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**Board Policy**  
Chapter 3 – General Institution

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**BP 3430 Prohibition of Harassment**

**References:**

Education Code Sections 212.5, 44100, 66252, 66281.5, and 66262.5;  
Government Code Sections 12923, 12940 and 12950.1;  
Civil Code Section 51.9;  
Title 2 Sections 10500 et seq.;  
Title VII of the Civil Rights Act of 1964, 42 U.S. Code Annotated Section 2000e;  
Age Discrimination in Employment Act of 1967 (ADEA);  
Americans with Disabilities Act of 1990 (ADA)  
California Code of Regulations, Title 5, Sections 59320 et seq.  
Title IX, Education Amendments of 1972

*The language in red ink is legally required (unless indicated otherwise) and recommended by the Policy & Procedure Service and its legal counsel (Liebert Cassidy Whitmore). This policy template was reviewed/revise by the Policy & Procedure Service in July 2002, February 2003, August 2003, February 2005, March 2012, April 2014, April 2015, October 2016, April 2017, March 2019, July 2020, October 2020, and April 2022.*

All forms of harassment are contrary to basic standards of conduct between individuals. State and federal law and this policy prohibit harassment, and the District will not tolerate harassment. The District is committed to providing an academic and work environment that respects the dignity of individuals and groups. The District shall be free of unlawful harassment, including that which is based on any of the following statuses: race, religious creed, color, national origin, ethnicity, ancestry, immigration status, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status, or because he/she/they is perceived to have one or more of the foregoing characteristics.

The District seeks to foster an environment in which all employees, students, unpaid interns, and volunteers feel free to report incidents of harassment without fear of retaliation or reprisal. Therefore, the District also strictly prohibits retaliation against any individual for filing a complaint of harassment or for participating in a harassment investigation. Such conduct is illegal and constitutes a violation of this policy. The



District will investigate all allegations of retaliation swiftly and thoroughly. If the District determines that someone has retaliated, it will take all reasonable steps within its power to stop such conduct. Individuals who engage in retaliatory conduct are subject to disciplinary action, up to and including termination or expulsion.

**NOTE: *The following paragraph (only the paragraph immediately below) is optional:***

The District recognizes that sex discrimination, including sexual harassment and violence, harms all students, undermines students' physical safety, impedes students' ability to learn, and can reinforce social inequality throughout a student's lifetime. The District will include on its website statistics on the prevalence of sexual harassment and sexual violence in the educational setting, and the differing rates at which students experience sexual harassment and sexual assault in the educational setting based on their race, sexual orientation, disability, gender, and gender identity. The District has a responsibility to make reasonable efforts to respond effectively when sexual harassment is reported to, or observed by, District employees.

Any student, employee, unpaid intern, or volunteer who believes that he/she/they has been harassed or retaliated against in violation of this policy should immediately report such incidents by following the procedures described in AP 3435 Discrimination and Harassment Complaints and Investigations. The District requires supervisors to report all incidents of harassment and retaliation that come to their attention.

This policy applies to all aspects of the academic environment, including but not limited to classroom conditions, grades, academic standing, employment opportunities, scholarships, recommendations, disciplinary actions, and participation in any community college activity. In addition, this policy applies to all terms and conditions of employment, including but not limited to hiring, placement, promotion, disciplinary action, layoff, recall, transfer, leave of absence, training opportunities and compensation.

To this end the Chancellor shall ensure that the institution undertakes education and training activities to counter harassment and to prevent, minimize, or eliminate any hostile environment that impairs access to equal education opportunity or impacts the terms and conditions of employment.

The Chancellor shall establish procedures that define harassment on campus. The Chancellor shall further establish procedures for employees, students, unpaid interns, volunteers, and other members of the campus community that provide for the investigation and resolution of complaints regarding harassment and discrimination, and procedures to resolve complaints of harassment and discrimination. State and federal law and this policy prohibit retaliatory acts by the District, its employees, students, and agents.



The District will publish and publicize this policy and related written procedures (including the procedure for making complaints) to administrators, faculty, staff, students, unpaid interns, and volunteers particularly when they are new to the institution. The District will make this policy and related written procedures (including the procedure for making complaints) available in all administrative offices and will post them on the District's website.

Employees who violate the policy and procedures may be subject to disciplinary action up to and including termination. Students who violate this policy and related procedures may be subject to disciplinary measures up to and including expulsion. Unpaid interns who violate this policy and related procedures may be subject to disciplinary measure up to and including termination from the internship or other unpaid work experience program.

**NOTE: The following language is from current FHDA BP 4110 Mutual Respect Policy. It is shown as struck and in **gray highlighting** as the content was last revised on August 28, 2006 whereas the language in **red ink** (above) was updated in July 2002, February 2003, August 2003, February 2005, March 2012, April 2014, April 2015, October 2016, April 2017, March 2019, July 2020, October 2020, and April 2022 by the Policy & Procedure Service.**

~~The Board of Trustees of the Foothill-De Anza Community College District is deeply committed to the premise that on college campuses full participation in the educational process must be in an environment that is free from harassment based on race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation or gender identity.~~

~~At the same time the Board is, as always, committed to protecting freedom of speech to guarantee the free exchange of ideas. Nowhere is this protection of greater importance than on our college campuses, where the free exchange of ideas fosters knowledge, individual growth, and tolerance for new and different ideas. However, speech or expression used as a weapon to harass specific victims is not to be tolerated and is to be condemned. Accordingly, the Board of Trustees adopts the following:~~

~~The Colleges shall take all steps necessary to provide a positive educational and employment environment which encourages equal educational opportunities. The Colleges will actively seek to educate staff and students on the deleterious effects of expressions of hatred or contempt based on race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation or gender identity; and will promote equality and mutual respect and understanding among all groups and individuals.~~



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The Board recognizes that the expression of certain ideas which might be regarded as unpopular or offensive is protected by the First Amendment. The Board will not, however, permit the harassment of an individual or specific individuals on the basis of their race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation or gender identity. Standards of conduct for students and the applicable sanctions for violating the standards of student conduct are contained in the Student Handbook. Decisions regarding discipline of employees will be made in accordance with applicable legal and contractual provisions and procedures and may range from reprimand to dismissal.

Copies of the District's Administrative Procedures: Investigation and Resolution of Complaints Regarding Harassment and Discrimination, Procedures to Resolve Student Complaints of Sexual Harassment and Discrimination, and the District's Unlawful Harassment and Discrimination Complaint forms are available in the District Human Resources Office, the District Chancellor's Office, the President's Office at each campus, the Office of the Vice President for Student Services (De Anza), and the Office of the Dean of Instruction & Student Affairs (Foothill).

**NOTE:** *The following language is from current FHDA BP 4640 Harassment and Discrimination It is shown as struck and in gray highlighting as the content was last revised on last revised on August 31, 2009 whereas the language in red ink (above) was updated in July 2002, February 2003, August 2003, February 2005, March 2012, April 2014, April 2015, October 2016, April 2017, March 2019, July 2020, October 2020, and April 2022 by the Policy & Procedure Service.*

Members of a college community, including students, faculty, staff and visitors, must be able to study and work in an atmosphere of mutual respect and trust. Foothill-De Anza Community College District is actively committed to creating and maintaining an environment which respects the dignity of individuals and groups. The Board of Trustees supports an educational and employment environment where diverse cultures, abilities and needs are respected and where diversity offers opportunities for learning and for personal and professional fulfillment. The District is committed to providing an educational and employment environment free of unlawful harassment and discrimination. Faculty, staff and students must be assured that the District will take action to prevent misconduct.

Accordingly, the Board adopts the following:

It is the Policy of the Foothill-De Anza Community College District to provide an educational and employment environment free of unlawful harassment and discrimination. The Board shall not discriminate against any person in the provision of any program or service based on ethnic group identification, race, religion, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex or gender, age, sexual orientation, or any other legally protected status, or



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on the basis of these perceived characteristics or based on association with a person or group with one or more of these actual or perceived characteristics. Anyone who engages in unlawful harassment or discrimination shall be subject to sanctions up to and including termination of employment or expulsion in accordance with applicable contractual, procedural and statutory requirements.

## **Harassment**

Harassment based on ethnic group identification, race, religion, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex or gender, age, sexual orientation, or any other legally protected status, or harassment based on the perception that a person has one or more of these statuses or associates with a person or persons perceived as having one or more of these statuses constitutes unlawful harassment and violates District policy.

Unlawful harassment comes in many forms and may include but is not limited to the conduct described below:

**Verbal:** Inappropriate or offensive remarks, slurs, jokes or innuendoes based on a person's race, gender, sexual orientation, or other legally protected status. This may include, but is not limited to, inappropriate comments regarding an individual's body, physical appearance, attire, sexual prowess, marital status, or sexual orientation; unwelcome flirting, whistling, or propositions; demands for sexual favors; verbal abuse, threats or intimidation.

**Physical:** Inappropriate or offensive touching, assault, or physical interference with free movement. This may include, but is not limited to kissing, patting, lingering or intimate touches, grabbing, pinching, unnecessarily brushing against or blocking another person, or sexual gestures. It also includes any physical assault or intimidation directed at an individual due to that person's race, gender, sexual orientation, or other legally protected status. It may also include leering and staring.

**Visual or Written:** The display or circulation of visual or written material that degrades an individual or groups based on race, gender, sexual orientation, or other legally protected status. This may include, but is not limited to, posters, cartoons, drawing, graffiti, reading materials, computer graphics, or electronic media transmissions.

**Environmental:** A hostile academic or work environment exists where it is permeated by innuendo or insults or abusive comments directed at an individual or group based on race, gender, sexual orientation, or other legally protected status. An environment may in some circumstances also be hostile toward anyone who merely witnesses unlawful harassment in his or her immediate surroundings, although the conduct is directed at others.



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For an unlawful harassment or hostile environment claim to be valid, in general the conduct must be sufficiently severe or pervasive so as to alter the conditions of the employment or educational environment. Subjective perception alone is insufficient evidence for a claim to be valid; an objective appraisal must be considered as well. The conduct shall be evaluated from the objective viewpoint of a reasonable person facing the same conditions.

### **Sexual Harassment**

As noted throughout the preceding section of this Policy, sexual harassment may be verbal, visual, written, physical or environmental and, as such, is a form of unlawful harassment.

Sexual harassment consists of unwelcome sexual advances, requests for sexual favors, and other conduct of a sexual nature when submission to the conduct is explicitly or implicitly made a term or condition of an individual's employment or academic status or progress.

“Quid pro quo” harassment occurs when submission to, or rejection of, the conduct by the individual is used as the basis of employment or academic decisions affecting the individual.

“Hostile environment” harassment occurs when the conduct has the purpose or effect of having a negative impact upon the individual's work or academic performance, or of creating an intimidating, hostile or offensive work or educational environment.

### **Retaliation**

The District seeks to foster an environment in which all employees and students feel free to report incidents of harassment or discrimination without fear of retaliation or reprisal. Therefore, the District also strictly prohibits retaliation against any individual for filing a complaint of harassment or discrimination or for participating in an investigation of such complaints. Such conduct is illegal and constitutes a violation of this Policy. All allegations of retaliation will be investigated. Any individual found to have violated this Policy will be subject to disciplinary sanctions, up to and including termination of employment or expulsion in accordance with applicable contractual, procedural and statutory requirements.

### **Academic Freedom**

While the Board recognizes that academic freedom does not allow harassment or any other form of unlawful discrimination, the Board reaffirms its commitment to academic freedom as established in Board Policy on Academic Freedom (4190). The lecture, content and discourse (including rhetorical strategies) that are an integral part of the course or which serve a legitimate pedagogical purpose shall in no event constitute harassment or other forms of unlawful discrimination. In cases involving questions of academic freedom, the District shall consult with the Academic Senates whenever





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~~possible or with other appropriate faculty representatives as needed, consistent with Administrative Procedures 4640.~~

### **Complaints**

~~Appropriate action shall be taken immediately against individuals determined to be in violation of this Policy. Any individual who believes that he or she has been a victim of harassment or discrimination or retaliation in violation of this Policy may file a complaint in accordance with the District's Procedures regarding investigation and resolution of complaints regarding harassment and discrimination.~~

~~The District has developed procedures to address complaints of discrimination, harassment and retaliation. Complaints are handled pursuant to the District's "Procedures to Resolve Complaints Regarding Harassment and Discrimination."~~

~~Complaints filed by students or employees regarding harassment or discrimination by third parties who are not themselves students or employees in the District shall be investigated. Additionally, the District shall forward written notice to the responsible party with a request for an investigation of the incident(s) and a report of the findings to be sent to the District.~~

~~Copies of the District's Procedures to Resolve Complaints Regarding Harassment and Discrimination and the District's Unlawful Harassment and Discrimination Complaint forms are available in the District Human Resources Office, the District Chancellor's Office, the President's Office at each campus, the Office of the Vice President for Student Services (De Anza), and the Office of the Vice President of Student Development and Instruction (Foothill).~~

~~See Administrative Procedure 4640 Procedures to Resolve Complaints Regarding Harassment and Discrimination~~

[Also see BP/AP 3410 Nondiscrimination, BP/AP 3420 Equal Employment Opportunity, AP 3430 Prohibition of Harassment, BP/AP 3433 Prohibition of Sex Discrimination under Title IX, AP 3434 Responding to Sex Discrimination under Title IX, AP 3435 Discrimination and Harassment Complaints and Investigations, BP/AP 3450 Sexual and Other Assaults on Campus, and BP 4030 Academic Freedom.](#)

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**NOTE:** The language in **red ink** is **legally required** (unless indicated otherwise) and recommended by the Policy & Procedure Service and its legal counsel (Liebert Cassidy Whitmore). This policy template was reviewed/revised by the Policy & Procedure Service in July 2002, February 2003, August 2003, February 2005, **March 2012, April 2014, April 2015, October 2016, April 2017, March 2019, July 2020, October 2020, and April 2022**. The language in **black ink** is from current FHDACCD **BP 4110 Mutual Respect Policy** adopted on 11/15/93 and revised on 7/25/94, 5/1/95, and 8/28/06 as well as **BP 4640 Harassment and Discrimination** adopted on 5/3/82 and revised on 11/15/93, 5/1/95, 12/12/05, 3/3/09, and 8/31/09. The language in **blue ink** is included for consideration. The language in **yellow highlighting** is included to



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draw the reviewers' attention, and this language will be removed upon final approval. The language in **gray highlighting** was uniquely developed by FHDA and requires careful review by leaders and local district legal counsel to ensure the language remains accurate and legally compliant. **The legal citation language reflected after the page break (below) should be removed following review and revision.**

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**Adopted:** 5/3/82 (BP 4640); 11/15/93 (BP 4110)

**Revised:** 11/15/93 (BP 4640), 7/25/94 (BP 4110), 5/1/95 (BP 4110 and BP 4640), 12/12/05 (BP 4640), 8/28/06 (BP 4110), 3/3/09 (BP 4640), 8/31/09 (BP 4640);

*(Replaces former FHDA BP 4110 and BP 4640)*





## Legal Citations for BP 3430

**Education Code Sections 212.5, 44100, 66252, 66281.5, and 66281.8;  
Government Code Sections 12940 and 12950.1; Civil Code Section 51.9;  
Title 2 Sections 10500 et seq.; Title VII of the Civil Rights Act of 1964; 42 U.S.  
Code Annotated Section 2000e; Age Discrimination in Employment Act of 1967  
(ADEA); Americans with Disabilities Act of 1990 (ADA)**

### EDUCATION CODE SECTION 212.5

#### **EDUCATION CODE - EDC**

##### **TITLE 1 GENERAL EDUCATION CODE PROVISIONS [1. - 32500]**

*( Title 1 enacted by Stats. 1976, Ch. 1010. )*

##### **DIVISION 1 GENERAL EDUCATION CODE PROVISIONS [1. - 32500]**

*( Division 1 enacted by Stats. 1976, Ch. 1010. )*

##### **PART 1 GENERAL PROVISIONS [1. - 446]**

*( Part 1 enacted by Stats. 1976, Ch. 1010. )*

##### **CHAPTER 2. Educational Equity [200 - 262.4]**

*( Heading of Chapter 2 amended by Stats. 1998, Ch. 914, Sec. 6. )*

#### ARTICLE 2. Definitions [210 - 214]

*( Article 2 added by Stats. 1982, Ch. 1117, Sec. 1. )*

### **212.5.**

“Sexual harassment” means unwelcome sexual advances, requests for sexual favors, and other verbal, visual, or physical conduct of a sexual nature, made by someone from or in the work or educational setting, under any of the following conditions:

- (a) Submission to the conduct is explicitly or implicitly made a term or a condition of an individual’s employment, academic status, or progress.
- (b) Submission to, or rejection of, the conduct by the individual is used as the basis of employment or academic decisions affecting the individual.
- (c) The conduct has the purpose or effect of having a negative impact upon the individual’s work or academic performance, or of creating an intimidating, hostile, or offensive work or educational environment.
- (d) Submission to, or rejection of, the conduct by the individual is used as the basis for any decision affecting the individual regarding benefits and services, honors, programs, or activities available at or through the educational institution.

