



This plan implements and maintains the Equal Employment Opportunity program ensuring that the Department of Environmental Quality does not discriminate in employment.

2013

Equal Employment Opportunity (EEO) Action Plan

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Alternative accessible formats of this action plan will be provided on request. Persons who need an alternative format should contact the Human Resources Office, Department of Environmental Quality, 1520 East Sixth Avenue, PO Box 200901, Helena, MT 59620-0901. Telephone 406-444-4218.

PLAN PURPOSE

This plan implements and maintains the Equal Employment Opportunity (EEO) Program ensuring that the Department of Environmental Quality (DEQ) does not discriminate in employment, based upon race, color, national origin, age, physical or mental disability, marital status, religion, creed, sex, sexual orientation, political beliefs, genetic information, veteran's status, culture, social origin or condition, or ancestry. DEQ uses the state of Montana's EEO Policy as the basis of its EEO program. See Appendix D for a copy of the State's policy.

GOALS AND OBJECTIVES

DEQ's goal is to make its workforce more closely reflect the labor force in Montana. DEQ will make good faith efforts to identify the underutilization of women and minorities. DEQ will also work to recruit and retain qualified individuals with disabilities at all employment levels.

Barriers to employment can cause underutilization. Therefore, DEQ will review their recruitment, selection, and promotion processes as well as the on-the-job experience of employees to ensure that women and minorities receive equal opportunities to secure employment and promotion.

DEQ will focus its efforts on:

- identifying underutilization of women and minorities
- recruiting and retaining qualified women, minorities, and disabled persons
- establishing and maintaining processes and procedures to ensure women and minorities have equal opportunities to secure employment and career advancement

UTILIZATION REVIEW

The utilization analysis report identifies and summarizes areas where DEQ has shown underutilization of women and minorities through 2012. The utilization analysis report compares DEQ's workforce to Montana's labor force by EEO category and job group. If DEQ's workforce, in a particular job group, is less than the Montana labor force, the report flags the job group as underutilized. The Human Resource Office will attempt to determine the cause of underutilization for each job group identified and develop an appropriate action plan. Appendix A summarizes the utilization analysis report.

The utilization or underutilization of women and minorities is analyzed using the EEO categories and occupation group codes. Each EEO category includes several occupational group codes. Underutilization calculations within occupational group codes may show different “net” underutilization than the total for the EEO category. An example of this is Category One: Officials and Administrators. Category One shows an overall or “net” underutilization of zero women. However, group code 113 within Category One, shows underutilization of two women. This difference is possible because the group code 000, which is also within Category One, has a higher rate of women than Montana’s labor force. Group code 000 improves the category’s overall average despite the underutilization of two women in Group Code 113. Appendix B contains definitions of the EEO categories.

ACTION PLAN

RECRUITMENT AND SELECTION

DEQ’s recruitment goal is to increase women and minority representation in underutilized categories by attracting qualified candidates to apply for vacancies in these categories. Hiring managers will review applicants’ qualifications to be sure qualified individuals are treated in a nondiscriminatory manner. Vacancy announcements for positions in underutilized categories will include the statement:

Women (and/or) minorities are under-represented in this position and are encouraged to apply.

DEQ will continue to work with recruitment sources that have effective contact with women and minorities and persons with disabilities to improve recruitment efforts. For all positions, DEQ will send vacancy announcements to Native American recruitment sources, the Interagency Committee for Change by Women; disability rehabilitation centers, and any other source DEQ identifies as appropriate.

DEQ may collaborate with Montana universities in attracting students in fields of study related to those required for DEQ positions.

DEQ will encourage women and minorities to apply for student intern positions in order to introduce them to DEQ work and potential career opportunities while providing work experience for the student.

UPWARD MOBILITY

Annually, the Human resources staff will review the utilization analysis in an effort to ensure that qualified women and minorities are promoted at rates substantially similar to those of qualified men and non-minority employees.

The agency will develop and implement succession planning ensuring all employees are given equal opportunity for promotion.

COMPENSATION

Each year, Human resources staff will review the Montana Compensation Report, the Personnel Action History Report, and the Workforce Analysis to determine if a gender, race, or ethnicity disparity exists in employees' pay. If the Human Resource Office identifies a disparity, they will work with senior managers to develop an action plan to resolve the disparity.

Human resources staff will work with senior managers to ensure managers make pay decisions in accordance with DEQ pay plan rules and other relevant policies and procedures.

TRAINING PROGRAMS

The Human resources staff will train supervisors and managers on the recruitment and selection process. Supervisors and managers are trained on the EEO action plan and will attend other relevant training offered on an annual basis.

