



## Department of Transformation and Shared Services Office of Personnel Management

**Policy Title:** Equal Employment Practices

**Policy Number:** 17

**Authority:** Title VII of the Civil Rights Act of 1964; Ark. Code Ann. §§ 21-3-203 and 21-12-103

**Revised:** March 16, 2020

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State agencies shall not discriminate in hiring, promoting, administering disciplinary action, or in any other way against employees. Every agency must adopt and pursue a comprehensive equal employment hiring program designed to achieve a goal of increasing the percentage of minority employees within the agency to a level that approximates the percentage of minorities in the state's population. Agencies shall report to the Legislative Council on June 30 of each year stating its efforts to achieve its equal employment hiring program goal.

Agencies should establish an investigation process for allegations of discrimination and/or harassment. Agencies shall include in their personnel manual a statement that discrimination by an officer or employee is grounds for dismissal. When it is determined by any court of law that an employee is guilty of discrimination, such determination is grounds for dismissal from employment.

The following types of discrimination are prohibited by law:

### **I. Age (Age Discrimination in Employment Act)**

The law protects employees who are at least forty (40) years of age or older. An agency is prohibited from limiting, segregating, or classifying employees in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his or her status as an employee and an agency cannot reduce an employee's rate of pay because of age.

An agency may take adverse personnel actions against an employee if age is a bona fide occupational qualification, reasonably necessary to the normal operations of a particular job, or where the differentiation is based on factors other than age.

An employee may be subject to compulsory retirement if the employee:

1. Is sixty-five (65) years of age;
2. For the two-year period immediately before retirement is employed in a bona fide executive or high policy-making position; and
3. Is entitled to an immediate non-forfeitable annual retirement benefit from pension, savings, or deferred compensation plan, or any combination of such plans which is an aggregate of at least forty-four thousand dollars (\$44,000).

### **II. Disability (Americans with Disabilities Act)**

Disability discrimination is when an agency does one of the following:

1. Treats a qualified individual with a disability who is an employee or applicant unfavorably because he/she has a disability;



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2. Treats an applicant or employee less favorably because he/she has a history of a disability (such as cancer that is controlled or in remission), or
3. Treats an applicant or employee less favorably because he/she is believed to have a physical or mental impairment that is not transitory (lasting or expected to last six months or less) and minor (even if he/she does not have such an impairment).

The law also protects people from discrimination based on their relationship with a person with a disability (even if they do not themselves have a disability). For example, it is illegal to discriminate against an employee because their spouse has a disability. The law requires an employer to provide reasonable accommodation to an employee or job applicant with a disability, unless doing so would cause significant difficulty or expense for the employer ("undue hardship").

### **III. Equal pay/compensation (Equal Pay Act)**

The Equal Pay Act requires that men and women in the same workplace be given equal pay for equal work. The jobs need not be identical, but they must be substantially equal.

### **IV. Genetic information (Genetic Information Nondiscrimination Act)**

Genetic information includes information about an individual's genetic tests and the genetic tests of an individual's family members, as well as information about the manifestation of a disease or disorder in an individual's family members (i.e. family medical history). Family medical history is included in the definition of genetic information because it is often used to determine whether someone has an increased risk of getting a disease, disorder, or condition in the future.

### **V. Harassment**

Harassment is unwelcome conduct that is based on race, color, religion, sex (including pregnancy), national origin, age (40 or older), disability or genetic information. Harassment becomes unlawful where 1) enduring the offensive conduct becomes a condition of continued employment, or 2) the conduct is severe or pervasive enough to create a work environment that a reasonable person would consider intimidating, hostile, or abusive.

### **VI. National origin (Immigration and Nationality Act)**



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National origin discrimination involves treating people (applicants or employees) unfavorably because they are from a particular country or part of the world, because of ethnicity or accent, or because they appear to be of a certain ethnic background (even if they are not). National origin discrimination also can involve treating people unfavorably because they are married to (or associated with) a person of a certain national origin. Discrimination can occur when the victim and the person who inflicted the discrimination are the same national origin.

### **VII. Pregnancy**

Pregnancy discrimination involves treating a woman, an applicant or employee, unfavorably because of pregnancy, childbirth, or a medical condition related to pregnancy or childbirth.

### **VIII. Race/color**

Race discrimination involves treating an applicant or employee unfavorably because he/she is of a certain race or because of personal characteristics associated with race (such as hair texture, skin color, or certain facial features). Color discrimination involves treating someone unfavorably because of skin color complexion. Race/color discrimination also can involve treating someone unfavorably because the person is married to (or associated with) a person of a certain race or color. Discrimination can occur when the victim and the person who inflicted the discrimination are the same race or color.

### **IX. Religion**

Religious discrimination involves treating an applicant or employee unfavorably because of his or her religious beliefs. The law protects not only people who belong to traditional, organized religions, such as Buddhism, Christianity, Hinduism, Islam, and Judaism, but also others who have sincerely held religious, ethical or moral beliefs. Religious discrimination can also involve treating someone differently because that person is married to (or associated with) an individual of a particular religion.

### **X. Sex**

Sex discrimination involves treating an applicant or employee unfavorably because of that person's sex.

### **XI. Sexual harassment**



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All state agencies must develop and implement a policy concerning sexual harassment and the resolution of such complaints. A copy of the agency or institution of higher education policy shall be filed with the Office of Personnel Management (OPM).

Sexual harassment is a form of discrimination and is unwelcome behavior that is either verbal or physical in nature. What constitutes sexual harassment is:

1. Submission to the conduct is either an explicit or implicit term or condition of employment, and/or
2. Submission to or rejection of the conduct is used as a basis for employment decisions affecting the person who did the submitting or rejecting, and/or
3. The conduct has the purpose or effect of substantially interfering with an individual's work performance or creating an intimidating, hostile or offensive work environment.

Actions that may be defined as sexual harassment are not limited to the "supervisor and employee" situation, but may include actions of coworkers, actions of the same or opposite sex and action of individuals external to the agency, but who have contact with employees in the work environment.

### **Retaliation**

It is illegal to discriminate because the employee complained about discrimination, filed a charge of discrimination, or participated in an employment discrimination investigation or lawsuit.

Every agency must adopt and pursue a comprehensive equal employment hiring program designed to achieve a goal of increasing the percentage of minority employees within the agency to a level that approximates the percentage of minorities in the state's population. Agencies shall report to the Legislative Council on June 30 of each year stating its efforts to achieve its equal employment hiring program goal.

Agencies shall include in their personnel manual a statement that discrimination by an officer or employee based upon race, creed, religion, national origin, age, sex, or gender is grounds for dismissal. When it is determined by any court of law that an employee of this state is guilty of discrimination based upon race, creed, religion, national origin, age, sex or gender, such determination is grounds for dismissal from employment.



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For more information about the types of discrimination and prohibited practices, see the U.S. Equal Employment Opportunity Commission website at <https://www.eeoc.gov/laws/index.cfm>.