*(Amended by Stats. 1998, Ch. 914, Sec. 12. Effective January 1, 1999.)*

### EDUCATION CODE SECTION 44100

#### **EDUCATION CODE - EDC**

##### **TITLE 2. ELEMENTARY AND SECONDARY EDUCATION [33000 - 64100]**

*( Title 2 enacted by Stats. 1976, Ch. 1010. )*

##### **DIVISION 3. LOCAL ADMINISTRATION [35000 - 45460]**

*( Division 3 enacted by Stats. 1976, Ch. 1010. )*



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**PART 25. EMPLOYEES [44000 - 45460]**

( Part 25 enacted by Stats. 1976, Ch. 1010. )

**CHAPTER 1. Employees [44000 - 44114]**

( Chapter 1 enacted by Stats. 1976, Ch. 1010. )

**ARTICLE 4. Affirmative Action Employment [44100 - 44105]**

( Article 4 added by Stats. 1977, Ch. 1090. )

**44100.**

(a) The Legislature finds and declares the following:

- (1) Generally, California school districts employ a disproportionately low number of racial and ethnic minority classified and certificated employees and a disproportionately low number of women and members of racial and ethnic minorities in administrative positions.
- (2) It is educationally sound for the minority student attending a racially impacted school to have available to him or her the positive image provided by minority classified and certificated employees. It is likewise educationally sound for the child from the majority group to have positive experiences with minority people, that can be provided, in part, by having minority classified and certificated employees at schools where the enrollment is largely made up of majority group students. It is also educationally important for students to observe that women as well as men can assume responsible and diverse roles in society.
- (3) Past employment practices created artificial barriers and past efforts to promote additional action in the recruitment, employment, and promotion of women and minorities did not result in a substantial increase in employment opportunities for these persons.
- (4) Lessons concerning democratic principles and the richness that racial diversity brings to our national heritage can be best taught by staffs composed of mixed races and ethnic groups working toward a common goal.

(b) It is the intent of the Legislature to do all of the following:

- (1) Establish and maintain a policy of equal opportunity in employment for all persons.
- (2) Prohibit discrimination on any basis listed in subdivision (a) of Section 12940 of the Government Code, as those bases are defined in Sections 12926 and 12926.1 of the Government Code, except as otherwise provided in Section 12940 of the Government Code, in every aspect of personnel policy and practice in the employment, development, advancement, and treatment of persons employed in the public school system.
- (3) Promote the total realization of equal employment opportunity through a continuing affirmative action employment program.

(c) The Legislature recognizes that it is not enough to proclaim that public employers do not discriminate in employment, but that effort must also be made to build a community in which opportunity is equalized. It is the intent of the Legislature to require educational agencies to adopt and implement plans for increasing the numbers of women and minority persons at all levels of responsibility.

(Amended by Stats. 2004, Ch. 788, Sec. 1. Effective January 1, 2005.)

**EDUCATION CODE - EDC**

**TITLE 3. POSTSECONDARY EDUCATION [66000 - 101060]**

( Title 3 enacted by Stats. 1976, Ch. 1010. )

**DIVISION 5. GENERAL PROVISIONS [66000 - 70129]**

( Division 5 enacted by Stats. 1976, Ch. 1010. )



**PART 40. DONAHOE HIGHER EDUCATION ACT [66000 - 67400]**

*( Part 40 enacted by Stats. 1976, Ch. 1010. )*

**CHAPTER 4.5. Equity in Higher Education Act [66250 - 66292.4]**

*( Heading of Chapter 4.5 amended by Stats. 2011, Ch. 637, Sec. 3. )*

**ARTICLE 1. Title and Declaration of Purpose [66250 - 66252]**

*( Article 1 added by Stats. 1998, Ch. 914, Sec. 49. )*

**66252.**

- (a) All students have the right to participate fully in the educational process, free from discrimination and harassment.
- (b) California's postsecondary educational institutions have an affirmative obligation to combat racism, sexism, and other forms of bias, and a responsibility to provide equal educational opportunity.
- (c) Harassment on school grounds directed at an individual on the basis of personal characteristics or status creates a hostile environment and jeopardizes equal educational opportunity as guaranteed by the California Constitution and the United States Constitution.
- (d) There is an urgent need to prevent and respond to acts of hate violence and bias-related incidents that are occurring at an increasing rate in California's public schools.
- (e) There is an urgent need to teach and inform students in the public schools about their rights, as guaranteed by the federal and state constitutions, in order to increase students' awareness and understanding of their rights and the rights of others, with the intention of promoting tolerance and sensitivity in postsecondary educational institutions and in society as a means of responding to potential harassment and hate violence.
- (f) It is the intent of the Legislature that each postsecondary educational institution undertake educational activities to counter discriminatory incidents on school grounds and, within constitutional bounds, to minimize and eliminate a hostile environment on school grounds that impairs the access of students to equal educational opportunity.
- (g) It is the intent of the Legislature that this chapter shall be interpreted as consistent with Article 9.5 (commencing with Section 11135) of Chapter 1 of Part 1 of Division 3 of Title 2 of the Government Code, Title VI of the federal Civil Rights Act of 1964 (42 U.S.C. Sec. 1981, et seq.), Title IX of the Education Amendments of 1972 (20 U.S.C. Sec. 1681, et seq.), Section 504 of the federal Rehabilitation Act of 1973 (29 U.S.C. Sec. 794(a)), the federal Individuals with Disabilities Education Act (20 U.S.C. Sec. 1400 et seq.), the federal Equal Educational Opportunities Act (20 U.S.C. Sec. 1701, et seq.), the Unruh Civil Rights Act (Secs. 51 to 53, incl., Civ. C.), and the Fair Employment and Housing Act (Pt. 2.8 (commencing with Sec. 12900), Div. 3, Gov. C.), except where this chapter may grant more protections or impose additional obligations, and that the remedies provided herein shall not be the exclusive remedies, but may be combined with remedies that may be provided by the above statutes.  
*(Added by Stats. 1998, Ch. 914, Sec. 49. Effective January 1, 1999.)*

**Education Code Section 66281.5**



**EDUCATION CODE - EDC**

**TITLE 3. POSTSECONDARY EDUCATION [66000 - 101060]**

( Title 3 enacted by Stats. 1976, Ch. 1010. )

**DIVISION 5. GENERAL PROVISIONS [66000 - 70110]**

( Division 5 enacted by Stats. 1976, Ch. 1010. )

**PART 40. DONAHOE HIGHER EDUCATION ACT [66000 - 67400]**

( Part 40 enacted by Stats. 1976, Ch. 1010. )

**CHAPTER 4.5. Equity in Higher Education Act [66250 - 66292.4]**

( Heading of Chapter 4.5 amended by Stats. 2011, Ch. 637, Sec. 3. )

**ARTICLE 4. Sex Equity in Education [66271.5 - 66281.7]**

( Article 4 added by Stats. 1998, Ch. 914, Sec. 49. )

**66281.5.**

(a) It is the policy of the State of California, pursuant to Section 66251, that all persons, regardless of their sex, should enjoy freedom from discrimination of any kind in the postsecondary educational institution of the state. The purpose of this section is to provide notification of the prohibition against sexual harassment as a form of sexual discrimination and to provide notification of available remedies.

(b) Each postsecondary educational institution in the State of California shall have a written policy on sexual harassment, including information on the complaint process and the timeline for the complaint process, which shall be available on its Internet Web site. It is the intent of the Legislature that each educational institution in this state include this policy in its regular policy statement rather than distribute an additional written document.

(c) The postsecondary educational institution's written policy on sexual harassment shall include information on where to obtain the specific rules and procedures for reporting charges of sexual harassment and for pursuing available remedies and resources, both on and off campus.

(d) A copy of the postsecondary educational institution's written policy on sexual harassment shall be displayed in a prominent location in the main administrative building or other area of the campus or schoolsite. "Prominent location" means that location, or those locations, in the main administrative building or other area where notices regarding the institution's rules, regulations, procedures, and standards of conduct are posted.

(e) A copy of the postsecondary educational institution's written policy on sexual harassment, as it pertains to students, shall be provided as part of any orientation program conducted for new students at the beginning of each quarter, semester, or summer session, as applicable.

(f) A copy of the postsecondary educational institution's written policy on sexual harassment shall be provided for each faculty member, all members of the administrative staff, and all members of the support staff at the beginning of the first quarter or semester of the school year, or at the time that there is a new employee hired.

(g) A copy of the postsecondary educational institution's written policy on sexual harassment shall appear in any publication of the institution that sets forth the comprehensive rules, regulations, procedures, and standards of conduct for the institution.

(Amended by Stats. 2016, Ch. 107, Sec. 1. (AB 2654) **Effective January 1, 2017.**)



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**EDUCATION CODE - EDC**

**TITLE 3. POSTSECONDARY EDUCATION [66000 - 101149.5]**

*( Title 3 enacted by Stats. 1976, Ch. 1010. )*

**DIVISION 5. GENERAL PROVISIONS [66000 - 70115.2]**

*( Division 5 enacted by Stats. 1976, Ch. 1010. )*

**PART 40. DONAHOE HIGHER EDUCATION ACT [66000 - 67400]**

*( Part 40 enacted by Stats. 1976, Ch. 1010. )*

**CHAPTER 4.5. Equity in Higher Education Act [66250 - 66292.4]**

*( Heading of Chapter 4.5 amended by Stats. 2011, Ch. 637, Sec. 3. )*

**ARTICLE 4. Sex Equity in Education [66271.5 - 66281.8]**

*( Article 4 added by Stats. 1998, Ch. 914, Sec. 49. )*

**66281.8.**

(a) For the purposes of this section, the following terms have the following meanings:

(1) "Postsecondary institution" means a campus of the University of California, the California State University, or the California Community Colleges, a private postsecondary educational institution, or an independent institution of higher education that receives state financial assistance.

(2) (A) "Responsible employee" means an employee who has the authority to take action to redress sexual harassment or provide supportive measures to students, or who has the duty to report sexual harassment to an appropriate school official who has that authority.

(B) "Responsible employee" includes, but is not limited to, those individuals with any of the following positions or substantially similar positions or job duties, regardless of the specific title the institution may attach to the position:

(i) Title IX coordinator or other coordinator designated to comply with and carry out the institution's responsibilities under this section.

(ii) Residential advisors, while performing the duties of employment by the institution.

(iii) Housing directors, coordinators, or deans.

(iv) Student life directors, coordinators, or deans.

(v) Athletic directors, coordinators, or deans.

(vi) Coaches of any student athletic or academic team or activity.

(vii) Faculty and associate faculty, teachers, instructors, or lecturers.

(viii) Graduate student instructors, while performing the duties of employment by the institution.

(ix) Laboratory directors, coordinators, or principal investigators.

(x) Internship or externship directors or coordinators.

(xi) Study abroad program directors or coordinators.

(C) (i) Notwithstanding subparagraphs (A) and (B), "responsible employee" does not include those individuals described in subparagraphs (A) and (B) who are also any of the following:



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(I) A therapist or other professional described in Sections 990, 1010, 1030, 1035, and 1037 of the Evidence Code, including a University of California Center for Advocacy, Resources, and Education (CARE) director, advocate, or employee.

(II) A University of California Center for Advocacy, Resources, and Education (CARE) director, advocate, or employee.

(III) A California State University victim advocate or other position with similar responsibilities.

(IV) An individual acting in a professional capacity for which confidentiality is mandated by law.

(ii) An individual described in clause (i) shall inform each student who provides the individual with information regarding sexual harassment of the student's ability to report to a responsible employee and direct the student to those specific reporting resources.

(b) Notwithstanding Section 67400, in order to receive state financial assistance, as defined in Section 213, the appropriate governing board or body of each postsecondary institution shall implement, and at all times comply with, all of the following requirements at the institution:

(1) It shall disseminate, by electronic or other means, a notice of nondiscrimination, including, but not limited to, all information required to be included in the notice provided pursuant to Section 66281.5, to all of the following:

(A) Each employee of the postsecondary institution.

(B) Each volunteer who will regularly interact with students.

(C) Each individual or entity under contract with the postsecondary institution to perform any service involving regular interaction with students at the institution.

(2) It shall designate at least one employee of the institution to coordinate its efforts to comply with and carry out its responsibilities under this section. The employee may be the same individual as the institution's federal Title IX coordinator. The employee shall have adequate training on what constitutes sexual harassment and on trauma-informed investigatory and hearing practices, and shall understand how the institution's grievance procedures operate.

(3) It shall adopt rules and procedures within the policies required by Title IX of the Education Amendments of 1972 (20 U.S.C. Sec. 1681 et seq.) and Section 67386 for the prevention of sexual harassment that also provide for all of the following elements:

(A) The institution's primary concern shall be student safety. Any disciplinary measures imposed by the institution for violations of the institution's student conduct policy at or near the time of the incident being investigated shall be consistent with paragraph (10) of subdivision (b) of Section 67386.

(B) The institution shall take reasonable steps to respond to each incident of sexual harassment involving individuals subject to the institution's policies that occur in connection with any educational activity or other program of the institution, as well as incidents that occurred outside of those educational programs or activities, whether they occurred on or off campus, if, based on the allegations, there is any reason to believe that the incident could contribute to a hostile educational environment or otherwise interfere with a student's access to education.





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(C) (i) Regardless of whether or not a complaint has been filed under the institution's grievance procedures, if the institution knows, or reasonably should know, about possible sexual harassment involving individuals subject to the institution's policies at the time, the institution shall promptly investigate to determine whether the alleged conduct more likely than not occurred, or otherwise respond if the institution determines that an investigation is not required. If the institution determines that the alleged conduct more likely than not occurred, it shall immediately take reasonable steps to end the harassment, address the hostile environment, if one has been created, prevent its recurrence, and address its effects. A postsecondary institution shall be presumed to know of sexual harassment if a responsible employee knew, or, in the exercise of reasonable care, should have known, about the sexual harassment. The institution may rebut this presumption of knowledge if it shows all of the following:

(I) The institution provides training and requires all nonconfidential responsible employees to report sexual harassment.

(II) Each nonconfidential responsible employee with actual or constructive knowledge of the conduct in question was provided training and direction to report sexual harassment.

(III) Each nonconfidential responsible employee with actual or constructive knowledge of the conduct in question failed to report it.

(ii) The institution shall consider and respond to requests for accommodations relating to prior incidents of sexual harassment that could contribute to a hostile educational environment or otherwise interfere with a student's access to education where both individuals are, at the time of the request, subject to the institution's policies.

(D) (i) If a complainant requests confidentiality, which could preclude a meaningful investigation or potential discipline of the potential respondent, or that no investigation or disciplinary action be pursued to address alleged sexual harassment, the institution shall take the request seriously, while at the same time considering its responsibility to provide a safe and nondiscriminatory environment for all students, including for the complainant. The institution shall generally grant the request. In determining whether to disclose a complainant's identity or proceed to an investigation over the objection of the complainant, the institution may consider whether any of the following apply:

(I) There are multiple or prior reports of sexual misconduct against the respondent.

(II) The respondent reportedly used a weapon, physical restraints, or engaged in battery.

(III) The respondent is a faculty or staff member with oversight of students.

(IV) There is a power imbalance between the complainant and respondent.

(V) The complainant believes that the complainant will be less safe if the complainant's name is disclosed or an investigation is conducted.

(VI) The institution is able to conduct a thorough investigation and obtain relevant evidence in the absence of the complainant's cooperation.

(ii) If the institution determines that it can honor the student's request for confidentiality, it shall still take reasonable steps to respond to the complaint,





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consistent with the request, to limit the effects of the alleged sexual harassment and prevent its recurrence without initiating formal action against the alleged perpetrator or revealing the identity of the complainant. These steps may include increased monitoring, supervision, or security at locations or activities where the alleged misconduct occurred; providing additional training and education materials for students and employees; or conducting climate surveys regarding sexual violence. The institution shall also take immediate steps to provide for the safety of the complainant while keeping the complainant's identity confidential as appropriate. These steps may include changing living arrangements or course schedules, assignments, or tests. The complainant shall be notified that the steps the institution will take to respond to the complaint will be limited by the request for confidentiality.

(iii) If the institution determines that it must disclose the complainant's identity to the respondent or proceed with an investigation, it shall inform the complainant prior to making this disclosure or initiating the investigation. The institution shall also take immediate steps to provide for the safety of the complainant where appropriate. In the event the complainant requests that the institution inform the respondent that the student asked the institution not to investigate or seek discipline, the institution shall honor this request.

(4) (A) It shall adopt and publish on its internet website grievance procedures that provide for prompt and equitable resolution of sexual harassment complaints filed by a student against an employee or another student. The grievance procedures shall satisfy all of the following requirements:

(i) They shall state that the investigation and adjudication of alleged misconduct under this section is not an adversarial process between the complainant, the respondent, and the witnesses, but rather a process for postsecondary institutions to comply with their obligations under existing law. The complainant does not have the burden to prove, nor does the respondent have the burden to disprove, the underlying allegation or allegations of misconduct.

(ii) They shall require notice be provided to all students of the grievance procedures, including where and how complaints may be filed.

(iii) They shall ensure that the persons or entities responsible for conducting investigations, finding facts, and making disciplinary decisions are neutral.

(iv) They shall ensure trauma-informed and impartial investigation of complaints. Student parties shall be given an opportunity to identify witnesses and other evidence to assist the institution in determining whether a policy violation has occurred, and shall be informed that any evidence available but not disclosed during the investigation might not be considered at a subsequent hearing.

(v) They shall include reasonable and equitable evidentiary guidelines, and may include page or word limitations on party submissions.

(vi) They shall include all of the following:

(I) The investigator or hearing office shall not consider the past sexual history of a complainant or respondent except in the limited circumstances permitted by this clause.