EQUAL EMPLOYMENT OPPORTUNITY AWARENESS

Human resources staff will:

- post vacancy announcements on DEQ's intranet and the state's online employment system
- e-mail employees announcing new internal vacancies
- offer training on topics such as job descriptions, performance management, recruitment, selection, FMLA, ADA, non-discrimination, and the EEO action plan

DEQ will offer:

- career information and job mentoring
- mobility assignments to employees providing an opportunity to try out various jobs

HARASSMENT AND DISCRIMINATION PREVENTION

Any person who believes they or another person has been subjected to discrimination, is encouraged to report incidents or actions of harassment and/or discrimination to the Human Resource Office.

DEQ will place a copy of this plan on DEQ's external website for access by those outside DEQ. DEQ's complaint resolution procedure is located in Appendix E.

UTILIZATION ANNUAL REVIEW

Upon receipt of the utilization analysis report, DEQ's Human resources staff will review the data and present a summary to the management team. The management team will discuss changes in effort or approach and the Human resources staff will incorporate changes into the EEO action plan.

EMPLOYEE SEPARATION

The Human resources staff will provide terminating employees the opportunity to discuss reasons for separation. Human resources staff will record, analyze, and report the information to the appropriate managers. Managers will use the information to identify areas of improvement.

The Human resources staff will review the termination data to identify if women, minorities, and employees with disabilities leave DEQ at rates substantially different from those of men, non-minority employees, and employees without disabilities.

DUTIES AND RESPONSIBILITIES FOR PROGRAM IMPLEMENTATION

DIRECTOR

1. Promotes DEQ's EEO action plan and holds managers accountable for adhering to it.
2. Directs and supports DEQ's division administrators and chief officers in their use of the plan and documents this in annual performance evaluations.

HUMAN RESOURCES STAFF

1. Reviews DEQ's EEO action plan with managers and updates the plan as necessary.
2. Implements and maintains utilization reporting and recordkeeping systems to measure the effectiveness of the plan.
3. Documents changes in goals and objectives.
4. Continues to ensure compensation is based on an individual's qualification and experience.
5. Updates the EEO action plan and provides a summary report to managers.
6. Assists managers in identifying what may be causing underutilization (employment barriers) and recommends appropriate action.
7. Keeps management informed of the latest developments in the area of utilization of women, minorities, and disabled persons.

8. Provides training opportunities for managers and supervisors in the area of EEO ensuring managers and supervisors are informed of their responsibilities.
9. Ensures the review of the EEO action plan prior to beginning the recruiting/hiring process.
10. Ensures the EEO Policy Statement and Complaint Resolution Procedure is posted on official DEQ bulletin boards.
11. Ensures investigation and resolution of all EEO complaints.
12. Reviews the recruitment, selection, and promotion processes.

MANAGERS AND SUPERVISORS

1. Responsible for implementing and adhering to DEQ's EEO action plan.
2. Lead by example in the treatment of all persons in the workplace.
3. Responsible for being knowledgeable of the policies and guidance related to the EEO action plan.

ALL EMPLOYEES

1. Carry out the DEQ Mission Statement, Guiding Principles, and Expectations of Employees (See Appendix C).
2. Inform the supervisor, the DEQ EEO Officer or the human resources staff of any EEO concerns.
3. Participate in DEQ's EEO action plan whenever relevant.

EEO PROGRAM ACTION PLAN DISTRIBUTION

INTERNAL

The human resources staff will:

- provide each employee with a copy of this plan during new employee orientation
- review the EEO Policy and Complaint Resolution Procedure during new employee orientation and during appropriate DEQ trainings
- post DEQ's EEO action plan on DEQ's intranet

EXTERNAL

The human resources staff will post DEQ's EEO action plan on the external web page.

2012 DEQ Utilization Analysis

Summary

DEQ is doing well in the area of hiring and retaining women throughout most job categories. The overall Officials and Administrators Category improved from the previous year from underutilized by two women to zero. None of the totals for the categories shows underutilization of women. However, several occupational group codes within categories do show underutilization of women. These occupational groups are:

- Group code 113 underutilized by 2 women
- Group code 193 underutilized by 1 women
- Group code 231 underutilized by 1 women
- Group code 436 underutilized by 2 women

DEQ has numerous opportunities to improve on utilization of minorities. Underutilization increased over the past year. Underutilization of minorities at DEQ was 18 in 2009, 17 in 2010, 18 in 2011, and 24 in 2012. The largest area for improvement is in the job class of environmental science specialists. DEQ had 179 individuals in this classification in 2012, of these only 2 were minorities.

