

Nondiscrimination-Equal Employment Opportunity Policy

Resource: Administrative Rules of the State of Montana (ARM)

State Human Resources Division

This document is designed to be a one-stop resource for information contained in the ARM. It is not the official web site. Links to the ARM and Montana Code Annotated (MCA) are embedded throughout the document. You may also go to the Secretary of State web page at <http://www.mtrules.org>.

2.21.4001 SHORT TITLE

(1) This subchapter may be cited as the nondiscrimination-equal employment opportunity policy.

History: 2-18-102, MCA; IMP, 2-18-102, MCA; NEW, 2000 MAR p. 3515, Eff. 12/22/00.

2.21.4002 POLICY AND OBJECTIVES

(1) It is the policy of the state of Montana that state government:

(a) is an equal employment opportunity employer;

(b) does not discriminate in employment based upon race, color, national origin, age, physical or mental disability, marital status, religion, creed, sex, sexual orientation, or political beliefs; and

(c) implement and maintain an effective equal employment opportunity program which may include a written affirmative action plan.

(2) It is the objective of this policy to establish minimum standards for the implementation of an equal employment opportunity program for all executive branch agencies, in compliance with relevant state and federal laws, regulations, and executive orders.

History: 2-18-102, MCA; IMP, 2-18-102, MCA; NEW, 2000 MAR p. 3515, Eff. 12/22/00.

2.21.4003 DEPARTMENT OF ADMINISTRATION ROLE

(1) The department of administration shall:

(a) develop equal employment opportunity (EEO) standards and guidelines and administrative systems to support the state EEO program;

(b) provide EEO analyses, reports, and technical assistance needed by executive branch agencies to establish EEO programs;

(c) provide follow up assistance where problem areas are identified;

(d) provide training for managers and employees; and

(e) encourage departments to make a commitment to provide training through upward mobility programs and/or through other available training programs where there is evidence that there have been barriers to employment for those classes of people who have traditionally been denied EEO.

History: 2-18-102, MCA; IMP, 2-18-102, MCA; NEW, 2000 MAR p. 3515, Eff. 12/22/00.

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2.21.4004 DEPARTMENT OR AGENCY ROLE

(1) Each department director or agency head shall appoint an EEO officer and an Americans with Disabilities Act (ADA) coordinator for the department. All executive branch departments are covered by this policy.

(2) The EEO officer is responsible for the development of the department EEO program, which may include a written affirmative action plan. The EEO officer shall work with managers to implement the program.

(3) Each department shall develop a written policy statement that includes at a minimum EEO, ADA, and the prohibition of sexual harassment provisions and a complaint resolution procedure for internal and external dissemination. A model policy statement poster and a model complaint resolution procedure are available from the state personnel division, department of administration.

History: 2-18-102, MCA; IMP, 2-18-102, MCA; NEW, 2000 MAR p. 3515, Eff. 12/22/00.

2.21.4005 EQUAL EMPLOYMENT OPPORTUNITY

(1) The state of Montana is an equal employment opportunity employer and prohibits discrimination based on race, color, national origin, age, physical or mental disability, marital status, religion, creed, sex, sexual orientation or political beliefs unless based on a bona fide occupational qualification (BFOQ). The state of Montana's prohibition of discrimination includes discrimination in hiring, firing, promotions, compensation, job assignments and other terms, conditions or privileges of employment.

(2) Any employee or applicant for employment with the state of Montana who believes he or she has been subjected to discrimination based upon any of these factors may contact the department EEO officer and also may contact the Montana human rights bureau and/or the federal equal employment opportunity commission (EEOC). Jurisdiction to address any one of the above types of discrimination complaints varies. For example, neither the EEOC nor the Montana human rights bureau considers discrimination complaints based on sexual orientation.

History: 2-18-102, MCA; IMP, 2-18-102, MCA; NEW, 2000 MAR p. 3515, Eff. 12/22/00.

2.21.4006 PRE-EMPLOYMENT INQUIRIES

(1) Except as may be required by the reasonable demands of a position, for example, a BFOQ, compliance with a lawful affirmative action plan, or government reporting or record-keeping requirements, the state of Montana may not elicit information concerning race, color, national origin, age, physical or mental disability, marital status, religion, creed, sex, sexual orientation or political beliefs.