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(II) The investigator or hearing officer shall not consider prior or subsequent sexual history between the complainant and anyone other than the respondent for any reason unless directly relevant to prove that physical injuries alleged to have been inflicted by the respondent were inflicted by another individual.

(III) (ia) The investigator or hearing officer shall not consider the existence of a dating relationship or prior or subsequent consensual sexual relations between the complainant and the respondent unless the evidence is relevant to how the parties communicated consent in prior or subsequent consensual sexual relations.

(ib) Where the investigator or hearing officer allows consideration of evidence about a dating relationship or prior or subsequent consensual sexual relations between the complainant and the respondent pursuant to sub-subclause (ia), the mere fact that the complainant and respondent engaged in other consensual sexual relations with one another is never sufficient, by itself, to establish that the conduct in question was consensual.

(IV) Before allowing the consideration of any evidence proffered pursuant to this subdivision, the investigator or hearing officer shall provide a written explanation to the parties as to why consideration of the evidence is consistent with this clause.

(vii) They shall prohibit questions of either party or of any witness that are repetitive, irrelevant, or harassing.

(viii) They shall provide that the institution shall decide whether or not a hearing is necessary to determine whether any sexual violence more likely than not occurred. In making this decision, an institution may consider whether the parties elected to participate in the investigation and whether each party had the opportunity to suggest questions to be asked of the other party or witnesses, or both, during the investigation. Any hearing shall be subject to the following rules:

(I) Any cross-examination of either party or any witness shall not be conducted directly by a party or a party's advisor.

(II) Either party or any witness may request to answer the questions by video from a remote location.

(III) Student parties shall have the opportunity to submit written questions to the hearing officer in advance of the hearing. At the hearing, the other party shall have an opportunity to note an objection to the questions posed. The institution may limit such objections to written form, and neither the hearing officer nor the institution are obligated to respond, other than to include any objection in the record. The hearing officer shall have the authority and obligation to discard or rephrase any question that the hearing officer deems to be repetitive, irrelevant, or harassing. In making these determinations, the hearing officer is not bound by, but may take guidance from, the formal rules of evidence.

(IV) Generally, the parties may not introduce evidence, including witness testimony, at the hearing that the party did not identify during the investigation and that was available at the time of the investigation. However, the hearing officer has discretion to accept for good cause, or exclude, such new evidence offered at the hearing.

(ix) They shall provide an explanation of the meaning of the preponderance of the evidence standard, and affirm that it shall apply to adjudications under this section.



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The preponderance of the evidence standard is met if the institution determines that it is more likely than not that the alleged misconduct occurred, based on the facts available at the time of the decision.

(x) They shall provide a reasonably prompt timeframe for all of the major stages of the complaint process, as well as a process for extending the institution's timelines for good cause only, and shall provide for the prompt communication of that information to the complainant and respondent. The communicated timeline information shall include, but shall not necessarily be limited to, each of the following:

(I) The period during which the institution shall conduct any investigation.

(II) The date by which the parties shall be notified of the outcome of any investigation.

(III) The deadlines and process for parties to appeal, if the institution's grievance procedures include an appeals process.

(xi) They shall provide that the institution shall not unreasonably deny a student party's request for an extension of a deadline related to a complaint during periods of examinations or school closures.

(xii) They shall provide for periodic status updates on the investigation consistent with the timelines referenced in clause (x) to the complainant and respondent.

(xiii) They shall provide for notice in writing to parties of any extension of a time period granted in the investigation and fact-finding process that would change the prospective timeframes for the major stages of the complaint process, and the reason for that extension.

(xiv) They shall provide for written notice to parties of the outcome of the complaint, including whether a policy violation was found to have occurred, the basis for that determination, including factual findings, and any discipline imposed.

(xv) They shall provide assurance that the institution will take steps to prevent recurrence of any harassment and to correct its discriminatory effects on the complainant and others, if appropriate.

(xvi) They shall require that student parties receive notice if the institution is conducting a formal investigation. The notice shall include the allegations and the alleged institutional policy violations under review. Any new allegations that arise during the course of the investigation that could subject either party to new or additional sanctions shall be subject to the same notice requirements.

(xvii) They shall afford both student parties the opportunity to each have a support person or adviser accompany the student party during any stage of the process.

(xviii) They shall advise student parties of their right to consult with an attorney, at their own expense, at any stage of the process if they wish to do so. An attorney may serve as a support person or adviser pursuant to clause (xvii).

(xix) They shall require that student parties receive a notice regarding appropriate counseling resources developed and maintained by the institution for student parties in school misconduct matters involving sexual harassment.

(xx) They shall allow either party to appeal the outcome of the grievance proceeding if the institution has such an appeals process. An institution's grievance procedure may limit the grounds for an appeal, provided that any limitation shall



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apply equally to all parties and that the nonappealing party shall have an opportunity to respond to the appeal.

(xxi) They shall outline the possible interim measures that may be put in place during the pendency of an investigation, the supportive measures that may be provided in the absence of an investigation, and the disciplinary outcomes, remedial measures, and systemic remedies that may follow a final finding of responsibility, subject to all of the following:

(I) An institution shall not mandate mediation to resolve allegations of sexual harassment, and shall not allow mediation, even on a voluntary basis, to resolve allegations of sexual violence.

(II) An institution shall not require that the complainant enter a voluntary resolution agreement or any other form of resolution as a prerequisite to receiving remedial measures from the institution which safeguard the complainant's access to education.

(III) (ia) When requested by a complainant or otherwise determined to be appropriate, an institution shall issue an interim no-contact directive prohibiting the respondent from contacting the complainant during the pendency of the investigation. An institution shall not issue an interim mutual no-contact directive automatically, but instead shall consider the specific circumstances of each case to determine whether a mutual no-contact directive is necessary or justifiable to protect the noncomplaining party's safety or well-being, or to respond to interference with an investigation. A no-contact directive issued after a decision of responsibility has been made shall be unilateral and only apply against the party found responsible.

(b) Upon the issuance of a mutual no-contact directive, an institution shall provide the parties with a written justification for the directive and an explanation of the terms of the directive. Upon the issuance of any no-contact directive, the institution shall provide the parties with an explanation of the terms of the directive, including the circumstances, if any, under which violation could be subject to disciplinary action.

(xxii) They shall describe the obligations of all faculty and staff designated by the institution as required to report concerns of sexual harassment to the Title IX coordinator or other designated employee, consistent with the requirement in paragraph (2). An individual who has a confidential relationship with a student or students by law is exempt from having to report sexual harassment concerns to the Title IX coordinator or other designated employee, unless otherwise required by law.

(xxiii) They shall contain a requirement that the Title IX coordinator or other designated employee assess each report of sexual harassment and provide outreach, as appropriate, to each identifiable student who is alleged to be the victim of the reported conduct. The outreach shall include all of the following information:

(I) The institution has received a report that the student may have been a victim of sexual harassment.



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(II) A statement that retaliation for filing a complaint or participating in a complaint process, or both, under this section is prohibited.

(III) Counseling resources within the institution or in the community.

(IV) Where a crime may have occurred, notice that the student has the right, but not the obligation, to report the matter to law enforcement.

(V) The institution's investigation procedures established pursuant to the requirements of this section.

(VI) Potential interim measures, such as no-contact directives, housing changes, and academic schedule changes, where applicable.

(VII) The importance of preserving evidence.

(VIII) A request for the student to meet with the Title IX coordinator or other designated employee to discuss options for responding to the report.

(IX) The manner in which the institution responds to reports of sexual harassment and a description of potential disciplinary consequences.

(B) The grievance procedures shall also provide a process for a student to report sexual harassment by a third party. The institution shall respond to those reports to address or prevent a hostile educational environment or to ensure students' access to education. Nothing in this section shall establish any duty or obligation owed by a postsecondary institution to nonstudent parties that does not already exist by statute or agreement.

(5) It shall publish in a prominent place on its internet website, with accompanying text clearly associating them with the sexual harassment and sexual violence grievance processes, the name, title, and contact information, which shall include the telephone number, office location, and email address, of each of the following individuals:

(A) The Title IX coordinator or other designated employee.

(B) Any individual official within the institution with the authority to investigate complaints made pursuant to this section or to institute corrective measures such as sanctions, accommodations, or other forms of resolution of the complaint.

(6) (A) It shall provide the training described in paragraph (12) of subdivision (b) of Section 67386 to each employee engaged in the grievance procedures related to sex discrimination, including sexual violence, which shall include for these employees training on (i) trauma-informed investigatory and hearing practices that help ensure an impartial and equitable process, (ii) best practices for assessment of a sexual harassment or sexual violence complaint, (iii) best practices for questioning of the complainant, respondent, and witnesses, and (iv) implicit bias and racial inequities, both broadly and in school disciplinary processes.

(B) Materials approved by the institution for this training shall include statistics on the prevalence of sexual harassment and sexual violence in the educational setting, and the differing rates at which students experience sexual harassment and sexual assault in the educational setting based on their race, sexual orientation, disability, gender, and gender identity. When possible, citation to such statistics shall be included in the written sexual harassment policies required by Section 66281.5 accompanying the institution's grievance procedures.



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(7) If the institution has on-campus housing, it shall ensure that residential life student and nonstudent staff, or their equivalent, annually receive training on how to handle, in a trauma-informed manner, reports made to them of sexual harassment or sexual violence, and situations in which they are aware of sexual harassment or sexual violence, in student residential facilities.

(8) It shall notify employees of the obligation to report harassment to appropriate school officials.

(9) It shall provide training to all employees on the identification of sexual harassment, including the person to whom it should be reported. This paragraph does not require an institution to provide separate training for identification of sexual harassment. The school may include this requirement in existing employee training on sexual harassment.

(c) This section does not require a school to provide separate grievance procedures for student sexual harassment complaints. The school may use student disciplinary procedures or other separate procedures to resolve sexual harassment complaints. Any procedures used to investigate complaints of sexual harassment, including disciplinary procedures, shall afford a complainant and a respondent a prompt and equitable resolution. If the school relies on existing procedures for compliance with the requirements of this section, the Title IX officer or designated employee shall review the school's procedures to ensure that they comply with the requirements of this section.

(d) A violation of this section may constitute discrimination and shall be subject to a civil action brought pursuant to Sections 66292.3 and 66292.4.

(e) The requirements of this section shall be implemented at each postsecondary institution by no later than January 1, 2022.

(f) If on or after the date of implementation, any provision of the act that adds this section conflicts with federal law, that provision shall be rendered inoperative for the duration of the conflict and without affecting the whole.

(g) (1) Any case law interpreting procedural requirements or process that is due to student complainants or respondents when adjudicating complaints of sexual or gender-based violence, including dating or domestic violence, at postsecondary educational institutions in the State of California shall have no retroactive effect.

(2) Any case law that conflicts with the provisions of the act that adds this section shall be superseded as of this statute's effective date.

*(Added by Stats. 2020, Ch. 303, Sec. 3. (SB 493) **Effective January 1, 2021.**)*

## **GOVERNMENT CODE - GOV**

### **TITLE 2. GOVERNMENT OF THE STATE OF CALIFORNIA [8000 - 22980]**

*( Title 2 enacted by Stats. 1943, Ch. 134. )*

#### **DIVISION 3. EXECUTIVE DEPARTMENT [11000 - 15986]**

*( Division 3 added by Stats. 1945, Ch. 111. )*

#### **PART 2.8. CIVIL RIGHTS DEPARTMENT [12900 - 12999]**

*( Heading of Part 2.8 amended by Stats. 2022, Ch. 48, Sec. 29. )*

#### **CHAPTER 6. Discrimination Prohibited [12940 - 12957]**

*( Chapter 6 added by Stats. 1980, Ch. 992. )*





## ARTICLE 1. Unlawful Practices, Generally [12940 - 12953]

*( Article 1 added by Stats. 1980, Ch. 992. )*

### **12940.**

It is an unlawful employment practice, unless based upon a bona fide occupational qualification, or, except where based upon applicable security regulations established by the United States or the State of California:

(a) For an employer, because of the race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or veteran or military status of any person, to refuse to hire or employ the person or to refuse to select the person for a training program leading to employment, or to bar or to discharge the person from employment or from a training program leading to employment, or to discriminate against the person in compensation or in terms, conditions, or privileges of employment.

(1) This part does not prohibit an employer from refusing to hire or discharging an employee with a physical or mental disability, or subject an employer to any legal liability resulting from the refusal to employ or the discharge of an employee with a physical or mental disability, if the employee, because of a physical or mental disability, is unable to perform the employee's essential duties even with reasonable accommodations, or cannot perform those duties in a manner that would not endanger the employee's health or safety or the health or safety of others even with reasonable accommodations.

(2) This part does not prohibit an employer from refusing to hire or discharging an employee who, because of the employee's medical condition, is unable to perform the employee's essential duties even with reasonable accommodations, or cannot perform those duties in a manner that would not endanger the employee's health or safety or the health or safety of others even with reasonable accommodations. Nothing in this part shall subject an employer to any legal liability resulting from the refusal to employ or the discharge of an employee who, because of the employee's medical condition, is unable to perform the employee's essential duties, or cannot perform those duties in a manner that would not endanger the employee's health or safety or the health or safety of others even with reasonable accommodations.

(3) Nothing in this part relating to discrimination on account of marital status shall do either of the following:

(A) Affect the right of an employer to reasonably regulate, for reasons of supervision, safety, security, or morale, the working of spouses in the same department, division, or facility, consistent with the rules and regulations adopted by the council.





(B) Prohibit bona fide health plans from providing additional or greater benefits to employees with dependents than to those employees without or with fewer dependents.

(4) Nothing in this part relating to discrimination on account of sex shall affect the right of an employer to use veteran status as a factor in employee selection or to give special consideration to Vietnam-era veterans.

(5) (A) This part does not prohibit an employer from refusing to employ an individual because of the individual's age if the law compels or provides for that refusal. Promotions within the existing staff, hiring or promotion on the basis of experience and training, rehiring on the basis of seniority and prior service with the employer, or hiring under an established recruiting program from high schools, colleges, universities, or trade schools do not, in and of themselves, constitute unlawful employment practices.

(B) The provisions of this part relating to discrimination on the basis of age do not prohibit an employer from providing health benefits or health care reimbursement plans to retired persons that are altered, reduced, or eliminated when the person becomes eligible for Medicare health benefits. This subparagraph applies to all retiree health benefit plans and contractual provisions or practices concerning retiree health benefits and health care reimbursement plans in effect on or after January 1, 2011.

(b) For a labor organization, because of the race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or veteran or military status of any person, to exclude, expel, or restrict from its membership the person, or to provide only second-class or segregated membership or to discriminate against any person because of the race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or veteran or military status of the person in the election of officers of the labor organization or in the selection of the labor organization's staff or to discriminate in any way against any of its members or against any employer or against any person employed by an employer.

(c) For any person to discriminate against any person in the selection, termination, training, or other terms or treatment of that person in any apprenticeship training program, any other training program leading to employment, an unpaid internship, or another limited duration program to provide unpaid work experience for that person because of the race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or veteran or military status of the person discriminated against.



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(d) For any employer or employment agency to print or circulate or cause to be printed or circulated any publication, or to make any nonjob-related inquiry of an employee or applicant, either verbal or through use of an application form, that expresses, directly or indirectly, any limitation, specification, or discrimination as to race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or veteran or military status, or any intent to make any such limitation, specification, or discrimination. This part does not prohibit an employer or employment agency from inquiring into the age of an applicant, or from specifying age limitations, if the law compels or provides for that action.

(e) (1) Except as provided in paragraph (2) or (3), for any employer or employment agency to require any medical or psychological examination of an applicant, to make any medical or psychological inquiry of an applicant, to make any inquiry whether an applicant has a mental disability or physical disability or medical condition, or to make any inquiry regarding the nature or severity of a physical disability, mental disability, or medical condition.

(2) Notwithstanding paragraph (1), an employer or employment agency may inquire into the ability of an applicant to perform job-related functions and may respond to an applicant's request for reasonable accommodation.

(3) Notwithstanding paragraph (1), an employer or employment agency may require a medical or psychological examination or make a medical or psychological inquiry of a job applicant after an employment offer has been made but prior to the commencement of employment duties, provided that the examination or inquiry is job related and consistent with business necessity and that all entering employees in the same job classification are subject to the same examination or inquiry.

(f) (1) Except as provided in paragraph (2), for any employer or employment agency to require any medical or psychological examination of an employee, to make any medical or psychological inquiry of an employee, to make any inquiry whether an employee has a mental disability, physical disability, or medical condition, or to make any inquiry regarding the nature or severity of a physical disability, mental disability, or medical condition.

(2) Notwithstanding paragraph (1), an employer or employment agency may require any examinations or inquiries that it can show to be job related and consistent with business necessity. An employer or employment agency may conduct voluntary medical examinations, including voluntary medical histories, which are part of an employee health program available to employees at that worksite.

(g) For any employer, labor organization, or employment agency to harass, discharge, expel, or otherwise discriminate against any person because the person



has made a report pursuant to Section 11161.8 of the Penal Code that prohibits retaliation against hospital employees who report suspected patient abuse by health facilities or community care facilities.

(h) For any employer, labor organization, employment agency, or person to discharge, expel, or otherwise discriminate against any person because the person has opposed any practices forbidden under this part or because the person has filed a complaint, testified, or assisted in any proceeding under this part.