Category 1 – Officials and Administrators (31 staff, includes Administrators and Program Managers)

- Women: net category underutilization of 0
 - 2 in occupational group code 113 which includes:
 - computer information systems managers
 - financial managers
 - human resources managers
- Minorities: net category underutilization of 0
 - 1 in occupational group code 111 which includes:
 - division administrators
 - program managers

Category 2 – Professionals (359 staff, specialists in all areas)

- Women: net category underutilization of 0
 - 1 in occupational group code 193 which includes economists
 - 1 in occupational group code 231 which includes lawyers
- Minorities: net category underutilization of 22
 - 2 in occupational group code 131 which includes:

- human resources specialists
- project facilitation specialists
- purchasing agents
- grants contract coordinators
- 2 in occupational group code 132 which includes:
 - accountants
 - budget analysts
 - financial specialists
 - financial operations supervisors
- 2 in occupational group code 151 which includes:
 - computer supervisors
 - web developers
 - computer application engineers
 - computer systems and database analysts
 - network administrators
 - data control specialists
- 16 in occupational group code 192 which includes:
 - science program managers
 - atmospheric science specialists
 - environmental science specialists
- 1 in occupational group code 231 which includes lawyers
- 1 in occupational group code 273 which includes public relation specialists

Category 3 – Technicians (40 staff, support and technical positions)

- Women: net category underutilization of 0
 - 2 in occupational group code 436 which includes administrative assistants
- Minorities: net category underutilization of 1
 - 1 in occupational group code 436 which includes administrative assistants

Category 6 – Office/Clerical (6 staff)

- Women: no category underutilization
- Minorities: no category underutilization

Description of EEO Categories

- 1. Officials and Administrators:** Occupations in which employees set broad policies, exercise overall responsibility for execution of these policies, exercise overall responsibility for execution of these policies, or direct individual departments or special phases of the agency's operations, or provide specialized consultation on a regional, district or area basis. Includes: department heads, bureau chiefs, division chiefs, directors, deputy directors, controllers, wardens, superintendents, sheriffs, police and fire chiefs and inspectors, examiners (bank, hearing motor vehicle, warehouse), inspectors (construction, building, safety, rent-and-housing, fire, A.B.C. Board, license, dairy, livestock, transportation), assessors, tax appraisers and investigators, coroners, farm managers, and kindred workers.
- 2. Professionals:** Occupations which require specialized and theoretical knowledge which is usually acquired through college training or through work experience and other training which provides comparable knowledge. Includes: personnel and labor relations workers, social workers, doctors, psychologists, registered nurses, economists, dieticians, lawyers, systems analysts, accountants, engineers, employment and vocational rehabilitation counselors, teachers or instructors, police and fire captains and lieutenants, librarians, management analysts, airplane pilots and navigators, surveyors and mapping scientists, and kindred workers.
- 3. Technicians:** Occupations which require a combination of basic scientific or technical knowledge and manual skill which can be obtained through specialized post-secondary school education or through equivalent on-the-job training. Includes: computer programmers, drafters, survey and mapping technicians, licensed practical nurses, photographers, radio operators, technical illustrators, highway technicians, technicians (medical, dental, electronic, physical sciences), police and fire sergeants, inspectors (production or processing inspectors, testers and weighers), and kindred workers.
- 4. Protective Service Workers:** Occupations in which workers are entrusted with public safety, security and protection from destructive forces. Includes: police patrol officers, fire fighters, guards, deputy sheriffs, bailiffs, correctional officers, detectives, marshals, harbor patrol officers, game and fish wardens, park rangers (except maintenance), and kindred workers.

- 5. Paraprofessionals:** Occupations in which workers perform some of the duties of a professional or technician in a supportive role, which usually require less formal training and/or experience normally required for professional or technical status. Such positions may fall within an identified pattern of staff development and promotion under a “New Careers” concept. Included: research assistants, medical aids, child support workers, policy auxiliary welfare service aids, recreation assistants, homemakers aides, home health aides, library assistants and clerks, ambulance drivers and attendants, and kindred workers.
- 6. Administrative Support (Including Clerical and Sales):** Occupations in which workers are responsible for internal and external communication, recording and retrieval of data and/or information and other paperwork required in an office. Includes: bookkeepers, messengers, clerk-typists, stenographers, court transcribers, hearing reporters, statistical clerks, dispatchers, license distributors, payroll clerks, office machine and computer operators, telephone operators, legal assistants, sales workers, cashiers, toll collectors, and kindred workers.

DEQ Mission and Guiding Principles

MISSION STATEMENT

The mission statement for DEQ is: “to protect, sustain, and improve a clean and healthful environment to benefit present and future generations”

DEQ GUIDING PRINCIPLES

- **Upholding the constitution**
 - We will uphold, in a consistent manner, the Montana Constitution – Article IX, and all other statutes, regulations, and legal policies that are applicable to DEQ.
 - Within the bounds of these laws and regulation, DEQ will strive to make decisions that balance public and private costs and benefits for the greatest public benefit
- **Working for a clean and healthful environment**
 - We recognize that most environmental regulations and standards are intended to protect the public health by preventing serious injury or illness.
 - We recognize that the people of Montana value a quality environment and encourage everyone to share responsibility to protect its quality.
 - We will encourage innovative thinking and seek practical, long-term solutions that serve the public interest and minimize the environmental effects of proposed actions.
 - We will seek cost-effective ways to minimize impacts to the environment and will identify for decision makers and the public any legal or institutional barriers that keep them from being used.
- **Working with the public**
 - We respect the public and recognize the value it places on the environment and its interest in the work of DEQ. Therefore, we encourage public input to our analyses, decision making and all other aspects of DEQ’s work. We will provide the public with our analyses and the implications of DEQ’s decisions and any other information the citizens want within legal constraints. We will encourage and consider public input in our decision making processes and make open decisions that are clear, understandable, and accessible to the public.