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(2) The state of Montana may obtain information required for legitimate business purposes after employment.

History: 2-18-102, MCA; IMP, 2-18-102, MCA; NEW, 2000 MAR p. 3515, Eff. 12/22/00.

2.21.4007 PRE-EMPLOYMENT MEDICAL EXAMINATIONS

(1) The state of Montana requires pre-employment medical examinations only when necessary to determine ability to perform the physical duties of a particular position. Any pre-employment medical examination must be job-related.

(2) The state of Montana will require a pre-employment medical examination only after a conditional offer of employment has been made to a job applicant.

(3) The state of Montana shall maintain the results of the examination in separate files which are treated as confidential, except that supervisors and managers may be informed regarding necessary restrictions and accommodations and safety personnel may be informed if a disability might require emergency treatment.

(4) The results of the examination may not be used to refuse employment or to make a distinction in employment unless a reasonable medical evaluation establishes inability of the particular applicant to safely and efficiently perform the duties of the position with reasonable accommodation, if necessary.

History: 2-18-102, MCA; IMP, 2-18-102, MCA; NEW, 2000 MAR p. 3515, Eff. 12/22/00.

2.21.4012 SEXUAL HARASSMENT

(1) Sexual harassment of employees, clients, customers, and any other persons is prohibited. It is the state of Montana policy to:

- (a) provide employees with a work environment free of sexual harassment;
- (b) communicate the state's sexual harassment prevention policy and reporting procedures to employees and supervisors;
- (c) recognize the unique nature of complaints of sexual harassment;
- (d) encourage early reporting by employees; and
- (e) resolve complaints promptly, confidentially, and at the lowest management level possible.

(2) Sexual harassment includes unwelcome verbal or physical conduct of a sexual nature when:

- (a) submission to the conduct is implicitly or explicitly made a term or condition of employment;
- (b) submission to or rejection of the conduct is used as the basis for an employment decision affecting the individual; or

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(c) the conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.

(3) Sexual harassment also includes harassment directed toward a person because of gender, a pattern of sexual favoritism, or harassment because of a person's sexual orientation.

(4) Examples of prohibited sexual harassment include, but are not limited to:

- (a) propositions or pressure to engage in sexual activity;
- (b) sexual assault;
- (c) repeated intentional body contact;
- (d) repeated sexual jokes, innuendoes, or comments;
- (e) constant staring or leering;
- (f) inappropriate comments concerning appearance;
- (g) display of magazines, books, pictures, or electronic documents with a sexual connotation;
- (h) a pattern of hiring or promoting sex partners over more qualified persons; or
- (i) any harassing behavior, whether or not sexual in nature, directed toward a person because of the person's gender including, but not limited to, hazing employees working in nontraditional work environments.

History: 2-18-102, MCA; IMP, 2-18-102, MCA; NEW, 2000 MAR p. 3515, Eff. 12/22/00.

2.21.4013 OTHER HARASSMENT

(1) Harassment of employees, clients, customers, and any other persons because of a person's race, color, national origin, age, physical or mental disability, marital status, religion, creed, sexual orientation or political beliefs is prohibited. It is the state of Montana policy to provide employees, clients, customers, and any other persons with a work environment free of these forms of harassment.

(2) Examples of other prohibited harassment include, but are not limited to:

- (a) coercion of employees, clients, or customers in the participation or non-participation in religious activities; or
- (b) ethnic slurs, repeated jokes, innuendoes, or other verbal or physical conduct because of a person's nationality, race, color, age, physical or mental disability, marital status, religion, creed, sexual orientation or political beliefs if these actions create an intimidating, hostile or offensive working environment.

History: 2-18-102, MCA; IMP, 2-18-102, MCA; NEW, 2000 MAR p. 3515, Eff. 12/22/00.

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2.21.4014 RETALIATION

(1) The state of Montana may not retaliate or allow, condone, or encourage others to retaliate against any applicant, or current or former employee for opposing unlawful discriminatory practices, filing a discrimination complaint and/or testifying or participating in any other manner in a discrimination proceeding.

History: 2-18-102, MCA; IMP, 2-18-102, MCA; NEW, 2000 MAR p. 3515, Eff. 12/22/00.