(i) For any person to aid, abet, incite, compel, or coerce the doing of any of the acts forbidden under this part, or to attempt to do so.

(j) (1) For an employer, labor organization, employment agency, apprenticeship training program or any training program leading to employment, or any other person, because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or veteran or military status, to harass an employee, an applicant, an unpaid intern or volunteer, or a person providing services pursuant to a contract. Harassment of an employee, an applicant, an unpaid intern or volunteer, or a person providing services pursuant to a contract by an employee, other than an agent or supervisor, shall be unlawful if the entity, or its agents or supervisors, knows or should have known of this conduct and fails to take immediate and appropriate corrective action. An employer may also be responsible for the acts of nonemployees, with respect to harassment of employees, applicants, unpaid interns or volunteers, or persons providing services pursuant to a contract in the workplace, if the employer, or its agents or supervisors, knows or should have known of the conduct and fails to take immediate and appropriate corrective action. In reviewing cases involving the acts of nonemployees, the extent of the employer's control and any other legal responsibility that the employer may have with respect to the conduct of those nonemployees shall be considered. An entity shall take all reasonable steps to prevent harassment from occurring. Loss of tangible job benefits shall not be necessary in order to establish harassment.

(2) The provisions of this subdivision are declaratory of existing law, except for the new duties imposed on employers with regard to harassment.

(3) An employee of an entity subject to this subdivision is personally liable for any harassment prohibited by this section that is perpetrated by the employee, regardless of whether the employer or covered entity knows or should have known of the conduct and fails to take immediate and appropriate corrective action.

(4) (A) For purposes of this subdivision only, "employer" means any person regularly employing one or more persons or regularly receiving the services of one or more persons providing services pursuant to a contract, or any person acting as an agent of an employer, directly or indirectly, the state, or any political or civil subdivision of the state, and cities. The definition of "employer" in



subdivision (d) of Section 12926 applies to all provisions of this section other than this subdivision.

(B) Notwithstanding subparagraph (A), for purposes of this subdivision, "employer" does not include a religious association or corporation not organized for private profit, except as provided in Section 12926.2.

(C) For purposes of this subdivision, "harassment" because of sex includes sexual harassment, gender harassment, and harassment based on pregnancy, childbirth, or related medical conditions. Sexually harassing conduct need not be motivated by sexual desire.

(5) For purposes of this subdivision, "a person providing services pursuant to a contract" means a person who meets all of the following criteria:

(A) The person has the right to control the performance of the contract for services and discretion as to the manner of performance.

(B) The person is customarily engaged in an independently established business.

(C) The person has control over the time and place the work is performed, supplies the tools and instruments used in the work, and performs work that requires a particular skill not ordinarily used in the course of the employer's work.

(k) For an employer, labor organization, employment agency, apprenticeship training program, or any training program leading to employment, to fail to take all reasonable steps necessary to prevent discrimination and harassment from occurring.

(l) (1) For an employer or other entity covered by this part to refuse to hire or employ a person or to refuse to select a person for a training program leading to employment or to bar or to discharge a person from employment or from a training program leading to employment, or to discriminate against a person in compensation or in terms, conditions, or privileges of employment because of a conflict between the person's religious belief or observance and any employment requirement, unless the employer or other entity covered by this part demonstrates that it has explored any available reasonable alternative means of accommodating the religious belief or observance, including the possibilities of excusing the person from those duties that conflict with the person's religious belief or observance or permitting those duties to be performed at another time or by another person, but is unable to reasonably accommodate the religious belief or observance without undue hardship, as defined in subdivision (u) of Section 12926, on the conduct of the business of the employer or other entity covered by this part. Religious belief or observance, as used in this section, includes, but is not limited to, observance of a Sabbath or other religious holy day or days, reasonable time necessary for travel



prior and subsequent to a religious observance, and religious dress practice and religious grooming practice as described in subdivision (q) of Section 12926. This subdivision shall also apply to an apprenticeship training program, an unpaid internship, and any other program to provide unpaid experience for a person in the workplace or industry.

(2) An accommodation of an individual's religious dress practice or religious grooming practice is not reasonable if the accommodation requires segregation of the individual from other employees or the public.

(3) An accommodation is not required under this subdivision if it would result in a violation of this part or any other law prohibiting discrimination or protecting civil rights, including subdivision (b) of Section 51 of the Civil Code and Section 11135 of this code.

(4) For an employer or other entity covered by this part to, in addition to the employee protections provided pursuant to subdivision (h), retaliate or otherwise discriminate against a person for requesting accommodation under this subdivision, regardless of whether the request was granted.

(m) (1) For an employer or other entity covered by this part to fail to make reasonable accommodation for the known physical or mental disability of an applicant or employee. Nothing in this subdivision or in paragraph (1) or (2) of subdivision (a) shall be construed to require an accommodation that is demonstrated by the employer or other covered entity to produce undue hardship, as defined in subdivision (u) of Section 12926, to its operation.

(2) For an employer or other entity covered by this part to, in addition to the employee protections provided pursuant to subdivision (h), retaliate or otherwise discriminate against a person for requesting accommodation under this subdivision, regardless of whether the request was granted.

(n) For an employer or other entity covered by this part to fail to engage in a timely, good faith, interactive process with the employee or applicant to determine effective reasonable accommodations, if any, in response to a request for reasonable accommodation by an employee or applicant with a known physical or mental disability or known medical condition.

(o) For an employer or other entity covered by this part, to subject, directly or indirectly, any employee, applicant, or other person to a test for the presence of a genetic characteristic.

(p) Nothing in this section shall be interpreted as preventing the ability of employers to identify members of the military or veterans for purposes of awarding a veteran's preference as permitted by law.

*(Amended by Stats. 2022, Ch. 48, Sec. 36. (SB 189) **Effective June 30, 2022.**)*



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**TITLE 2. GOVERNMENT OF THE STATE OF CALIFORNIA [8000 - 22980]**

*( Title 2 enacted by Stats. 1943, Ch. 134. )*

**DIVISION 3. EXECUTIVE DEPARTMENT [11000 - 15986]**

*( Division 3 added by Stats. 1945, Ch. 111. )*

**PART 2.8. CIVIL RIGHTS DEPARTMENT [12900 - 12999]**

*( Heading of Part 2.8 amended by Stats. 2022, Ch. 48, Sec. 29. )*

**CHAPTER 6. Discrimination Prohibited [12940 - 12957]**

*( Chapter 6 added by Stats. 1980, Ch. 992. )*

**ARTICLE 1. Unlawful Practices, Generally [12940 - 12953]**

*( Article 1 added by Stats. 1980, Ch. 992. )*

**12950.1.**

(a) (1) By January 1, 2021, an employer having five or more employees shall provide at least two hours of classroom or other effective interactive training and education regarding sexual harassment to all supervisory employees and at least one hour of classroom or other effective interactive training and education regarding sexual harassment to all nonsupervisory employees in California. Thereafter, each employer covered by this section shall provide sexual harassment training and education to each employee in California once every two years. New nonsupervisory employees shall be provided training within six months of hire. New supervisory employees shall be provided training within six months of the assumption of a supervisory position. An employer may provide this training in conjunction with other training provided to the employees. The training may be completed by employees individually or as part of a group presentation, and may be completed in shorter segments, as long as the applicable hourly total requirement is met. An employer who has provided this training and education to an employee in 2019 is not required to provide refresher training and education again until two years thereafter. The training and education required by this section shall include information and practical guidance regarding the federal and state statutory provisions concerning the prohibition against and the prevention and correction of sexual harassment and the remedies available to victims of sexual harassment in employment. The training and education shall also include practical examples aimed at instructing supervisors in the prevention of harassment, discrimination, and retaliation, and shall be presented by trainers or educators with knowledge and expertise in the prevention of harassment, discrimination, and retaliation. The department shall provide a method for employees who have completed the training to save electronically and print a certificate of completion.

(2) An employer shall also include prevention of abusive conduct as a component of the training and education specified in paragraph (1).

(3) An employer shall also provide training inclusive of harassment based on gender identity, gender expression, and sexual orientation as a component of the training and education specified in paragraph (1). The training and education shall include practical examples inclusive of harassment based on gender identity,





gender expression, and sexual orientation, and shall be presented by trainers or educators with knowledge and expertise in those areas.

(b) The state shall incorporate the training required by subdivision (a) into the 80 hours of training provided to all new employees pursuant to subdivision (b) of Section 19995.4, using existing resources.

(c) Notwithstanding subdivisions (j) and (k) of Section 12940, a claim that the training and education required by this section did not reach a particular individual or individuals shall not in and of itself result in the liability of any employer to any present or former employee or applicant in any action alleging sexual harassment. Conversely, an employer's compliance with this section does not insulate the employer from liability for sexual harassment of any current or former employee or applicant.

(d) If an employer violates this section, the department may seek an order requiring the employer to comply with these requirements.

(e) The training and education required by this section is intended to establish a minimum threshold and should not discourage or relieve any employer from providing for longer, more frequent, or more elaborate training and education regarding workplace harassment or other forms of unlawful discrimination in order to meet its obligations to take all reasonable steps necessary to prevent and correct harassment and discrimination. This section shall not be construed to override or supersede statutes, including, but not limited to, Section 1684 of the Labor Code, that meet or exceed the training for nonsupervisory employees required under this section.

(f) Except as provided in subdivision (l), beginning January 1, 2021, for seasonal, temporary, or other employees that are hired to work for less than six months, an employer shall provide training within 30 calendar days after the hire date or within 100 hours worked, whichever occurs first. In the case of a temporary employee employed by a temporary services employer, as defined in Section 201.3 of the Labor Code, to perform services for clients, the training shall be provided by the temporary services employer, not the client.

(g) Beginning January 1, 2020, sexual harassment prevention training for migrant and seasonal agricultural workers, as defined in the federal Migrant and Seasonal Agricultural Worker Protection Act (29 U.S.C. 1801, et seq.), shall be consistent with training for nonsupervisory employees pursuant to paragraph (8) of subdivision (a) of Section 1684 of the Labor Code.

(h) (1) For purposes of this section only, "employer" means any person regularly employing five or more persons or regularly receiving the services of five or more persons providing services pursuant to a contract, or any person acting as an agent of an employer, directly or indirectly, the state, or any political or civil subdivision of the state, and cities.





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(2) For purposes of this section, “abusive conduct” means conduct of an employer or employee in the workplace, with malice, that a reasonable person would find hostile, offensive, and unrelated to an employer’s legitimate business interests. Abusive conduct may include repeated infliction of verbal abuse, such as the use of derogatory remarks, insults, and epithets, verbal or physical conduct that a reasonable person would find threatening, intimidating, or humiliating, or the gratuitous sabotage or undermining of a person’s work performance. A single act shall not constitute abusive conduct, unless especially severe and egregious.

(i) For purposes of providing training to employees as required by this section, an employer may develop its own training module or may direct employees to view the online training course referenced in subdivision (j) and this shall be deemed to have complied with and satisfied the employers’ obligations as set forth in this section and Section 12950.

(j) The department shall develop or obtain two online training courses on the prevention of sexual harassment in the workplace in accordance with the provisions of this section. The course for nonsupervisory employees shall be one hour in length and the course for supervisory employees shall be two hours in length.

(k) The department shall make the online training courses available on its internet website. The online training courses shall contain an interactive feature that requires the viewer to respond to a question periodically in order for the online training courses to continue to play. Any questions resulting from the online training course described in this subdivision shall be directed to the trainee’s employer’s human resources department or equally qualified professional rather than the department.

(l) (1) An employer that employs workers pursuant to a multiemployer collective bargaining agreement in the construction industry may satisfy the requirements of subdivision (a) or (f) by demonstrating that the employee has received the training required by subdivision (a) within the past two years under any of the following circumstances:

(A) While the employee was employed by another employer that is also signatory to a multiemployer collective bargaining agreement with the same trade in the building and construction industry.

(B) While the employee was an apprentice registered in a building and construction trades apprenticeship program approved by the Division of Apprenticeship Standards.

(C) Through a building and construction trades apprenticeship program approved by the Division of Apprenticeship Standards, a labor management training trust, or labor management cooperation committee. For purposes of this subdivision, “labor management cooperation committee” shall mean a committee that is established pursuant to Section 175a of Title 29 of the United States Code.



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(2) For purposes of this subdivision, “multiemployer collective bargaining agreement” means a bona fide collective bargaining agreement to which multiple employers are signatory, including predecessor and successor agreements.

(3) An employer shall require verification that an employee has undergone prevention of harassment training pursuant to this subdivision within the past two years. The employer shall provide prevention of harassment training pursuant to subdivision (a) for any employee for whom verification cannot be obtained.

(4) A state-approved apprenticeship program, labor management training trust, or labor management cooperation committee shall maintain a certificate of completion of training for each person to whom the entity has provided prevention of harassment training pursuant to this subdivision for a period of not less than four years. The apprenticeship program, labor management training trust, or labor management cooperation committee shall maintain a database of journey-level worker and apprentice training that entity has provided and shall provide verification of an employee’s or apprentice’s prevention of harassment training status upon the request of an employer that is a party to the multiemployer collective bargaining agreement.

(5) (A) A qualified trainer may provide prevention of harassment training on behalf of an apprenticeship program, labor management training trust, or labor management cooperation committee.

(B) A “qualified trainer,” for purposes of this subdivision, is any person who, through a combination of training and experience, has the ability to train employees about the following:

(i) How to identify behavior that may constitute unlawful harassment, discrimination, or retaliation under both California and federal law.

(ii) What steps to take when harassing behavior occurs in the workplace.

(iii) How to report harassment complaints.

(iv) Supervisory employees’ obligation to report harassing, discriminatory, or retaliatory behavior of which they become aware.

(v) How to respond to a harassment complaint.

(vi) The employer’s obligation to conduct a workplace investigation of a harassment complaint.

(vii) What constitutes retaliation and how to prevent it.

(viii) Essential components of an antiharassment policy.



(ix) The effect of harassment on harassed employees, coworkers, harassers, and employers.

(C) A "qualified trainer" includes, but is not limited to, an attorney admitted to the State Bar of California with at least two years of experience practicing employment law, a human resources professional with at least two years of practical experience in prevention of harassment training, investigation, and advising employers in the prevention of harassment, or any other person who has received training in the provision of prevention of harassment training from a qualified trainer.

(6) An apprenticeship program, labor management training trust, or labor management cooperation committee may also provide training by use of the online training courses referenced in subdivision (j).

(7) An apprenticeship program, labor management training trust, or labor management cooperation committee shall not incur any liability for providing prevention of harassment training or for maintaining records pursuant to this subdivision.

(m) An employee who has received training in compliance with this section within the prior two years either from a current, a prior, or an alternate or a joint employer, or who received a valid work permit from the Labor Commissioner that required the employee to receive training in compliance with this section within the prior two years, shall be given, and required to read and to acknowledge receipt of, the employer's anti-harassment policy within six months of assuming the employee's new position. That employee shall then be put on a two year tracking schedule based on the employee's last training. The current employer shall have the burden of establishing that the prior training was legally compliant with this section.

*(Amended by Stats. 2020, Ch. 227, Sec. 1. (AB 3369) **Effective September 28, 2020.**)*

## **CIVIL CODE - CIV**

### **DIVISION 1. PERSONS [38 - 86]**

*( Heading of Division 1 amended by Stats. 1988, Ch. 160, Sec. 12. )*

### **PART 2. PERSONAL RIGHTS [43 - 53.7]**

*( Part 2 enacted 1872. )*

## **51.9.**

(a) A person is liable in a cause of action for sexual harassment under this section when the plaintiff proves all of the following elements:

(1) There is a business, service, or professional relationship between the plaintiff and defendant or the defendant holds himself or herself out as being able to help the plaintiff establish a business, service, or professional relationship with the



defendant or a third party. Such a relationship may exist between a plaintiff and a person, including, but not limited to, any of the following persons:

(A) Physician, psychotherapist, or dentist. For purposes of this section, "psychotherapist" has the same meaning as set forth in paragraph (1) of subdivision (c) of Section 728 of the Business and Professions Code.

(B) Attorney, holder of a master's degree in social work, real estate agent, real estate appraiser, investor, accountant, banker, trust officer, financial planner loan officer, collection service, building contractor, or escrow loan officer.

(C) Executor, trustee, or administrator.

(D) Landlord or property manager.

(E) Teacher.

(F) Elected official.

(G) Lobbyist.

(H) Director or producer.

(I) A relationship that is substantially similar to any of the above.

(2) The defendant has made sexual advances, solicitations, sexual requests, demands for sexual compliance by the plaintiff, or engaged in other verbal, visual, or physical conduct of a sexual nature or of a hostile nature based on gender, that were unwelcome and pervasive or severe.

(3) The plaintiff has suffered or will suffer economic loss or disadvantage or personal injury, including, but not limited to, emotional distress or the violation of a statutory or constitutional right, as a result of the conduct described in paragraph (2).

(b) In an action pursuant to this section, damages shall be awarded as provided by subdivision (b) of Section 52.

(c) Nothing in this section shall be construed to limit application of any other remedies or rights provided under the law.

(d) The definition of sexual harassment and the standards for determining liability set forth in this section shall be limited to determining liability only with regard to a cause of action brought under this section.