- **Improving cooperation and coordination**

- The various bureaus and divisions of DEQ will cooperate and coordinate among themselves and with federal, state, and local agencies, and other interested parties.

- **Reaching potential with our employees**

- DEQ employees are an important asset. We will empower them to exercise professional judgment in carrying out their duties. We will provide them with a safe work place and the training and tools necessary to achieve DEQ's mission.
- We encourage team efforts and use of the expertise of DEQ's employees to find solutions that meet the challenges we face.
- We will seek a diversity of individuals and professions within DEQ.

ALL EMPLOYEES OF DEQ ARE EXPECTED TO:

- Fully support the DEQ mission statement and work within these guiding principles.
- Be service-oriented, providing helpful assistance to the public and continually seeking better ways to improve long-term customer relations.
- Be solutions-oriented.
- Utilize and contribute to team efforts and keep colleagues and affected others informed of progress and events.
- Make timely decisions and maintain objectivity in making decisions.
- Act with honesty and integrity, strive for quality, be productive and innovative, and responsible for their actions.
- Be fiscally responsible and consistently apply the State Constitution, applicable statutes, regulations, and legal policies.

EEO, Nondiscrimination, and Harassment Prevention Policy

Resource: Administrative Rules of the State of Montana (ARM)
Human Resources/ Employee Benefits

State Human Resources includes policies in administrative rules (ARM) when the policy may affect the public or be used by persons who are not currently employees. The policies that only affect state employees are not included in ARM. This policy is in ARM. This is a reproduction created for your convenience, but it is not the official version. You may find the official ARM website at <http://www.mtrules.org>.

2.21.4001 SHORT TITLE

(1) This subchapter may be cited as the Equal Employment Opportunity, Nondiscrimination, and Harassment Prevention Policy. History: [2-18-102](#), MCA; IMP, [2-18-102](#), MCA; NEW, 2000 MAR p. 3515, Eff. 12/22/00; AMD, 2011 MAR p. 1672, Eff. 8/26/11.

2.21.4002 POLICY AND OBJECTIVES

(1) These rules establish the minimum requirements for implementing and maintaining an equal opportunity program that promotes compliance with:

- (a) federal laws and regulations prohibiting illegal discrimination including the Genetic Information Nondiscrimination Act of 2008 (GINA);
- (b) the Montana Human Rights Act, [Title 49, MCA](#);
- (c) the Governmental Code of Fair Practices, [Title 49, chapter 3, MCA](#); and
- (d) and the Governor's Executive Order 41-2008, Equal Employment Opportunity, Nondiscrimination, and Harassment Prevention.

(2) These rules establish complaint procedures to promote prompt and equitable resolution of discrimination complaints.

(3) These rules cover all agencies in Montana's executive branch except:

- (a) the Montana University System;
- (b) the Montana State Fund;
- (c) elected officials;
- (d) personal appointed staff of elected officials; and
- (e) any other position specifically excluded under [2-18-103](#) and [2-18-104](#), MCA. History: [2-18-102](#), MCA; IMP, [2-18-102](#), MCA; NEW, 2000 MAR p. 3515, Eff. 12/22/00; AMD, 2011 MAR p. 1672, Eff. 8/26/11.

2.21.4005 EQUAL EMPLOYMENT OPPORTUNITY (EEO) AND NONDISCRIMINATION

(1) The executive branch is committed to equal opportunity, nondiscrimination, and harassment prevention in all aspects of employment and in programs, services, and activities offered to the public.

(2) Agency managers, as defined by the agency in policy or rule to promote consistency with internal policies and procedures, may not tolerate discrimination or harassment based on an individual's race, color, national origin, age, physical or mental disability, marital status, religion, creed, sex, sexual orientation, political beliefs, genetic information, veteran's status, culture, social origin or condition, or ancestry. Likewise, agency management may not tolerate discrimination or harassment because of a person's marriage to or association with individuals in one of the previously mentioned protected classes.

(3) Agency managers may use a bona fide occupational qualification (BFOQ) where the reasonable demands of a position require a distinction based on age, physical or mental disability, marital status, sex, religion, or national origin.

A BFOQ is a legal exception to an otherwise discriminatory hiring practice. Exceptions are strictly construed, as provided in 49-2-303, MCA, and the burden rests with the agency to demonstrate the exemption should be granted. Federal and state laws prohibit BFOQs based on race or color.

