.

Also, information concerning race, age, sex and number of dependents may be requested after the applicant has been hired, provided such information is not used for any subsequent employment decision, i.e., promotions or layoffs.

## GUIDE TO PRE-EMPLOYMENT INQUIRIES

TOPIC	ACCEPTABLE	INADVISABLE
1. Arrest Records	Any inquiry is inadvisable.	
2. Availability for work weekends, and/or evenings	If asked of all applicants and it is a business necessity for the person to be available to work weekends and/or evenings.	Any inquiry about religious observance.
3. Birthplace & Residence	Applicant's place of residence, length of applicant's residence and/or city where employer is located.	Birthplace of applicant or parents; birth certificate, naturalization or baptismal certificate prior to hiring.
4. Child Care	None, unless asked of all applicants.	Inquiry into child care arrangements of only female applicants.
5. Citizenship	Whether applicant is prevented from lawfully becoming employed in this country because of visa or immigration status.	Whether applicant is a U. S. Citizen.
6. Conviction Records	Inquiry into convictions, if job related.	Any inquiry about conviction, unrelated to job requirements.
7. Creed or Religion	None, except where religion is a bona fide occupational qualification.	Applicant's religious affiliation, church, parish or religious holidays observed.
8. Credit Records	None, unless job related.	Inquiries about charge accounts, bank accounts, etc.
9. Family Status	Whether applicant has responsibilities or commitments which prevent him/her from meeting work schedules, if asked of all applicants, regardless of sex.	Marital status, number and ages of children, spouse's job.
10. Handicap	Whether applicant can perform job in question.	To ask applicant to list or describe his/her handicap(s).
11. Height & Weight	None, unless job related.	Any inquiry unrelated to job requirements.
12. Language	Languages applicant speaks or writes fluently.	Applicant's mother tongue, used by applicant at home, or how applicant acquired the ability to read, write, or speak a foreign language.
13. Marital Status	Any inquiry is inadvisable.	
14. Military Service	Military experience or training.	Type or condition of discharge.
15. Name	Whether applicant has worked under a different name.	The original name of an applicant whose name has been legally changed or the national origin of an applicant's name.
16. National Origin	None, except whether applicant is legally eligible to work in the United States.	Applicant's lineage, ancestry, national origin, descent, parentage, or nationality of applicant, or applicant's parent or spouse.
17. Organizations	Applicant's membership in professional organizations, if job related.	All clubs, social fraternities, societies, lodges or organizations of which applicant belongs.
18. Photographs	None, except after hiring.	Photograph with application or after interview, but before hiring.
19. Pregnancy	Any inquiry is inadvisable.	
20. Race or Color	Any inquiry is inadvisable.	
21. References	Name of character references.	Name of applicant's pastor or religious leader.
22. Age	Are you over 16, 18 or 21, etc.	Date of Birth.
23. Sex	None, except where sex is a bona fide occupational qualification.	Any inquiry, except where it is a bona fide occupational qualification.



## **APPENDIX E**

### **ETHNIC IDENTIFICATION**

In order to maintain consistency among the federal agencies, the following standard set of racial/ethnic categories has been developed by the Office of Management and Budget.

These designations do not denote scientific definitions of anthropological origins. An employee may be included in the group to which he or she appears to belong, identifies with, or is regarded in the community as belonging. However, no person should be counted in more than one racial/ethnic group.

The definitions presented below provide examples of areas or countries which are to be included in particular categories. These lists are not meant to be exhaustive. If a question arises with respect to the proper categorization of persons from a particular country or who appear to belong to a particular group, it is usually permissible to make reasonable presumptions for the purpose of completing employee census type forms. Visual surveys are an acceptable basis for classification.

#### **American Indian or Alaskan Native**

A person having origins in any of the original peoples of North America, and who maintain cultural identification through tribal affiliation or community recognition.

#### **Asian or Pacific Islander**

A person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent or the Pacific Islands. This area includes, for example, China, Japan, Korea, the Philippine Islands, and Samoa.

#### **Black, not of Hispanic Origin**

A person having origins in any of the black racial groups of Africa.

#### **Hispanic**

A person of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish Culture or origin, regardless of race.

#### **White, not of Hispanic Origin**

A person having origins in any of the original peoples of Europe, North Africa, or the Middle East.

In response to requests from agencies, contractors and the general public, OMB has provided the following guidance in response to specific questions.

1. What countries are included within the Indian subcontinent?

The Indian subcontinent includes: India, Pakistan, Bangladesh, Sri Lanka, Nepal, Sikkim, and Bhutan.

2. Should persons from all Central and South American countries be reported in the category "Hispanic"?

No. Only those persons from Central and South American countries who are of Spanish origin, descent, or culture should be included in the category Hispanic. Persons from Brazil, Guyana, Surinam, or Trinidad, for example, would be classified according to their race and would not necessarily be included in the Hispanic category.

3. Does the Hispanic category include persons from Portugal?

No. The Portuguese should be excluded from the category Hispanic, and should be classified according to their race.

## APPENDIX F

[Form I-9](#)