*(Amended by Stats. 2018, Ch. 951, Sec. 1. (SB 224) **Effective January 1, 2019.**)*



Title 2. Administration  
 Division 4.1. Department of Fair Employment and Housing  
 Chapter 2. Conflict of Interest Code

2 CCR § 10500

**§ 10500. Department of Fair Employment and Housing (DFEH) - Conflict of Interest Code.**

The Political Reform Act (Gov. Code, § 81000 et seq.) requires state and local government agencies to adopt and promulgate conflict of interest codes. The Fair Political Practices Commission has adopted a regulation (Cal. Code Regs., tit. 2, § 18730) that contains the terms of a standard conflict of interest code, which can be incorporated by reference in an agency's regulation. After public notice and hearing, the standard code may be amended by the Fair Political Practices Commission to conform to amendments in the Political Reform Act. Therefore, the terms of California Code of Regulations, title 2, section 18730 and any amendments to it duly adopted by the Fair Political Practices Commission are hereby incorporated by reference. This regulation, and the attached appendices designating positions and establishing disclosure requirements, shall constitute the conflict of interest code for the Department of Fair Employment and Housing (DFEH).

Individuals holding designated positions shall file their statements with the DFEH, which will make the statements available for public inspection and reproduction. (Gov. Code, § 81008.) Upon receipt of the statement of the Director, the DFEH will make and retain a copy and forward the original to the Fair Political Practices Commission.

**Appendix A**

<i>List of Designated Positions</i>	As
<i>Executive Administration</i>	
Assistant Chief Counsel	1
Career Executive Assignment, all levels	1
Chief Deputy Director	1
Deputy Director	1
Director	1
Deputy Director of Executive Programs	1
<i>Enforcement Division</i>	
Administrator, FEH, all levels	1
FEH Consultant, all ranges	4
Associate Government Program Analyst	4
<i>Legal Division</i>	
Legal Counsel, all levels and types	1
<i>Administrative Division</i>	
Accounting Administrator I (Supervisor)	2
Accounting Administrator II	2
Associate Information Systems Analyst, (Specialist)	3
Associate Business Management Analyst	2
Business Service Assistant (Specialist), all types	2
Data Processing Manager, all levels	3



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Information Officer II	3
Labor Relations Manager I	5
Senior Information Systems Analyst (Specialist)	3
Special Consultant	1*
Staff Information Systems Analyst (Supervisor)	3
Staff Services Manager, all levels and types	2
Systems Software Specialist II (Supervisor)	3

\* Consultants / new positions shall be included in the list of designated positions and shall disclose pursuant to the disclosure requirements in this conflict of interest code subject to the following limitation: The Director may determine in writing that a particular consultant or new position, although holding a “designated position,” is hired to perform a range of duties that is limited in scope and thus is not required to fully comply with the disclosure requirements described in this section. Such written determination shall include a description of the consultant's or new position's duties and, based upon that description, a statement of the extent of disclosure requirements. The Director's determination is a public record and shall be retained for public inspection in the same manner and location as this conflict of interest code.

## Appendix B

### *Disclosure Requirements*

#### *Disclosure Category 1*

Individuals holding designated positions assigned to disclosure category 1 shall report interest in real property located within the State of California; investments and business positions in business entities, and income, including loans, gifts, and travel payments, from all sources.

#### *Disclosure Category 2*

Individuals holding designated positions assigned to disclosure category 2 shall report investments and business positions in business entities, and income, including receipt of gifts, loans, and travel payments, from sources, of the type to provide services, supplies, materials, and/or equipment to the DFEH. Such services include, but are not limited to, legal recording/reporting services, rental of meeting and/or administrative hearing space.

#### *Disclosure Category 3*

Individuals holding designated positions assigned to disclosure category 3 shall report investments and business positions in business entities, and income, including receipt of gifts, loans, and travel payments, from sources, of the type to provide information technology and telecommunications services, goods, and/or supplies, including, but not limited to, software, hardware, data retrieval and/or security services.

#### *Disclosure Category 4*

Individuals holding designated positions assigned to disclosure category 4 must determine whether, during the reporting period, they had a financial interest in any of their assignments. If they had no such interest, they shall file Fair Political Practices Commission Form 700-A. Otherwise, they shall disclose their pertinent financial interests on the schedules for Fair Political Practices Commission Form 700.

#### *Disclosure Category 5*

Individuals holding designated positions assigned to category 5 must report investments, positions in business entities, and income (including receipt of loans, gifts, and travel payments) received from a department employee and from any of the following sources: training and educational services, labor specialists, and human resource management services.





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Note: Authority cited: Sections 81008, 87300 and 87306, Government Code. Reference: Section 87302, Government Code.

#### **HISTORY**

1. New chapter 2 (section 10500) and renumbering of former section 11005.1 to new section 10500 filed 12-9-2015; operative 4-1-2016 (Register 2015, No. 50). For prior history, see Register 83, No. 24.
2. Repealer and new section and appendices A and B filed 11-28-2016; operative 12-28-2016 pursuant to Cal. Code Regs., tit. 2, section 18750(l). Approved by Fair Political Practices Commission 10-27-2016 and submitted to OAL for filing and printing only pursuant to Cal. Code Regs., tit. 2, section 18750(k) (Register 2016, No. 49).

Title 2. Administration  
Division 4.1. Department of Fair Employment and Housing  
Chapter 5. Fair Employment and Housing Council  
Subchapter 1. Administration  
Article 1. Administration

2 CCR § 11000

#### **§ 11000. Generally.**

The authority for the rules and regulations set forth in this chapter is briefly described at the beginning of each subchapter herein and in some cases is set out with more particularity at the beginning of a constituent article within a subchapter. Special definitions or rules of construction, which only apply to a particular subchapter or article, are set forth at the beginning of the subchapter or article to which they pertain.

Note: Authority cited: Section 12935(a), Government Code. Reference: Part 2.8 of Division 3 of Title 2, Government Code.

#### **HISTORY**

1. Change without regulatory effect renumbering title 2, division 4 (chapters 1-5) to title 2, division 4.1, chapter 5 (subchapters 1-5), renumbering former chapter 1 (subchapters 1-2) to new subchapter 1 (articles 1-2), renumbering former subchapter 1 (sections 7285.0-7285.2) to new article 1 (sections 11000-11002), renumbering section 7285.0 to new section 11000 and amending section and Note filed 10-3-2013 pursuant to section 100, title 1, California Code of Regulations (Register 2013, No. 40).

Title 2. Administration  
Division 4.1. Department of Fair Employment and Housing  
Chapter 5. Fair Employment and Housing Council  
Subchapter 1. Administration  
Article 1. Administration

2 CCR § 11001

#### **§ 11001. Construction.**

(a) These rules and regulations are to be construed liberally so as to further the policy and purposes of the statutes they interpret and implement.



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(b) Except as required by the Supremacy Clause of the United States Constitution, federal laws and their interpretations regarding discrimination in employment and housing are not determinative of the construction of these rules and regulations and the California statutes they interpret and implement but, in the spirit of comity, shall be considered to the extent practical and appropriate.

(c) Unless the context dictates otherwise, terms used herein that are in the singular include the plural, and terms that are in the plural include the singular.

(d) If any rule or regulation, or portion thereof, in this chapter is adjudged by a court of competent jurisdiction to be invalid, or if any such rule or regulation, or portion thereof, loses its force and effect by legislative action, that judgment or action does not affect the remainder of the rules and regulations.

(e) Pursuant to the Governor's Reorganization Plan No. 1 (1980), the Fair Employment Practice Act is renamed the Fair Employment and Housing Act and renumbered in Part 2.8 of Division 3 of Title 2 of the Government Code.

Note: Authority cited: Section 12935(a), Government Code. Reference: Part 2.8 of Division 3 of Title 2 of the Government Code.

#### **HISTORY**

1. Change without regulatory effect renumbering former section 7285.1 to new section 11001 and amending section and Note filed 10-3-2013 pursuant to section 100, title 1, California Code of Regulations (Register 2013, No. 40).

Title 2. Administration

Division 4.1. Department of Fair Employment and Housing

Chapter 5. Fair Employment and Housing Council

Subchapter 1. Administration

Article 1. Administration

2 CCR § 11002

#### **§ 11002. Definitions.**

Unless a different meaning clearly applies from the context, the meaning of the words and phrases as defined in this section shall apply throughout this chapter:

(a) "Council or FEHC" means the State Fair Employment and Housing Council created by section 12903 of the Government Code pursuant to Senate Bill 1038 (2011-2012 Reg. Sess.) (State. 2012, ch. 46).

(b) "Department or DFEH" means the Department of Fair Employment and Housing created by section 12901 of the Government Code pursuant to the Governor's Reorganization Plan No. 1 (1980).

(c) "Person" includes one or more individuals, partnerships, associations or corporations, legal representatives, trustees, trustees in bankruptcy, or receivers.

(d) "Complainant" means the person who files a timely, verified complaint with the DFEH alleging aggrievement by an unlawful practice.

(e) "Respondent" means the person who is alleged to have committed an unlawful practice in a complaint filed with the DFEH.

(f) "Act" means the California Fair Employment and Housing Act, created by Government Code section 12900.



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Note: Authority cited: Section 12935(a), Government Code. Reference: Sections 12903 and 12925, Government Code.

#### **HISTORY**

1. Change without regulatory effect renumbering former section 7285.2 to new section 11002 and amending section and Note filed 10-3-2013 pursuant to section 100, title 1, California Code of Regulations (Register 2013, No. 40).

Title 2. Administration

Division 4.1. Department of Fair Employment and Housing

Chapter 5. Fair Employment and Housing Council

Article 2. Powers and Duties of the Council

2 CCR § 11003

### **§ 11003. Rules, Regulations and Guidelines.**

(a) The Council shall adopt, promulgate, amend and rescind suitable rules, regulations and guidelines as are necessary to interpret, implement and apply laws within its jurisdiction and as are necessary to carry out all of its other functions and duties.

(b) All rules and regulations shall be adopted pursuant to Chapter 3.5 (commencing with section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

Note: Authority cited: Section 12935(a), Government Code. Reference: Part 2.8 of Division 3 of Title 2, Government Code.

#### **HISTORY**

1. Change without regulatory effect renumbering former subchapter 2 (sections 7285.3-7285.7) to new article 2 (sections 11003-11004), renumbering former section 7285.4 to new section 11003 and amending article heading, section and Note filed 10-3-2013 pursuant to section 100, title 1, California Code of Regulations (Register 2013, No. 40).

Title 2. Administration

Division 4.1. Department of Fair Employment and Housing

Chapter 5. Fair Employment and Housing Council

Article 2. Powers and Duties of the Council

2 CCR § 11004

### **§ 11004. Other Powers and Duties.**

The functions, powers and duties of the Council shall also include, but are not limited to, the authority to:

(a) Make inquiries into general discrimination problems and issue informal and formal findings, including published reports;

(b) Establish such advisory agencies and councils as will assist in fostering goodwill, cooperation and conciliation among groups and elements of the population of the state through studies, conciliation, hearings, and recommendations to the Council;

(c) Hold hearings, issue publications, results of inquiries and research, and reports to the Governor and the Legislature that, in its judgment, will tend to aid in effectuating the purpose of



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the Fair Employment and Housing Act, promote good will, cooperation and conciliation, and minimize or eliminate unlawful discrimination, or advance civil rights in the State of California.

(d) Advise and concur with the Secretary of Health and Human Services in establishing standards and guidelines determining unlawful practices of state contractors under section 11135, et seq.

Note: Authority cited: Section 12935(a), Government Code. Reference: Sections 11139.5, 12935, 12946 and 12990, Government Code.

### **HISTORY**

1. Change without regulatory effect renumbering former section 7285.7 to new section 11004 amending section and Note filed 10-3-2013 pursuant to section 100, title 1, California Code of Regulations (Register 2013, No. 40).

## ***The U.S. Equal Employment Opportunity Commission***

### **Title VII of the Civil Rights Act of 1964**

*EDITOR'S NOTE: The following is the text of Title VII of the Civil Rights Act of 1964 (Pub. L. 88-352) (Title VII), as amended, as it appears in volume 42 of the United States Code, beginning at section 2000e. Title VII prohibits employment discrimination based on race, color, religion, sex and national origin. The Civil Rights Act of 1991 (Pub. L. 102-166) (CRA) amends several sections of Title VII. These amendments appear in boldface type. 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.*

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### **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 [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 [of the 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 1954], 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.





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(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 .

## **42 U.S. Code Section 2000e**

**42 USC 2000e: Definitions** Text contains those laws in effect on January 2, 2001  
**From Title 42-THE PUBLIC HEALTH AND WELFARE** CHAPTER 21-CIVIL RIGHTS  
SUBCHAPTER VI-EQUAL EMPLOYMENT OPPORTUNITIES

### **§2000e. Definitions**

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



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representatives, mutual companies, joint-stock companies, trusts, unincorporated organizations, trustees, trustees in cases under title 11, 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](#)), 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](#), except that during the first year after March 24, 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, 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 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.

( Pub. L. 88-352, title VII, §701, July 2, 1964, 78 Stat. 253 ; Pub. L. 89-554, §8(a), Sept. 6, 1966, 80 Stat. 662 ; Pub. L. 92-261, §2, Mar. 24, 1972, 86 Stat. 103 ; Pub. L. 95-555, §1, Oct.



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31, 1978, 92 Stat. 2076 ; Pub. L. 95-598, title III, §330, Nov. 6, 1978, 92 Stat. 2679 ; Pub. L. 99-514, §2, Oct. 22, 1986, 100 Stat. 2095 ; Pub. L. 102-166, title I, §§104, 109(a), Nov. 21, 1991, 105 Stat. 1074 , 1077.)

### **REFERENCES IN TEXT**

The National Labor Relations Act, as amended, referred to in subsec. (e)(1), is act July 5, 1935, ch. 372, 49 Stat. 449, as amended, which is classified generally to subchapter II (§151 et seq.) of chapter 7 of Title 29, Labor. For complete classification of this Act to the Code, see section 167 of Title 29 and Tables.

The Railway Labor Act, referred to in subsec. (e)(1), is act May 20, 1926, ch. 347, 44 Stat. 577, as amended, which is classified principally to chapter 8 (§151 et seq.) of Title 45, Railroads. For complete classification of this Act to the Code, see section 151 of Title 45 and Tables.

The Labor-Management Reporting and Disclosure Act of 1959, referred to in subsec. (h), is Pub. L. 86-257, Sept. 14, 1959, 73 Stat. 519, as amended, which is classified principally to chapter 11 (§401 et seq.) of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note set out under section 401 of Title 29 and Tables.

For definition of Canal Zone, referred to in subsec. (i), see section 3602(b) of Title 22, Foreign Relations and Intercourse.

The Outer Continental Shelf Lands Act, referred to in subsec. (i), is act Aug. 7, 1953, ch. 345, 67 Stat. 462, as amended, which is classified generally to subchapter III (§1331 et seq.) of chapter 29 of Title 43, Public Lands. For complete classification of this Act to the Code, see Short Title note set out under section 1331 of Title 43 and Tables.

### **AMENDMENTS**

**1991**-Subsec. (f). Pub. L. 102-166, §109(a), inserted at end "With respect to employment in a foreign country, such term includes an individual who is a citizen of the United States."

Subsecs. (l) to (n). Pub. L. 102-166, §104, added subsecs. (l) to (n).

**1986**-Subsec. (b). Pub. L. 99-514 substituted "Internal Revenue Code of 1986" for "Internal Revenue Code of 1954", which for purposes of codification was translated as "title 26" thus requiring no change in text.

**1978**-Subsec. (a). Pub. L. 95-598 substituted "trustees in cases under title 11" for "trustees in bankruptcy".

Subsec. (k). Pub. L. 95-555 added subsec. (k).

**1972**-Subsec. (a). Pub. L. 92-261, §2(1), included within "person" governments, governmental agencies, and political subdivisions.

Subsec. (b). Pub. L. 92-261, §2(2), substituted "fifteen or more employees" for "twenty-five or more employees", extended coverage to include State and local governments, excepted from coverage 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, and substituted provisions under which persons having fewer than twenty-five employees during the first year after March 24, 1972, were not to be considered employers, for provisions under which persons having fewer



than a specified number of employees during the first year after the effective date of this section, and the second and third years after such date were not to be considered employers.

Subsec. (c). Pub. L. 92–261, §2(3), struck out from term "employment agency" exemption from coverage for agencies of the United States, States or political subdivisions of States, other than the United States Employment Service and the system of State and local employment services receiving Federal assistance.

Subsec. (e). Pub. L. 92–261, §2(4), substituted provisions which set forth the number of members for a labor organization to be deemed to be engaged in an industry affecting commerce as twenty-five or more during the first year after March 24, 1972, and fifteen or more thereafter, for provisions which set forth the number of members for a labor organization to be deemed to be engaged in an industry affecting commerce as one hundred or more during the first year after the effective date of this section, seventy-five or more during the second year after such date, fifty or more during the third year after such date, and twenty-five or more thereafter.

Subsec. (f). Pub. L. 92–261, §2(5), inserted provisions enumerating persons excepted from term "employee".

Subsec. (h). Pub. L. 92–261, §2(6), inserted ", and further includes any governmental industry, business, or activity" after "Labor-Management Reporting and Disclosure Act of 1959".

Subsec. (j). Pub. L. 92–261, §2(7), added subsec. (j).

**1966-**Subsec. (b). Pub. L. 89–554 struck out proviso which stated that it shall be the policy of the United States to insure equal employment opportunities for Federal employees without discrimination because of race, color, religion, sex, or national origin and directed the President to utilize his existing authority to effectuate this policy.