(4) To promote a work and customer service environment free from discrimination, agency managers shall:

- (a) base hiring decisions on individual competencies and qualifications;
- (b) promote an inclusive work environment where individuals are afforded every opportunity to reach their fullest potential;
- (c) recognize individual differences as a key element of organizational and team success;
- (d) treat individuals with dignity and respect; and
- (e) value the rights of all Montanans to benefit from equal access to employment and programs, services, and activities offered to the public.

(5) Agency managers who observe behaviors that may be viewed as discriminatory shall stop the behavior and notify their agency's EEO officer, Americans with Disabilities Act (ADA) coordinator, or human resources manager. History: 2-18-102, MCA; IMP, 2-18-102, MCA; NEW, 2000 MAR p. 3515, Eff. 12/22/00; AMD, 2011 MAR p. 1672, Eff. 8/26/11.

2.21.4008 RESPONSIBILITIES

(1) The Department of Administration shall:

- (a) periodically review and update equal opportunity (EO) standards, guidelines, and administrative processes and procedures;
- (b) assist agencies in maintaining an effective EO program;
- (c) provide annual utilization analysis reports to agencies;
- (d) provide EEO analyses, reports, and technical assistance to agencies;
- (e) recommend strategies to promote diversity and overcome potential barriers to employment; and
- (f) design and develop equal opportunity training.

(2) Executive branch department heads shall:

- (a) appoint an EEO officer responsible for:
 - (i) managing the agency's EEO program;
 - (ii) training employees on EO;
 - (iii) assisting employees and managers with resolving EO issues;
 - (iv) conducting internal investigations; and
 - (v) developing written EEO action plans; and
- (b) appoint an ADA coordinator responsible for:
 - (i) training employees on the ADA, disability awareness, and reasonable accommodations;
 - (ii) conducting self-evaluations to assess accessibility of programs, services, and activities; and
 - (iii) assisting with reasonable accommodation requests.

(3) Agency managers shall:

- (a) retain electronic records for all jobs recording the sex, race, and ethnic group of employees and applicants as provided in 49-2-102, MCA, and the Uniform Guidelines on Employee Selection Procedures (1978); 43 FR 38295 (August 25, 1978);
- (b) provide reasonable accommodations, upon request, for qualified individuals with disabilities and for applicants and employees based on their religious practices, unless doing so would create an undue hardship;
- (c) post the state's EO policy poster and complaint-resolution procedures, including contact information for the agency EEO officer and ADA coordinator, in areas frequented by employees and the public;
- (d) provide a copy of these rules to all employees;
- (e) provide EO and harassment prevention training to all new employees within 90 days of hire or within [six months of the effective date of these rules] for current employees who have not yet received training;

- (f) provide EO and harassment prevention refresher training for all employees every three years or more frequently as needed; and
- (g) document all training in the employee's personnel file. History: 2-18-102, MCA; IMP, 2-18-102, MCA; NEW, 2011 MAR p. 1672, Eff. 8/26/11.

2.21.4009 COMPLIANCE WITH THE FEDERAL GENETIC INFORMATION NONDISCRIMINATION ACT OF 2008 (GINA)

(1) To comply with GINA, which prohibits discrimination based on genetic information with respect to employment or state-sponsored group health plans, agency managers may not:

- (a) request, require, or purchase genetic information about employees or their family members; or
- (b) use genetic information to:
 - (i) discriminate against an individual in hiring, discharge, compensation, terms, conditions, or privileges of employment;
 - (ii) make decisions about admission to apprenticeship and training programs, including on-the-job training;
 - (iii) limit, segregate, or classify an individual;
 - (iv) fail or refuse to refer an individual for employment;
 - (v) deprive an individual of employment opportunities; or
 - (vi) acquire health insurance or set premiums under the group health plan.

(2) Requests for genetic information include, but are not limited to:

- (a) conducting Internet searches on individuals in a way that is likely to result in obtaining genetic information;
- (b) knowingly or purposefully listening to third-party conversations or searching an individual's personal effects for the purpose of obtaining genetic information; and
- (c) requesting information about an individual's current health status in a way that is likely to result in obtaining genetic information.

(3) To avoid inadvertently receiving genetic information, agency representatives who request medical information as part of an employment-related medical exam or a medical certification in response to a request for sick leave, leave qualifying under the Family Medical Leave Act, or a reasonable accommodation request under the Americans with Disabilities Act, shall include the following statements verbatim in their written request for medical information:

- (a) "The Genetic Information Nondiscrimination Act of 2008 (GINA) prohibits employers and other entities covered by GINA Title II from requesting or requiring genetic information of employees or their family members. To comply with this law, we ask you not to provide any genetic information when responding to this request for medical information."
- (b) "Genetic information, as defined by GINA, includes an individual's family medical history, the results of an individual's or family member's genetic tests, the fact that an individual or an individual's family member sought or received genetic services, and genetic information of a fetus carried by an individual or an individual's family member or an embryo lawfully held by an individual or family member receiving assistive reproductive services."
- (c) "Genetic test means an analysis of human DNA, RNA, chromosomes, proteins, or metabolites that detects genotypes, mutations, or chromosomal changes."

(4) Agency managers may not ask probing questions of an individual if they inadvertently learn of a health condition of an applicant, employee, or the health condition of a family member.

(a) Probing questions include, but are not limited to, asking the individual whether other family members have the condition or whether the individual has been tested for the condition. These questions are likely to result in the acquisition of genetic information.

(5) Agency representatives possessing genetic information about an employee shall maintain the information as confidential in compliance with ARM Title 2, chapter 21, subchapter 66, Employee Records Management Policy.

History: 2-18-102, MCA; IMP, 2-18-102, MCA; NEW, 2011 MAR p. 1672, Eff. 8/26/11.

2.21.4013 HARASSMENT

(1) Harassment, including sexual harassment, consists of, but is not limited to, oral, written, or electronic communications (for example, voice mails, e-mails, text messages, or other social networking tools) in the form of

repeated and unwelcomed jokes, slurs, comments, visual images, or innuendos based on a protected class. Even mutually agreeable behavior, or behavior accepted between two or more people, can be offensive to others; for this reason it is prohibited in the workplace.

(2) Sexual harassment is a form of discrimination that 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

(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) Agency managers may not tolerate any behavior that negatively focuses on a protected class. Although a behavior or pattern of behavior might not constitute illegal discrimination, it might still violate this rule.

(4) Agency managers who observe behaviors that could be viewed as discrimination or harassment shall stop the behavior and notify their agency's EEO officer, ADA coordinator, or human resources manager. History: 2-18-102, MCA; IMP, 2-18-102, MCA; NEW, 2000 MAR p. 3515, Eff. 12/22/00; AMD, 2011 MAR p. 1672, Eff. 8/26/11.

2.21.4014 RETALIATION

(1) Agency managers may not retaliate or allow, condone, or encourage others to retaliate against any customer, applicant, or current or former employee for opposing unlawful discriminatory practices, filing a discrimination complaint or participating in a discrimination proceeding, including testifying in court.

(2) Agency managers who become aware of retaliation shall inform the agency's human resource manager, human resource staff, EEO officer, or ADA coordinator. The human resource manager, human resource staff, EEO officer, or ADA coordinator shall advise management on the appropriate course of action. History: 2-18-102, MCA; IMP, 2-18-102, MCA; NEW, 2000 MAR p. 3515, Eff. 12/22/00; AMD, 2011 MAR p. 1672, Eff. 8/26/11.

2.21.4019 INITIATING AN INTERNAL COMPLAINT

(1) Agency managers shall encourage employees, applicants, clients, and customers who believe they have been discriminated against or harassed to contact their supervisor, another manager, or the agency's EEO officer, ADA coordinator, or human resources staff.

(2) Complaints may be oral or in writing; however, complainants are encouraged to use the Department of Administration's complaint form found at <http://hr.mt.gov/hrpp/policies.mcp>.

(3) For complaints not submitted on a complaint form, the agency representative receiving the complaint shall obtain and document the following information:

(a) name, address, and phone number(s) of the complainant(s);

(b) date(s), time(s), and location(s) of the alleged discriminatory behavior or conduct;

(c) name(s), if known, of the accused(s);

(d) description of the behavior or conduct that resulted in an alleged violation;

(e) whether the alleged discrimination was based on a protected class; and

(f) names of potential witnesses who may have heard or observed the alleged discriminatory conduct or behavior.

(4) Agency representatives who receive a complaint or become aware of allegations of discrimination or harassment shall promptly notify the human resource manager, EEO officer, or ADA coordinator, regardless of their perception of the validity of the complaint.

(5) The human resource manager, EEO officer or ADA coordinator, legal counsel, and appropriate manager shall meet to discuss the appropriate course of action. If the complaint is against any of these individuals, that individual is excluded from the meeting. The discussion must focus on measures to stop the alleged behavior, a review of the investigative process, and management's role in the process.

(6) If management determines an internal investigation would not be appropriate because of a potential conflict, they may request assistance from the State Human Resources Division or other outside source.

(7) The human resource manager or human resource staff, as appropriate, shall coordinate with the investigator and advise management throughout the course of the investigation. History: [2-18-102, MCA](#); [IMP, 2-18-102, MCA](#); [NEW, 2011 MAR p. 1672, Eff. 8/26/11](#).