#### ***EFFECTIVE DATE OF 1991 AMENDMENT***

Amendment by section 104 of Pub. L. 102–166 effective Nov. 21, 1991, except as otherwise provided, see section 402 of Pub. L. 102–166, set out as a note under [section 1981 of this title](#).

Section 109(c) of Pub. L. 102–166 provided that: "The amendments made by this section [amending this section and [sections 2000e–1, 12111, and 12112 of this title](#)] shall not apply with respect to conduct occurring before the date of the enactment of this Act [Nov. 21, 1991]."

#### ***EFFECTIVE DATE OF 1978 AMENDMENT***

Amendment by Pub. L. 95–598 effective Oct. 1, 1979, see section 402(a) of Pub. L. 95–598, set out as Effective Date note preceding [section 101 of Title 11, Bankruptcy](#).

#### ***EFFECTIVE DATE OF 1978 AMENDMENT; EXCEPTIONS TO APPLICATION***

Section 2 of Pub. L. 95–555 provided that:

"(a) Except as provided in subsection (b), the amendment made by this Act [amending this section] shall be effective on the date of enactment [Oct. 31, 1978].

"(b) The provisions of the amendment made by the first section of this Act [amending this section] shall not apply to any fringe benefit program or fund, or insurance program which is in





effect on the date of enactment of this Act [Oct. 31, 1978] until 180 days after enactment of this Act."

#### ***EFFECTIVE DATE***

Subsecs. (a), (b) of section 716 of Pub. L. 88-352 provided that:

"(a) This title [enacting this section and sections 2000e-1, 2000e-4, 2000e-7 to 2000e-15 of this title, and amending sections 2204 and 2205(a)(45) of former Title 5, Executive Departments and Government Officers and Employees] shall become effective one year after the date of its enactment [July 2, 1964].

"(b) Notwithstanding subsection (a), sections of this title other than sections 703, 704, 706, and 707 [sections 2000e-2, 2000e-3, 2000e-5, and 2000e-6 of this title] shall become effective immediately [July 2, 1964]."

#### ***GLASS CEILING***

Title II of Pub. L. 102-166, entitled the "Glass Ceiling Act of 1991", established a Glass Ceiling Commission which was to submit to Congress, no later than 15 months after Nov. 21, 1991, study and recommendations concerning eliminating artificial barriers to advancement of women and minorities in the workplace and increasing opportunities and developmental experiences of women and minorities to foster advancement to management and decisionmaking positions in businesses, authorized creation of a National Award for Diversity and Excellence in American Executive Management which was to be awarded annually by the Commission to a qualified business concern which promoted more diverse skilled work force at management and decisionmaking levels in business, and further provided for composition of Commission, powers, staff and consultants, confidentiality of information, appropriations, and termination of Commission and authority to make awards 4 years after Nov. 21, 1991.

#### ***READJUSTMENT OF BENEFITS***

Section 3 of Pub. L. 95-555 provided that: "Until the expiration of a period of one year from the date of enactment of this Act [Oct. 31, 1978] or, if there is an applicable collective-bargaining agreement in effect on the date of enactment of this Act, until the termination of that agreement, no person who, on the date of enactment of this Act is providing either by direct payment or by making contributions to a fringe benefit fund or insurance program, benefits in violation with this Act [amending this section and enacting provisions set out above] shall, in order to come into compliance with this Act, reduce the benefits or the compensation provided any employee on the date of enactment of this Act, either directly or by failing to provide sufficient contributions to a fringe benefit fund or insurance program: *Provided*, That where the costs of such benefits on the date of enactment of this Act are apportioned between employers and employees, the payments or contributions required to comply with this Act may be made by employers and employees in the same proportion: *And provided further*, That nothing in this section shall prevent the readjustment of benefits or compensation for reasons unrelated to compliance with this Act."

#### ***EXECUTIVE ORDER No. 11126***

Ex. Ord. No. 11126, Nov. 1, 1963, 28 F.R. 11717, as amended by Ex. Ord. No. 11221, May 6, 1965, 30 F.R. 6427; Ex. Ord. No. 12007, Aug. 22, 1977, 42 F.R. 42839, which related to the Interdepartmental Committee on the Status of Women and the Citizens' Advisory Council on the





Status of Women, was revoked by Ex. Ord. No. 12050, Apr. 4, 1978, 43 F.R. 14431, formerly set out below.

***Ex. ORD. No. 11246. EQUAL OPPORTUNITY IN FEDERAL EMPLOYMENT***

Ex. Ord. No. 11246, Sept. 24, 1965, 30 F.R. 12319, as amended by Ex. Ord. No. 11375, Oct. 13, 1967, 32 F.R. 14303; Ex. Ord. No. 11478, Aug. 8, 1969, 34 F.R. 12985; Ex. Ord. No. 12086, Oct. 5, 1978, 43 F.R. 46501, provided:

Under and by virtue of the authority vested in me as President of the United States by the Constitution and statutes of the United States, it is ordered as follows:

***PART I-NONDISCRIMINATION IN GOVERNMENT EMPLOYMENT***

[Superseded. Ex. Ord. No. 11478, eff. Aug. 8, 1969, 34 F.R. 12985.]

***PART II-NONDISCRIMINATION IN EMPLOYMENT BY GOVERNMENT CONTRACTORS AND SUBCONTRACTORS***

***SUBPART A-DUTIES OF THE SECRETARY OF LABOR***

Sec. 201. The Secretary of Labor shall be responsible for the administration and enforcement of Parts II and III of this Order. The Secretary shall adopt such rules and regulations and issue such orders as are deemed necessary and appropriate to achieve the purposes of Parts II and III of this Order.

***SUBPART B-CONTRACTORS' AGREEMENTS***

Sec. 202. Except in contracts exempted in accordance with Section 204 of this Order, all Government contracting agencies shall include in every Government contract hereafter entered into the following provisions:

"During the performance of this contract, the contractor agrees as follows:

"(1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.

"(2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex or national origin.

"(3) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer, advising the labor union or workers' representative of the contractor's commitments under Section 202 of Executive Order No. 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.



"(4) The contractor will comply with all provisions of Executive Order No. 11246 of Sept. 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

"(5) The contractor will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

"(6) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be cancelled, terminated or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order No. 11246 of Sept. 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order No. 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

"(7) The contractor will include the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of September 24, 1965 [section 204 of this Order] so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions including sanctions for noncompliance: *Provided, however,* that in the event the contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the contractor may request the United States to enter into such litigation to protect the interests of the United States."

Sec. 203. (a) Each contractor having a contract containing the provisions prescribed in Section 202 shall file, and shall cause each of his subcontractors to file, Compliance Reports with the contracting agency or the Secretary of Labor as may be directed. Compliance Reports shall be filed within such times and shall contain such information as to the practices, policies, programs, and employment policies, programs, and employment statistics of the contractor and each subcontractor, and shall be in such form, as the Secretary of Labor may prescribe.

(b) Bidders or prospective contractors or subcontractors may be required to state whether they have participated in any previous contract subject to the provisions of this Order, or any preceding similar Executive order, and in that event to submit, on behalf of themselves and their proposed subcontractors, Compliance Reports prior to or as an initial part of their bid or negotiation of a contract.

(c) Whenever the contractor or subcontractor has a collective bargaining agreement or other contract or understanding with a labor union or an agency referring workers or providing or supervising apprenticeship or training for such workers, the Compliance Report shall include such information as to such labor union's or agency's practices and policies affecting compliance as the Secretary of Labor may prescribe: *Provided,* That to the extent such information is within the exclusive possession of a labor union or any agency referring workers or providing or supervising apprenticeship or training and such labor union or agency shall refuse to furnish such information to the contractor, the contractor shall so certify to the



Secretary of Labor as part of its Compliance Report and shall set forth what efforts he has made to obtain such information.

(d) The Secretary of Labor may direct that any bidder or prospective contractor or subcontractor shall submit, as part of his Compliance Report, a statement in writing, signed by an authorized officer or agent on behalf of any labor union or any agency referring workers or providing or supervising apprenticeship or other training, with which the bidder or prospective contractor deals, with supporting information, to the effect that the signer's practices and policies do not discriminate on the grounds of race, color, religion, sex or national origin, and that the signer either will affirmatively cooperate in the implementation of the policy and provisions of this order or that it consents and agrees that recruitment, employment, and the terms and conditions of employment under the proposed contract shall be in accordance with the purposes and provisions of the order. In the event that the union, or the agency shall refuse to execute such a statement, the Compliance Report shall so certify and set forth what efforts have been made to secure such a statement and such additional factual material as the Secretary of Labor may require.

Sec. 204. The Secretary of Labor may, when he deems that special circumstances in the national interest so require, exempt a contracting agency from the requirement of including any or all of the provisions of Section 202 of this Order in any specific contract, subcontract, or purchase order. The Secretary of Labor may, by rule or regulation, also exempt certain classes of contracts, subcontracts, or purchase orders (1) whenever work is to be or has been performed outside the United States and no recruitment of workers within the limits of the United States is involved; (2) for standard commercial supplies or raw materials; (3) involving less than specified amounts of money or specified numbers of workers; or (4) to the extent that they involve subcontracts below a specified tier. The Secretary of Labor may also provide, by rule, regulation, or order, for the exemption of facilities of a contractor which are in all respects separate and distinct from activities of the contractor related to the performance of the contract: *Provided*, That such an exemption will not interfere with or impede the effectuation of the purposes of this order: *And provided further*, That in the absence of such an exemption all facilities shall be covered by the provisions of this Order.

#### **SUBPART C-POWERS AND DUTIES OF THE SECRETARY OF LABOR AND THE CONTRACTING AGENCIES**

Sec. 205. The Secretary of Labor shall be responsible for securing compliance by all Government contractors and subcontractors with this Order and any implementing rules or regulations. All contracting agencies shall comply with the terms of this Order and any implementing rules, regulations, or orders of the Secretary of Labor. Contracting agencies shall cooperate with the Secretary of Labor and shall furnish such information and assistance as the Secretary may require.

Sec. 206. (a) The Secretary of Labor may investigate the employment practices of any Government contractor or subcontractor to determine whether or not the contractual provisions specified in Section 202 of this Order have been violated. Such investigation shall be conducted in accordance with the procedures established by the Secretary of Labor.

(b) The Secretary of Labor may receive and investigate complaints by employees or prospective employees of a Government contractor or subcontractor which allege discrimination contrary to the contractual provisions specified in Section 202 of this Order.



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Sec. 207. The Secretary of Labor shall use his best efforts, directly and through interested Federal, State, and local agencies, contractors, and all other available instrumentalities to cause any labor union engaged in work under Government contracts or any agency referring workers or providing or supervising apprenticeship or training for or in the course of such work to cooperate in the implementation of the purposes of this Order. The Secretary of Labor shall, in appropriate cases, notify the Equal Employment Opportunity Commission, the Department of Justice, or other appropriate Federal agencies whenever it has reason to believe that the practices of any such labor organization or agency violate Title VI or Title VII of the Civil Rights Act of 1964 [sections 2000d to 2000d-4 of this title and this subchapter] or other provision of Federal law.

Sec. 208. (a) The Secretary of Labor, or any agency, officer, or employee in the executive branch of the Government designated by rule, regulation, or order of the Secretary, may hold such hearings, public or private, as the Secretary may deem advisable for compliance, enforcement, or educational purposes.

(b) The Secretary of Labor may hold, or cause to be held, hearings in accordance with Subsection (a) of this Section prior to imposing, ordering, or recommending the imposition of penalties and sanctions under this Order. No order for debarment of any contractor from further Government contracts under Section 209(a)(6) shall be made without affording the contractor an opportunity for a hearing.

#### ***SUBPART D-SANCTIONS AND PENALTIES***

Sec. 209. (a) In accordance with such rules, regulations, or orders as the Secretary of Labor may issue or adopt, the Secretary may:

(1) Publish, or cause to be published, the names of contractors or unions which it has concluded have complied or have failed to comply with the provisions of this Order or of the rules, regulations, and orders of the Secretary of Labor.

(2) Recommend to the Department of Justice that, in cases in which there is substantial or material violation or the threat of substantial or material violation of the contractual provisions set forth in Section 202 of this Order, appropriate proceedings be brought to enforce those provisions, including the enjoining, within the limitations of applicable law, of organizations, individuals, or groups who prevent directly or indirectly, or seek to prevent directly or indirectly, compliance with the provisions of this Order.

(3) Recommend to the Equal Employment Opportunity Commission or the Department of Justice that appropriate proceedings be instituted under Title VII of the Civil Rights Act of 1964 [this subchapter].

(4) Recommend to the Department of Justice that criminal proceedings be brought for the furnishing of false information to any contracting agency or to the Secretary of Labor as the case may be.

(5) After consulting with the contracting agency, direct the contracting agency to cancel, terminate, suspend, or cause to be cancelled, terminated, or suspended, any contract, or any portion or portions thereof, for failure of the contractor or subcontractor to comply with equal employment opportunity provisions of the contract. Contracts may be cancelled, terminated, or



suspended absolutely or continuance of contracts may be conditioned upon a program for future compliance approved by the Secretary of Labor.

(6) Provide that any contracting agency shall refrain from entering into further contracts, or extensions or other modifications of existing contracts, with any noncomplying contractor, until such contractor has satisfied the Secretary of Labor that such contractor has established and will carry out personnel and employment policies in compliance with the provisions of this Order.

(b) Pursuant to rules and regulations prescribed by the Secretary of Labor, the Secretary shall make reasonable efforts, within a reasonable time limitation, to secure compliance with the contract provisions of this Order by methods of conference, conciliation, mediation, and persuasion before proceedings shall be instituted under subsection (a)(2) of this Section, or before a contract shall be cancelled or terminated in whole or in part under subsection (a)(5) of this Section.

Sec. 210. Whenever the Secretary of Labor makes a determination under Section 209, the Secretary shall promptly notify the appropriate agency. The agency shall take the action directed by the Secretary and shall report the results of the action it has taken to the Secretary of Labor within such time as the Secretary shall specify. If the contracting agency fails to take the action directed within thirty days, the Secretary may take the action directly.

Sec. 211. If the Secretary of Labor shall so direct, contracting agencies shall not enter into contracts with any bidder or prospective contractor unless the bidder or prospective contractor has satisfactorily complied with the provisions of this Order or submits a program for compliance acceptable to the Secretary of Labor.

Sec. 212. When a contract has been cancelled or terminated under Section 209(a)(5) or a contractor has been debarred from further Government contracts under Section 209(a)(6) of this Order, because of noncompliance with the contract provisions specified in Section 202 of this Order, the Secretary of Labor shall promptly notify the Comptroller General of the United States.

#### ***SUBPART E-CERTIFICATES OF MERIT***

Sec. 213. The Secretary of Labor may provide for issuance of a United States Government Certificate of Merit to employers or labor unions, or other agencies which are or may hereafter be engaged in work under Government contracts, if the Secretary is satisfied that the personnel and employment practices of the employer, or that the personnel, training, apprenticeship, membership, grievance and representation, upgrading, and other practices, and policies of the labor union or other agency conform to the purposes and provisions of this Order.

Sec. 214. Any Certificate of Merit may at any time be suspended or revoked by the Secretary of Labor if the holder thereof, in the judgment of the Secretary, has failed to comply with the provisions of this Order.

Sec. 215. The Secretary of Labor may provide for the exemption of any employer, labor union, or other agency from any reporting requirements imposed under or pursuant to this Order if such employer, labor union, or other agency has been awarded a Certificate of Merit which has not been suspended or revoked.

#### ***PART III-NONDISCRIMINATION PROVISIONS IN FEDERALLY ASSISTED CONSTRUCTION CONTRACTS***

Sec. 301. Each executive department and agency which administers a program involving Federal financial assistance shall require as a condition for the approval of any grant, contract,





loan, insurance, or guarantee thereunder, which may involve a construction contract, that the applicant for Federal assistance undertake and agree to incorporate, or cause to be incorporated, into all construction contracts paid for in whole or in part with funds obtained from the Federal Government or borrowed on the credit of the Federal Government pursuant to such grant, contract, loan, insurance, or guarantee, or undertaken pursuant to any Federal program involving such grant, contract, loan, insurance, or guarantee, the provisions prescribed for Government contracts by Section 202 of this Order or such modification thereof, preserving in substance the contractor's obligations thereunder, as may be approved by the Secretary of Labor; together with such additional provisions as the Secretary deems appropriate to establish and protect the interest of the United States in the enforcement of those obligations. Each such applicant shall also undertake and agree (1) to assist and cooperate actively with the Secretary of Labor in obtaining the compliance of contractors and subcontractors with those contract provisions and with the rules, regulations and relevant orders of the Secretary, (2) to obtain and to furnish to the Secretary of Labor such information as the Secretary may require for the supervision of such compliance, (3) to carry out sanctions and penalties for violation of such obligations imposed upon contractors and subcontractors by the Secretary of Labor pursuant to Part II, Subpart D, of this Order, and (4) to refrain from entering into any contract subject to this Order, or extension or other modification of such a contract with a contractor debarred from Government contracts under Part II, Subpart D, of this Order.

Sec. 302. (a) "Construction contract," as used in this Order means any contract for the construction, rehabilitation, alteration, conversion, extension, or repair of buildings, highways, or other improvements to real property.