2.21.4020 INVESTIGATING A COMPLAINT

- (1) The EEO officer, ADA coordinator, or another representative chosen by management shall begin an investigation upon receiving a complaint.
- (2) Before the investigation begins, the appropriate manager shall separately explain the following to the complainant and accused:
 - (a) the investigation process and anticipated timelines;
 - (b) what retaliation is and that it is unacceptable behavior; and
 - (c) expectations and consequences of discussing the complaint with anyone other than the investigator, management, union representative, or legal counsel.
- (3) Agency managers shall provide:
 - (a) periodic updates to the complainant and the accused; and
 - (b) documentation of their initial meeting and all subsequent follow-up action to the investigator.
- (4) The investigator shall:
 - (a) gather evidence to determine a "cause" or "no-cause" finding;
 - (b) coordinate with the agency's legal counsel before conducting interviews and throughout the investigation; and
 - (c) provide periodic updates to the agency's human resource manager. History: [2-18-102, MCA](#); [IMP, 2-18-102, MCA](#); [NEW, 2011 MAR p. 1672, Eff. 8/26/11](#).

2.21.4021 POST-INVESTIGATION ACTIONS

- (1) After receiving the final report, the appropriate manager shall promptly inform the complainant and accused of the outcome of the investigation in writing.
- (2) In the case of a cause finding, the appropriate agency manager shall:
 - (a) take appropriate disciplinary action, if necessary, according to the [ARM Title 2, chapter 21, subchapter 65](#), Discipline Policy;
 - (b) advise the complainant corrective action to stop the behavior has been taken, but not disclose the details or nature of disciplinary action;
 - (c) reemphasize that retaliation is unacceptable behavior; and
 - (d) contact the complainant within 30 days to ensure the behavior has stopped and no retaliation has occurred.
- (3) In the case of a no-cause finding, the appropriate agency manager shall contact the complainant within 30 days to ensure the complainant has not experienced retaliation. History: [2-18-102, MCA](#); [IMP, 2-18-102, MCA](#); [NEW, 2011 MAR p. 1672, Eff. 8/26/11](#).

2.21.4022 CONFIDENTIALITY REQUIREMENTS

- (1) Agency managers shall make every attempt to protect the privacy of individuals involved in the complaint process; however, individual privacy cannot be guaranteed.
- (2) Agency managers may not prohibit employees from discussing a complaint or ongoing investigation with coworkers unless management conducts an individualized assessment and demonstrates that one of the following factors exists:
 - (a) there are witnesses in need of protection;
 - (b) evidence is in danger of being destroyed;
 - (c) testimony is in danger of being fabricated; or
 - (d) there is a need to prevent a cover-up.
- (3) Agency managers shall document their rationale for requiring that employees refrain from discussing a complaint or ongoing investigation.

(4) The human resource staff shall maintain the investigative report and supporting documents in a secure, confidential case file separate from the regular employee file. History: 2-18-102, MCA; IMP, 2-18-102, MCA; NEW, 2011 MAR p. 1672, Eff. 8/26/11; AMD, MAR p. 110, Eff. 2/1/13.)

2.21.4027 TRACKING AND REPORTING INTERNAL COMPLAINTS

(1) Agency EEO officers shall track internal complaints using the Complaint Tracking Sheet located on the State Human Resources Division website: <http://hr.mt.gov/hrpp/policies.mcp>. EEO officers shall provide quarterly summaries of internal complaints to the State Human Resources Division no later than the fifteenth day of each quarter.

(2) The report must include:

(a) the total number of complaints;

(b) whether the complainant and accused was an employee, customer, or client;

(c) the protected class or basis of the complaint;

(d) the reason for complaint (for example, employment-related, denied access to a program or service, or inappropriate comment); and

(e) the outcome of the complaint.

(3) The report is for tracking purposes only and may not include confidential information such as names of individuals involved.

(4) The State Human Resources Division shall collect and analyze the data to:

(a) assess program effectiveness;

(b) develop or modify existing policies, procedures, and guides; and

(c) promote compliance with applicable laws, regulations, and policies. History: 2-18-102, MCA; IMP, 2-18-102, MCA; NEW, 2011 MAR p. 1672, Eff. 8/26/11.

2.21.4028 INITIATING AN EXTERNAL COMPLAINT

(1) In addition to the internal complaint process, complaints may be filed with the following agencies:

(a) Montana Human Rights Bureau, 1625 11th Avenue, P.O. Box 1728, Helena, MT 59624-1728, (406) 444-2884, (800) 542-0807, TTY (406) 444-0532; or

(b) United States Equal Employment Opportunity Commission (EEOC) San Francisco District Office, 350 The Embarcadero, Suite 500, San Francisco, CA 94105-1260, (800) 669-4000, TTY (800)-669-6820.

(2) Jurisdiction may vary based on the nature of the complaint. For example, neither the Human Rights Bureau nor the EEOC considers complaints based on sexual orientation, culture, social origin or condition, or ancestry.

(3) The Human Rights Bureau must receive the complaint within 180 days of when the alleged discriminatory practice occurred or was discovered unless the person has filed an internal complaint. A person who files an internal complaint under these rules has 180 days from the conclusion of the internal investigation to file a complaint with the Human Rights Bureau if management completes the investigation within 120 days of when the alleged discriminatory practice occurred or was discovered. If management does not complete the investigation within 120 days, the person must file a complaint with the Human Rights Bureau within 300 days of when the alleged discriminatory practice occurred or was discovered.

(4) The EEOC must receive the complaint within 300 calendar days from the date the discrimination took place if the Human Rights Bureau enforces a law prohibiting employment discrimination against the same protected class.

Otherwise, the complaint must be filed with the EEOC in 180 days. History: 2-18-102, MCA; IMP, 2-18-102, MCA; NEW, 2011 MAR p. 1672, Eff. 8/26/11; AMD, MAR p. 110, Eff. 2/1/13.

2.21.4029 RULE VIOLATIONS

(1) Employees who violate these rules are subject to discipline, up to and including discharge under ARM Title 2, chapter 21, subchapter 65, Discipline Policy. A rule violation includes managers who allow discrimination to occur or fail to take appropriate action to correct inappropriate behavior, including discrimination or

harassment.

(2) Failure to conduct an investigation in a proper and timely manner, interference with an investigation, failure to cooperate with an investigator, or making a false statement to an investigator may result in disciplinary action, up to and including discharge. History: 2-18-102, MCA; IMP, 2-18-102, MCA; NEW, 2011 MAR p. 1672, Eff. 8/26/11.

**State of Montana, Department of Environmental Quality
Nondiscrimination-Equal Employment Opportunity
Complaint Resolution Procedure**

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 also prohibits discrimination in providing services, activities and programs unless providing a reasonable accommodation or reasonable modification would cause an undue hardship.

The State of Montana is committed to resolving complaints of discrimination in a fair and timely manner. The complaint resolution procedure is a dispute resolution process used when an applicant, client, customer or employee alleges that discrimination has taken place. Management must investigate when reports are received. Complaints concerning disability discrimination are submitted to the Human Resource Manager. All other complaints are submitted to the agency Equal Employment Opportunity (EEO) Officer. This complaint resolution procedure may not cover members of a collective bargaining unit unless it is stipulated in the bargaining agreement.

Complainant's Responsibility:

Any applicant, client, customer, or employee who believes he or she or another person has been subjected to a discrimination of the equal employment opportunity policy is encouraged to report the incident(s) or action(s) to management as soon as possible after the alleged discrimination occurs. Early reporting is encouraged, because management's ability to investigate and act on reports diminishes with time.

Management's Responsibility:

1. Any supervisor who receives a report of an alleged discrimination shall immediately notify the agency Human Resource Office.
2. Upon receipt of a report alleging discrimination, including sexual harassment, the agency shall take all appropriate steps to prevent the alleged conduct from continuing pending completion of the investigation. The agency will determine the steps to be taken by balancing the rights of the alleged victim, including the severity of the alleged conduct, and the rights of the alleged harasser.
3. The Human Resource Office shall initiate an investigation or select another appropriate management representative to initiate the investigation no later than 10 working days after receiving notice of the alleged discrimination. The investigation shall include verification of the report, a recommended course of action, and written documentation of the investigation. The investigator shall submit the results of the investigation to the Human Resource Manager. The factual report shall remain confidential and may not be disseminated except to persons having a need or right to know which outweighs the privacy rights of the persons involved.
4. Within five working days of receiving the investigator's factual report, the agency will, in writing, inform the complainant, any employees directly involved, their immediate supervisors and the Human Resource Manager of the results of the investigation and the agency's decision.
5. If the investigation establishes that there is insufficient evidence to find that illegal discrimination occurred, the agency will inform all parties involved that no action will be taken. If the investigation establishes that discrimination occurred, the agency will take appropriate action, including, but not limited to, disciplinary

measures pursuant to the agency's disciplinary policy, which may include termination. The agency will, in writing, inform the complainant only that an action was taken, not the details of the action.

6. Neither the agency management nor any employee will retaliate against any employee for filing a discrimination complaint or for participating in any way in a complaint procedure.

OTHER COMPLAINT FILING OPTION

An applicant, client, customer, or employee may concurrently file a complaint of unlawful discrimination with the Human Rights Bureau (PO Box 1728, Helena, MT 59624-1728, phone 1-800-542-0807). The complaint must be filed either:

1. within 180 days of the alleged incident; or
2. if the employee initiates action to resolve the alleged discrimination in accordance with this procedure or contract grievance procedure, within 300 days of the alleged incident.

Peggy MacEwen, DEQ Human Resource Manager, ADA/EEO Coordinator
406-444-6717
1520 East Sixth Avenue, Helena, MT 59620