(b) The provisions of Part II of this Order shall apply to such construction contracts, and for purposes of such application the administering department or agency shall be considered the contracting agency referred to therein.

(c) The term "applicant" as used in this Order means an applicant for Federal assistance or, as determined by agency regulation, other program participant, with respect to whom an application for any grant, contract, loan, insurance, or guarantee is not finally acted upon prior to the effective date of this Part, and it includes such an applicant after he becomes a recipient of such Federal assistance.

Sec. 303(a). The Secretary of Labor shall be responsible for obtaining the compliance of such applicants with their undertakings under this Order. Each administering department and agency is directed to cooperate with the Secretary of Labor and to furnish the Secretary such information and assistance as the Secretary may require in the performance of the Secretary's functions under this Order.

(b) In the event an applicant fails and refuses to comply with the applicant's undertakings pursuant to this Order, the Secretary of Labor may, after consulting with the administering department or agency, take any or all of the following actions: (1) direct any administering department or agency to cancel, terminate, or suspend in whole or in part the agreement, contract or other arrangement with such applicant with respect to which the failure or refusal occurred; (2) direct any administering department or agency to refrain from extending any further assistance to the applicant under the program with respect to which the failure or refusal occurred until satisfactory assurance of future compliance has been received by the Secretary of Labor from such applicant; and (3) refer the case to the Department of Justice or the Equal Employment Opportunity Commission for appropriate law enforcement or other proceedings.





(c) In no case shall action be taken with respect to an applicant pursuant to clause (1) or (2) of subsection (b) without notice and opportunity for hearing.

Sec. 304. Any executive department or agency which imposes by rule, regulation, or order requirements of nondiscrimination in employment, other than requirements imposed pursuant to this Order, may delegate to the Secretary of Labor by agreement such responsibilities with respect to compliance standards, reports, and procedures as would tend to bring the administration of such requirements into conformity with the administration of requirements imposed under this Order: *Provided*, That actions to effect compliance by recipients of Federal financial assistance with requirements imposed pursuant to Title VI of the Civil Rights Act of 1964 [sections 2000d to 2000d-4 of this title] shall be taken in conformity with the procedures and limitations prescribed in Section 602 thereof [section 2000d-1 of this title] and the regulations of the administering department or agency issued thereunder.

#### ***PART IV-MISCELLANEOUS***

Sec. 401. The Secretary of Labor may delegate to any officer, agency, or employee in the Executive branch of the Government, any function or duty of the Secretary under Parts II and III of this Order.

Sec. 402. The Secretary of Labor shall provide administrative support for the execution of the program known as the "Plans for Progress."

Sec. 403. (a) Executive Orders Nos. 10590 (January 19, 1955), 10722 (August 5, 1957), 10925 (March 6, 1961), 11114 (June 22, 1963), and 11162 (July 28, 1964), are hereby superseded and the President's Committee on Equal Employment Opportunity established by Executive Order No. 10925 is hereby abolished. All records and property in the custody of the Committee shall be transferred to the Civil Service Commission and the Secretary of Labor, as appropriate.

(b) Nothing in this Order shall be deemed to relieve any person of any obligation assumed or imposed under or pursuant to any Executive Order superseded by this Order. All rules, regulations, orders, instructions, designations, and other directives issued by the President's Committee on Equal Employment Opportunity and those issued by the heads of various departments or agencies under or pursuant to any of the Executive orders superseded by this Order, shall, to the extent that they are not inconsistent with this Order, remain in full force and effect unless and until revoked or superseded by appropriate authority. References in such directives to provisions of the superseded orders shall be deemed to be references to the comparable provisions of this Order.

Sec. 404. The General Services Administration shall take appropriate action to revise the standard Government contract forms to accord with the provisions of this Order and of the rules and regulations of the Secretary of Labor.

Sec. 405. This Order shall become effective thirty days after the date of this Order.

#### ***EX. ORD. NO. 11478. EQUAL EMPLOYMENT OPPORTUNITY IN FEDERAL GOVERNMENT***

Ex. Ord. No. 11478, Aug. 8, 1969, 34 F.R. 12985, as amended by Ex. Ord. No. 11590, Apr. 23, 1971, 36 F.R. 7831; Ex. Ord. No. 12106, Dec. 26, 1978, 44 F.R. 1053; Ex. Ord. No. 13087, May 28, 1998, 63 F.R. 30097; Ex. Ord. No. 13152, May 2, 2000, 65 F.R. 26115, provided:



NOW THEREFORE, under and by virtue of the authority vested in me as President of the United States by the Constitution and statutes of the United States, it is ordered as follows:

Section 1. It is the policy of the Government of the United States to provide equal opportunity in Federal employment for all persons, to prohibit discrimination in employment because of race, color, religion, sex, national origin, handicap, age, sexual orientation, or status as a parent., [sic] and to promote the full realization of equal employment opportunity through a continuing affirmative program in each executive department and agency. This policy of equal opportunity applies to and must be an integral part of every aspect of personnel policy and practice in the employment, development, advancement, and treatment of civilian employees of the Federal Government, to the extent permitted by law.

Sec. 2. The head of each executive department and agency shall establish and maintain an affirmative program of equal employment opportunity for all civilian employees and applicants for employment within his jurisdiction in accordance with the policy set forth in section 1. It is the responsibility of each department and agency head, to the maximum extent possible, to provide sufficient resources to administer such a program in a positive and effective manner; assure that recruitment activities reach all sources of job candidates; utilize to the fullest extent the present skills of each employee; provide the maximum feasible opportunity to employees to enhance their skills so they may perform at their highest potential and advance in accordance with their abilities; provide training and advice to managers and supervisors to assure their understanding and implementation of the policy expressed in this Order; assure participation at the local level with other employers, schools, and public or private groups in cooperative efforts to improve community conditions which affect employability; and provide for a system within the department or agency for periodically evaluating the effectiveness with which the policy of this Order is being carried out.

Sec. 3. The Equal Employment Opportunity Commission shall be responsible for directing and furthering the implementation of the policy of the Government of the United States to provide equal opportunity in Federal employment for all employees or applicants for employment (except with regard to aliens employed outside the limits of the United States) and to prohibit discrimination in employment because of race, color, religion, sex, national origin, handicap, or age.

Sec. 4. The Equal Employment Opportunity Commission, after consultation with all affected departments and agencies, shall issue such rules, regulations, orders, and instructions and request such information from the affected departments and agencies as it deems necessary and and [sic] appropriate to carry out its responsibilities under this Order.

Sec. 5. All departments and agencies shall cooperate with and assist the Equal Employment Opportunity Commission in the performance of its functions under this Order and shall furnish the Commission such reports and information as it may request. The head of each department or agency shall comply with rules, regulations, orders and instructions issued by the Equal Employment Opportunity Commission pursuant to Section 4 of this Order.

Sec. 6. "Status as a parent" refers to the status of an individual who, with respect to an individual who is under the age of 18 or who is 18 or older but is incapable of self-care because of a physical or mental disability, is:

(a) a biological parent;



- (b) an adoptive parent;
- (c) a foster parent;
- (d) a stepparent;
- (e) a custodian of a legal ward;
- (f) in loco parentis over such an individual; or
- (g) actively seeking legal custody or adoption of such an individual.

Sec. 7. The Office of Personnel Management shall be authorized to develop guidance on the provisions of this order prohibiting discrimination on the basis of an individual's sexual orientation or status as a parent.

Sec. 8. This Order applies (a) to military departments as defined in [section 102 of title 5, United States Code](#), and executive agencies (other than the General Accounting Office) as defined in [section 105 of title 5, United States Code](#), and to the employees thereof (including employees paid from nonappropriated funds), and (b) to those portions of the legislative and judicial branches of the Federal Government and of the Government of the District of Columbia having positions in the competitive service and to the employees in those positions. This Order does not apply to aliens employed outside the limits of the United States.

Sec. 9. Part I of Executive Order No. 11246 of September 24, 1965, and those parts of Executive Order No. 11375 of October 13, 1967, which apply to Federal employment, are hereby superseded.

Sec. 10. This Order shall be applicable to the United States Postal Service and to the Postal Rate Commission established by the Postal Reorganization Act of 1970 [Title 39, Postal Service].

Sec. 11. This Executive Order does not confer any right or benefit enforceable in law or equity against the United States or its representatives.

#### ***EXECUTIVE ORDER NO. 12050***

Ex. Ord. No. 12050, Apr. 4, 1978, 43 F.R. 14431, as amended by Ex. Ord. No. 12057, May 8, 1978, 43 F.R. 19811; Ex. Ord. No. 12135, May 9, 1979, 44 F.R. 27639; Ex. Ord. No. 12336, Dec. 21, 1981, 46 F.R. 62239, which established a National Advisory Committee for Women, was omitted in view of the revocation of sections 1 to 5 and 7 and 8 by Ex. Ord. No. 12135, May 9, 1979, 44 F.R. 27639 and the revocation of section 6 by Ex. Ord. No. 12336, Dec. 21, 1981, 46 F.R. 62239.

#### ***EX. ORD. NO. 12067. COORDINATION OF FEDERAL EQUAL EMPLOYMENT OPPORTUNITY PROGRAMS***

Ex. Ord. No. 12067, June 30, 1978, 43 F.R. 28967, as amended by Ex. Ord. No. 12107, Dec. 28, 1978, 44 F.R. 1055, provided:

By virtue of the authority vested in me as President of the United States by the Constitution and statutes of the United States, including Section 9 of Reorganization Plan Number 1 of 1978 (43 FR 19807) [set out under [section 2000e-4 of this title](#) and in the Appendix to Title 5, Government Organizations and Employees], it is ordered as follows:



### *1-1. IMPLEMENTATION OF REORGANIZATION PLAN*

1-101. The transfer to the Equal Employment Opportunity Commission of all the functions of the Equal Employment Opportunity Coordinating Council, and the termination of that Council, as provided by Section 6 of Reorganization Plan Number 1 of 1978 (43 FR 19807) [set out under [section 2000e-4 of this title](#) and in the Appendix to Title 5, Government Organization and Employees] shall be effective on July 1, 1978.

### *1-2. RESPONSIBILITIES OF EQUAL EMPLOYMENT OPPORTUNITY COMMISSION*

1-201. The Equal Employment Opportunity Commission shall provide leadership and coordination to the efforts of Federal departments and agencies to enforce all Federal statutes, Executive orders, regulations, and policies which require equal employment opportunity without regard to race, color, religion, sex, national origin, age or handicap. It shall strive to maximize effort, promote efficiency, and eliminate conflict, competition, duplication and inconsistency among the operations, functions and jurisdictions of the Federal departments and agencies having responsibility for enforcing such statutes, Executive orders, regulations and policies.

1-202. In carrying out its functions under this order the Equal Employment Opportunity Commission shall consult with and utilize the special expertise of Federal departments and agencies with equal employment opportunity responsibilities. The Equal Employment Opportunity Commission shall cooperate with such departments and agencies in the discharge of their equal employment responsibilities.

1-203. All Federal departments and agencies shall cooperate with and assist the Equal Employment Opportunity Commission in the performance of its functions under this order and shall furnish the Commission such reports and information as it may request.

### *1-3. SPECIFIC RESPONSIBILITIES*

1-301. To implement its responsibilities under Section 1-2, the Equal Employment Opportunity Commission shall, where feasible:

(a) develop uniform standards, guidelines, and policies defining the nature of employment discrimination on the ground of race, color, religion, sex, national origin, age or handicap under all Federal statutes, Executive orders, regulations, and policies which require equal employment opportunity;

(b) develop uniform standards and procedures for investigations and compliance reviews to be conducted by Federal departments and agencies under any Federal statute, Executive order, regulation or policy requiring equal employment opportunity;

(c) develop procedures with the affected agencies, including the use of memoranda of understanding, to minimize duplicative investigations or compliance reviews of particular employers or classes of employers or others covered by Federal statutes, Executive orders, regulations or policies requiring equal employment opportunity;

(d) ensure that Federal departments and agencies develop their own standards and procedures for undertaking enforcement actions when compliance with equal employment opportunity requirements of any Federal statute, Executive order, regulation or policy cannot be secured by voluntary means;



(e) develop uniform record-keeping and reporting requirements concerning employment practices to be utilized by all Federal departments and agencies having equal employment enforcement responsibilities;

(f) provide for the sharing of compliance records, findings, and supporting documentation among Federal departments and agencies responsible for ensuring equal employment opportunity;

(g) develop uniform training programs for the staff of Federal departments and agencies with equal employment opportunity responsibilities;

(h) assist all Federal departments and agencies with equal employment opportunity responsibilities in developing programs to provide appropriate publications and other information for those covered and those protected by Federal equal employment opportunity statutes, Executive orders, regulations, and policies; and

(i) initiate cooperative programs, including the development of memoranda of understanding between agencies, designed to improve the coordination of equal employment opportunity compliance and enforcement.

1-302. The Equal Employment Opportunity Commission shall assist the Office of Personnel Management, or its successor, in establishing uniform job-related qualifications and requirements for job classifications and descriptions for Federal employees involved in enforcing all Federal equal employment opportunity provisions.

1-303. The Equal Employment Opportunity Commission shall issue such rules, regulations, policies, procedures or orders as it deems necessary to carry out its responsibilities under this order. It shall advise and offer to consult with the affected Federal departments and agencies during the development of any proposed rules, regulations, policies, procedures or orders and shall formally submit such proposed issuances to affected departments and agencies at least 15 working days prior to public announcement. The Equal Employment Opportunity Commission shall use its best efforts to reach agreement with the agencies on matters in dispute. Departments and agencies shall comply with all final rules, regulations, policies, procedures or orders of the Equal Employment Opportunity Commission.

1-304. All Federal departments and agencies shall advise and offer to consult with the Equal Employment Opportunity Commission during the development of any proposed rules, regulations, policies, procedures or orders concerning equal employment opportunity. Departments and agencies shall formally submit such proposed issuances to the Equal Employment Opportunity Commission and other interested Federal departments and agencies at least 15 working days prior to public announcement. The Equal Employment Opportunity Commission shall review such proposed rules, regulations, policies, procedures or orders to ensure consistency among the operations of the various Federal departments and agencies. Issuances related to internal management and administration are exempt from this clearance process. Case handling procedures unique to a single program also are exempt, although the Equal Employment Opportunity Commission may review such procedures in order to assure maximum consistency within the Federal equal employment opportunity program.

1-305. Before promulgating significant rules, regulations, policies, procedures or orders involving equal employment opportunity, the Commission and affected departments and agencies shall afford the public an opportunity to comment.



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Community College District

1-306. The Equal Employment Opportunity Commission may make recommendations concerning staff size and resource needs of the Federal departments and agencies having equal employment opportunity responsibilities to the Office of Management and Budget.

1-307. (a) It is the intent of this order that disputes between or among agencies concerning matters covered by this order shall be resolved through good faith efforts of the affected agencies to reach mutual agreement. Use of the dispute resolution mechanism contained in Subsections (b) and (c) of this Section should be resorted to only in extraordinary circumstances.

(b) Whenever a dispute which cannot be resolved through good faith efforts arises between the Equal Employment Opportunity Commission and another Federal department or agency concerning the issuance of an equal employment opportunity rule, regulation, policy, procedure, order or any matter covered by this Order, the Chairman of the Equal Employment Opportunity Commission or the head of the affected department or agency may refer the matter to the Executive Office of the President. Such reference must be in writing and may not be made later than 15 working days following receipt of the initiating agency's notice of intent publicly to announce an equal employment opportunity rule, regulation, policy, procedure or order. If no reference is made within the 15 day period, the decision of the agency which initiated the proposed issuance will become effective.

(c) Following reference of a disputed matter to the Executive Office of the President, the Assistant to the President for Domestic Affairs and Policy (or such other official as the President may designate) shall designate an official within the Executive Office of the President to meet with the affected agencies to resolve the dispute within a reasonable time.

#### *1-4. ANNUAL REPORT*

1-401. The Equal Employment Opportunity Commission shall include in the annual report transmitted to the President and the Congress pursuant to Section 715 of Title VII of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000e-14), a statement of the progress that has been made in achieving the purpose of this order. The Equal Employment Opportunity Commission shall provide Federal departments and agencies an opportunity to comment on the report prior to formal submission.

#### *1-5. GENERAL PROVISIONS*

1-501. Nothing in this order shall relieve or lessen the responsibilities or obligations imposed upon any person or entity by Federal equal employment law, Executive order, regulation or policy.

1-502. Nothing in this order shall limit the Attorney General's role as legal adviser to the Executive Branch.

JIMMY CARTER.

### ***EX. ORD. NO. 12086. CONSOLIDATION OF CONTRACT COMPLIANCE FUNCTIONS FOR EQUAL EMPLOYMENT OPPORTUNITY***

Ex. Ord. No. 12086, Oct. 5, 1978, 43 F.R. 46501, as amended by Ex. Ord. No. 12608, Sept. 9, 1987, 52 F.R. 34617, provided:





By the authority vested in me as President by the Constitution and statutes of the United States of America, including Section 202 of the Budget and Accounting Procedures Act of 1950 (31 U.S.C. 581c) [31 U.S.C. 1531], in order to provide for the transfer to the Department of Labor of certain contract compliance functions relating to equal employment opportunity, it is hereby ordered as follows:

*1-1. TRANSFER OF FUNCTIONS*

1-101. The functions concerned with being primarily responsible for the enforcement of the equal employment opportunity provisions under Parts II and III of Executive Order No. 11246, as amended [set out as a note above], are transferred or reassigned to the Secretary of Labor from the following agencies:

- (a) Department of the Treasury.
- (b) Department of Defense.
- (c) Department of the Interior.
- (d) Department of Commerce.
- (e) Department of Health and Human Services.
- (f) Department of Housing and Urban Development.
- (g) Department of Transportation.
- (h) Department of Energy.
- (i) Environmental Protection Agency.
- (j) General Services Administration.
- (k) Small Business Administration.

1-102. The records, property, personnel and positions, and unexpended balances of appropriations or funds related to the functions transferred or reassigned by this Order, that are available and necessary to finance or discharge those functions, are transferred to the Secretary of Labor.

1-103. The Director of the Office of Management and Budget shall make such determinations, issue such orders, and take all actions necessary or appropriate to effectuate the transfers or reassignments provided by this Order, including the transfer of funds, records, property, and personnel.

*1-2. CONFORMING AMENDMENTS TO EXECUTIVE ORDER NO. 11246*

1-201(a). In order to reflect the transfer of enforcement responsibility to the Secretary of Labor, Section 201 of Executive Order No. 11246, as amended, is amended to read:

"Sec. 201. The Secretary of Labor shall be responsible for the administration and enforcement of Parts II and III of this Order. The Secretary shall adopt such rules and regulations and issue such orders as are deemed necessary and appropriate to achieve the purposes of Parts II and III of this Order."



(b) Paragraph (7) of the contract clauses specified in Section 202 of Executive Order No. 11246, as amended, is amended to read:

"(7) The contractor will include the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions including sanctions for noncompliance: *Provided, however,* that in the event the contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the contractor may request the United States to enter into such litigation to protect the interests of the United States."

1-202. In subsection (c) of Section 203 of Executive Order No. 11246, as amended, delete "contracting agency" in the proviso and substitute "Secretary of Labor" therefor.

1-203. In both the beginning and end of subsection (d) of Section 203 of Executive Order No. 11246, as amended, delete "contracting agency or the" in the phrase "contracting agency or the Secretary".

1-204. Section 205 of Executive Order No. 11246, as amended, is amended by deleting the last two sentences, which dealt with agency designation of compliance officers, and revising the rest of that Section to read:

"Sec. 205. The Secretary of Labor shall be responsible for securing compliance by all Government contractors and subcontractors with this Order and any implementing rules or regulations. All contracting agencies shall comply with the terms of this Order and any implementing rules, regulations, or orders of the Secretary of Labor. Contracting agencies shall cooperate with the Secretary of Labor and shall furnish such information and assistance as the Secretary may require."

1-205. In order to delete references to the contracting agencies conducting investigations, Section 206 of Executive Order No. 11246, as amended, is amended to read:

"Sec. 206. (a) The Secretary of Labor may investigate the employment practices of any Government contractor or subcontractor to determine whether or not the contractual provisions specified in Section 202 of this Order have been violated. Such investigation shall be conducted in accordance with the procedures established by the Secretary of Labor."

"(b) The Secretary of Labor may receive and investigate complaints by employees or prospective employees of a Government contractor or subcontractor which allege discrimination contrary to the contractual provisions specified in Section 202 of this Order."

1-206. In Section 207 of Executive Order No. 11246, as amended, delete "contracting agencies, other" in the first sentence.

1-207. The introductory clause in Section 209(a) of Executive Order No. 11246, as amended, is amended by deleting "or the appropriate contracting agency" from "In accordance with such rules, regulations, or orders as the Secretary of Labor may issue or adopt, the Secretary or the appropriate contracting agency may:".



1-208. In paragraph (5) of Section 209(a) of Executive Order No. 11246, as amended, insert at the beginning the phrase "After consulting with the contracting agency, direct the contracting agency to", and at the end of paragraph (5) delete "contracting agency" and substitute therefor "Secretary of Labor" so that paragraph (5) is amended to read:

"(5) After consulting with the contracting agency, direct the contracting agency to cancel, terminate, suspend, or cause to be cancelled, terminated, or suspended, any contract, or any portion or portions thereof, for failure of the contractor or subcontractor to comply with equal employment opportunity provisions of the contract. Contracts may be cancelled, terminated, or suspended absolutely or continuance of contracts may be conditioned upon a program for future compliance approved by the Secretary of Labor."

1-209. In order to reflect the transfer from the agencies to the Secretary of Labor of the enforcement functions, substitute "Secretary of Labor" for "each contracting agency" in Section 209(b) of Executive Order No. 11246, as amended, so that Section 209(b) is amended to read:

"(b) Pursuant to rules and regulations prescribed by the Secretary of Labor, the Secretary shall make reasonable efforts, within a reasonable time limitation, to secure compliance with the contract provisions of this Order by methods of conference, conciliation, mediation, and persuasion before proceedings shall be instituted under subsection (a)(2) of this Section, or before a contract shall be cancelled or terminated in whole or in part under subsection (a)(5) of this Section."

1-210. In order to reflect the responsibility of the contracting agencies for prompt compliance with the directions of the Secretary of Labor, Sections 210 and 211 of Executive Order No. 11246, as amended, are amended to read:

"Sec. 210. Whenever the Secretary of Labor makes a determination under Section 209, the Secretary shall promptly notify the appropriate agency. The agency shall take the action directed by the Secretary and shall report the results of the action it has taken to the Secretary of Labor within such time as the Secretary shall specify. If the contracting agency fails to take the action directed within thirty days, the Secretary may take the action directly."

"Sec. 211. If the Secretary of Labor shall so direct, contracting agencies shall not enter into contracts with any bidder or prospective contractor unless the bidder or prospective contractor has satisfactorily complied with the provisions of this Order or submits a program for compliance acceptable to the Secretary of Labor."

1-211. Section 212 of Executive Order No. 11246, as amended, is amended to read:

"Sec. 212. When a contract has been cancelled or terminated under Section 209(a)(5) or a contractor has been debarred from further Government contracts under Section 209(a)(6) of this Order, because of noncompliance with the contract provisions specified in Section 202 of this Order, the Secretary of Labor shall promptly notify the Comptroller General of the United States."

1-212. In order to reflect the transfer of enforcement responsibility to the Secretary of Labor, references to the administering department or agency are deleted in clauses (1), (2), and (3) of Section 301 of Executive Order No. 11246, as amended, and those clauses are amended to read:



"(1) to assist and cooperate actively with the Secretary of Labor in obtaining the compliance of contractors and subcontractors with those contract provisions and with the rules, regulations and relevant orders of the Secretary, (2) to obtain and to furnish to the Secretary of Labor such information as the Secretary may require for the supervision of such compliance, (3) to carry out sanctions and penalties for violation of such obligations imposed upon contractors and subcontractors by the Secretary of Labor pursuant to Part II, Subpart D, of this Order."

1-213. In order to reflect the transfer from the agencies to the Secretary of Labor of the enforcement functions "Secretary of Labor" shall be substituted for "administering department or agency" in Section 303 of Executive Order No. 11246, as amended, and Section 303 is amended to read:

"Sec. 303(a). The Secretary of Labor shall be responsible for obtaining the compliance of such applicants with their undertakings under this Order. Each administering department and agency is directed to cooperate with the Secretary of Labor and to furnish the Secretary such information and assistance as the Secretary may require in the performance of the Secretary's functions under this Order."

"(b) In the event an applicant fails and refuses to comply with the applicant's undertakings pursuant to this Order, the Secretary of Labor may, after consulting with the administering department or agency, take any or all of the following actions: (1) direct any administering department or agency to cancel, terminate, or suspend in whole or in part the agreement, contract or other arrangement with such applicant with respect to which the failure or refusal occurred; (2) direct any administering department or agency to refrain from extending any further assistance to the applicant under the program with respect to which the failure or refusal occurred until satisfactory assurance of future compliance has been received by the Secretary of Labor from such applicant; and (3) refer the case to the Department of Justice or the Equal Employment Opportunity Commission for appropriate law enforcement or other proceedings."

"(c) In no case shall action be taken with respect to an applicant pursuant to clause (1) or (2) of subsection (b) without notice and opportunity for hearing."

1-214. Section 401 of Executive Order No. 11246, as amended, is amended to read:

"Sec. 401. The Secretary of Labor may delegate to any officer, agency, or employee in the Executive branch of the Government, any function or duty of the Secretary under Parts II and III of this Order."

### *1-3. GENERAL PROVISIONS*

1-301. The transfers or reassignments provided by Section 1-1 of this Order shall take effect at such time or times as the Director of the Office of Management and Budget shall determine. The Director shall ensure that all such transfers or reassignments take effect within 60 days.

1-302. The conforming amendments provided by Section 1-2 of this Order shall take effect on October 8, 1978; except that, with respect to those agencies identified in Section 1-101 of this Order, the conforming amendments shall be effective on the effective date of the transfer or reassignment of functions as specified pursuant to Section 1-301 of this Order.



***EXECUTIVE ORDER NO. 12135***

Ex. Ord. No. 12135, May 9, 1979, 44 F.R. 27639, which established the President's Advisory Committee for Women, was revoked by Ex. Ord. No. 12336, Dec. 21, 1981, 46 F.R. 62239, set out below.

***EX. ORD. NO. 12336. TASK FORCE ON LEGAL EQUITY FOR WOMEN***

Ex. Ord. No. 12336, Dec. 21, 1981, 46 F.R. 62239, as amended by Ex. Ord. No. 12355, Apr. 1, 1982, 47 F.R. 14479, provided:

By the authority vested in me as President by the Constitution of the United States of America, and in order to provide for the systematic elimination of regulatory and procedural barriers which have unfairly precluded women from receiving equal treatment from Federal activities, it is hereby ordered as follows:

Section 1. *Establishment.* (a) There is established the Task Force on Legal Equity for Women.

(b) The Task Force members shall be appointed by the President from among nominees by the heads of the following Executive agencies, each of which shall have one representative on the Task Force.

- (1) Department of State.
- (2) Department of The Treasury.
- (3) Department of Defense.
- (4) Department of Justice.
- (5) Department of The Interior.
- (6) Department of Agriculture.
- (7) Department of Commerce.
- (8) Department of Labor.
- (9) Department of Health and Human Services.
- (10) Department of Housing and Urban Development.
- (11) Department of Transportation.
- (12) Department of Energy.
- (13) Department of Education.
- (14) Agency for International Development.
- (15) Veterans Administration [now Department of Veterans Affairs].
- (16) Office of Management and Budget.
- (17) International Communication Agency.



(18) Office of Personnel Management.

(19) Environmental Protection Agency.

(20) ACTION [now Corporation for National and Community Service].

(21) Small Business Administration.

(c) The President shall designate one of the members to chair the Task Force. Other agencies may be invited to participate in the functions of the Task Force.

*Sec. 2. Functions.* (a) The members of the Task Force shall be responsible for coordinating and facilitating in their respective agencies, under the direction of the head of their agency, the implementation of changes ordered by the President in sex-discriminatory Federal regulations, policies, and practices.

(b) The Task Force shall periodically report to the President on the progress made throughout the Government in implementing the President's directives.

(c) The Attorney General shall complete the review of Federal laws, regulations, policies, and practices which contain language that unjustifiably differentiates, or which effectively discriminates, on the basis of sex. The Attorney General or his designee shall, on a quarterly basis, report his findings to the President through the Cabinet Council on Legal Policy.

*Sec. 3. Administration.* (a) The head of each Executive agency shall, to the extent permitted by law, provide the Task Force with such information and advice as the Task Force may identify as being useful to fulfill its functions.

(b) The agency with its representative chairing the Task Force shall, to the extent permitted by law, provide the Task Force with such administrative support as may be necessary for the effective performance of its functions.

(c) The head of each agency represented on the Task Force shall, to the extent permitted by law, furnish its representative such administrative support as is necessary and appropriate.

*Sec. 4. General Provisions.* (a) Section 1–101(h) of Executive Order No. 12258, as amended, is revoked.

(b) Executive Order No. 12135 is revoked.

(c) Section 6 of Executive Order No. 12050, as amended, is revoked.

RONALD REAGAN.

[The International Communication Agency was redesignated the United States Information Agency, see section 303 of [Pub. L. 97–241, title III, Aug. 24, 1982, 96 Stat. 291](#), set out as a note under section 1461 of Title 22, Foreign Relations and Intercourse. For abolition of United States Information Agency (other than Broadcasting Board of Governors and International Broadcasting Bureau), transfer of functions, and treatment of references thereto, see [sections 6531, 6532, and 6551 of Title 22.](#)]





**EX. ORD. NO. 13171. HISPANIC EMPLOYMENT IN THE FEDERAL GOVERNMENT**

Ex. Ord. No. 13171, Oct. 12, 2000, 65 F.R. 61251, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to improve the representation of Hispanics in Federal employment, within merit system principles and consistent with the application of appropriate veterans' preference criteria, to achieve a Federal workforce drawn from all segments of society, it is hereby ordered as follows:

*Section 1. Policy. It is the policy of the executive branch to recruit qualified individuals from appropriate sources in an effort to achieve a workforce drawn from all segments of society. Pursuant to this policy, this Administration notes that Hispanics remain underrepresented in the Federal workforce: they make up only 6.4 percent of the Federal civilian workforce, roughly half of their total representation in the civilian labor force. This Executive Order, therefore, affirms ongoing policies and recommends additional policies to eliminate the underrepresentation [sic] of Hispanics in the Federal workforce.*

*Sec. 2. Responsibilities of Executive Departments and Agencies.* The head of each executive department and agency (agency) shall establish and maintain a program for the recruitment and career development of Hispanics in Federal employment. In its program, each agency shall:

(a) provide a plan for recruiting Hispanics that creates a fully diverse workforce for the agency in the 21st century;

(b) assess and eliminate any systemic barriers to the effective recruitment and consideration of Hispanics, including but not limited to:

(1) broadening the area of consideration to include applicants from all appropriate sources;

(2) ensuring that selection factors are appropriate and achieve the broadest consideration of applicants and do not impose barriers to selection based on nonmerit factors; and

(3) considering the appointment of Hispanic Federal executives to rating, selection, performance review, and executive resources panels and boards;

(c) improve outreach efforts to include organizations outside the Federal Government in order to increase the number of Hispanic candidates in the selection pool for the Senior Executive Service;

(d) promote participation of Hispanic employees in management, leadership, and career development programs;

(e) ensure that performance plans for senior executives, managers, and supervisors include specific language related to significant accomplishments on diversity recruitment and career development and that accountability is predicated on those plans;

(f) establish appropriate agency advisory councils that include Hispanic Employment Program Managers;



(g) implement the goals of the Government-wide Hispanic Employment Initiatives issued by the Office of Personnel Management (OPM) in September 1997 (Nine-Point Plan), and the Report to the President's Management Council on Hispanic Employment in the Federal Government of March 1999;

(h) ensure that managers and supervisors receive periodic training in diversity management in order to carry out their responsibilities to maintain a diverse workforce; and

(i) reflect a continuing priority for eliminating Hispanic underrepresentation in the Federal workforce and incorporate actions under this order as strategies for achieving workforce diversity goals in the agency's Government Performance and Results Act (GPRA) Annual Performance Plan.

*Sec. 3. Cooperation.* All efforts taken by heads of agencies under sections 1 and 2 of this order shall, as appropriate, further partnerships and cooperation among Federal, public, and private sector employers, and appropriate Hispanic organizations whenever such partnerships and cooperation are possible and would promote the Federal employment of qualified individuals. In developing the long-term comprehensive strategies required by section 2 of this order, agencies shall, as appropriate, consult with and seek information and advice from experts in the areas of special targeted recruitment and diversity in employment.

*Sec. 4. Responsibilities of the Office of Personnel Management.* The Office of Personnel Management is required by law and regulations to undertake a Government-wide minority recruitment effort. Pursuant to that on-going effort and in implementation of this order, the Director of OPM shall:

(a) provide Federal human resources management policy guidance to address Hispanic underrepresentation where it occurs;

(b) take the lead in promoting diversity to executive agencies for such actions as deemed appropriate to promote equal employment opportunity;

(c) within 180 days from the date of this order, prescribe such regulations as may be necessary to carry out the purposes of this order;

(d) within 60 days from the date of this order, establish an Interagency Task Force, chaired by the Director and composed of agency officials at the Deputy Secretary level, or the equivalent. This Task Force shall meet semi-annually to:

(1) review best practices in strategic human resources management planning, including alignment with agency GPRA plans;

(2) assess overall executive branch progress in complying with the requirements of this order;

(3) provide advice on ways to increase Hispanic community involvement; and

(4) recommend any further actions, as appropriate, in eliminating the underrepresentation of Hispanics in the Federal workforce where it occurs; and



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(e) issue an annual report with findings and recommendations to the President on the progress made by agencies on matters related to this order. The first annual report shall be issued no later than 1 year from the date of this order.

Sec. 5. *Judicial Review.* This order is intended only to improve the internal management of the executive branch. It does not create any right or benefit, substantive or procedural, enforceable in law or equity except as may be identified in existing laws and regulations, by a party against the United States, its agencies, its officers or employees, or any other person.

WILLIAM J. CLINTON.

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

<https://www.eeoc.gov/statutes/age-discrimination-employment-act-1967>

### **Americans with Disabilities Act of 1990 (ADA)**

<https://www.dol.gov/general/topic/disability/ada>