



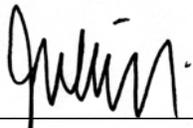
MO Division of Workforce Development  
DWD Issuance 10-2012

Issued: December 17, 2012  
Effective: Immediately

**Subject: Harassment and Discrimination Policy and Accommodation Policy**

1. Purpose: This Issuance is written to inform all Workforce Investment Act (WIA) Title I financially assisted entities of their responsibility to formulate policies: (1) prohibiting employees and non-employees from harassing or discriminating against staff, customers, and partner employees; and (2) providing reasonable employment-related accommodations to employees and job applicants with disabilities.
2. Background: The nondiscrimination and equal opportunity (EO) provisions of the WIA prohibit discrimination against applicants, beneficiaries, and employees on the basis of race, color, national origin, age, disability, sex, religion, and political affiliation or belief, and for beneficiaries only, citizenship or participation in a WIA Title I-financially assisted program or activity. The regulations that implement these provisions are published at 29 CFR Part 37 and require the Division of Workforce Development (DWD) to ensure that (1) policies on WIA Title I nondiscrimination and/or EO issues are developed and implemented in a timely manner; and (2) WIA recipients provide reasonable modification of policies, practices, and procedures as required.
3. Substance: In compliance with the regulations stated above, DWD requires that all local Workforce Investment Boards, partner agencies, and/or subcontracting entities develop and implement policies: (1) prohibiting employees and non-employees from harassing or discriminating against staff, customers, and partner employees; and (2) providing reasonable employment-related accommodations to employees and job applicants with disabilities. DWD currently utilizes the attached (1) Discrimination and Harassment Policy and (2) Reasonable Accommodation Policy, which recipients may **use as TEMPLATES** for crafting their own policies.
4. Action: Please submit the requested policies to the State WIA EO Officer by March 1, 2013.

5. Contact: Direct questions or comments regarding this Issuance to Danielle Smith, State WIA EO Officer, at (573) 751-2428 or email [danielle.smith@ded.mo.gov](mailto:danielle.smith@ded.mo.gov).
6. Reference: U.S. Department of Labor, 29 CFR Part 37, Implementation of the Nondiscrimination and Equal Opportunity Provisions of the Workforce Investment Act of 1998, Final Rule.
7. Rescissions: This Issuance rescinds and supersedes DWD Issuance 09-2010 dated February 1, 2011.
8. Attachments: (1) DWD Harassment and Discrimination Policy; (2) DWD Accommodation Policy.



---

Julie Gibson  
Director  
MO Division of Workforce Development



**POLICY STATEMENT**

<b>Subject: Harassment and Discrimination Policy</b>	<b>Issued:</b>	<b>Policy Section:</b> HR
	<b>Revised:</b> 5/08	<b>Page:</b> 1 of 5

The Department of Economic Development is committed to providing a workplace free of unlawful harassment and discrimination for all employees and customers. Employees assuming a management/supervisory role must report all complaints and instances of harassment or discrimination to the Human Relations Officer or Human Resource Manager, immediately. All complaints, to include unlawful harassment, discrimination and offensive behavior in general, will be investigated in a timely fashion and will remain confidential to the extent possible.

Employees as well as non-employees are prohibited from harassing or discriminating against staff, customers, and partner employees whether or not the incidents of harassment or discrimination occur on employer premises and whether or not the incidents occur during work hours. Behavior covered by this policy may extend beyond the normal work hours and occur at conferences, meetings, or other extra-curricular events. An incident may be considered harassment or discrimination even if the accused party did not intend to be offensive.

**Definitions**

*Unwelcome Conduct* - The employee did not solicit or invite the conduct and regarded it as undesirable.

*Power-differentiated Working Relationships* – Any work relationship in which one employee supervises or manages (directly or indirectly) another employee OR makes decisions concerning another employee’s terms, conditions or privileges of employment.

*Intimate Relationships* – For the purposes of this policy the department will consider intimate relationships to be those that involve dating, sexual activity and/or romantic involvement. Managers/supervisors participating in this type of relationship with their subordinates or with others where a power-differentiated relationship exists are in violation of this policy. Employees who find themselves involved in situations such as this are responsible for reporting their involvement to their supervisor, manager, or Human Resources. The appropriate action will be taken to remove the power component from the relationship.

**1. Unlawful Harassment**

Prohibited conduct includes unwelcome conduct, whether verbal, physical, or visual, that is based on or relates to an individual’s sex, race, color, religion, national origin, age, disability, or any other status protected by law, and 1) has the purpose or effect of creating an intimidating, hostile or offensive working environment; 2) has the purpose or effect of unreasonably interfering with an individual’s work performance; or 3) otherwise adversely affects an individual’s employment opportunities.



## POLICY STATEMENT

<b>Subject: Harassment and Discrimination Policy</b>	<b>Issued:</b>	<b>Policy Section:</b> HR
	<b>Revised:</b> 5/08	<b>Page:</b> 2 of 5

Examples of prohibited conduct include but are not limited to epithets, slurs, negative stereotyping, written or graphic material, including e-mails that denigrate or show hostility toward an individual, or any other threatening or intimidating act that relates to race, gender, sex, color, religion, national origin, age, or disability.

### 2. Sexual Harassment

Prohibited behavior may also include any unwelcome behavior of a sexual nature such as: sexual advances and propositions; requests for sexual favors; sexual jokes, comments, suggestions, or innuendo; foul or obscene gestures or language; display of foul or obscene or offensive printed or visual material; physical contact such as patting, pinching, hugging or brushing against another individual's body; and any other unwelcome verbal, physical or visual conduct of a sexual nature where:

1. Submission to such conduct is an explicit or implicit condition of employment; or
2. Submission to or rejection of such conduct is used as a basis for employment-related decisions such as a promotion, discharge, performance evaluation, pay adjustment, discipline, work assignment or any other condition of employment or career development; or
3. Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, abusive or offensive working environment.

Sexual harassment can involve males or females being harassed by members of either sex. Although sexual harassment typically involves a person in a greater position of authority as the harasser, individuals in positions of lesser or equal authority also can be found responsible for engaging in prohibited harassment.

Sexual harassment can be physical and/or psychological in nature. An aggregation of a series of incidents can constitute sexual harassment even if one of the incidents considered on its own would not be harassing.

Sexual harassment does not refer to behavior or occasional compliments of a socially acceptable nature.

### 3. Discrimination

The Department of Economic Development is committed to providing a work environment free from discrimination based on religion, race, sex, national origin, age, disability, color, or veteran



## POLICY STATEMENT

<b>Subject: Harassment and Discrimination Policy</b>	<b>Issued:</b>	<b>Policy Section:</b> HR
	<b>Revised:</b> 5/08	<b>Page:</b> 3 of 5

status. Prohibited behavior may include, but is not limited to, discrimination in the provision of employment opportunities and training, benefits, or the creation of a discriminatory working environment.

### **Reporting Harassment or Discrimination**

Employees who feel they have witnessed or experience behavior prohibited by this policy in connection with their employment with the Department, or who have questions, concerns or complaints of discrimination, including a complaint of harassment, should immediately report the circumstances or incident as indicated below:

#### Employee Responsibilities

If employees believe they have been subjected to harassment, to include unwanted attention, or discrimination, the following steps should be taken:

1. If possible, make their unease and/or disapproval directly and immediately know to the offending party. Employees can often stop or prevent harassment by immediately and directly expressing their disapproval of any individual's conduct in a professional manner.
2. Make a written record of the date, time and nature of the incident and the names of any witnesses.
3. Immediately report the incident to the Human Relations Officer, Human Resource Manager, their supervisor, or their manager. All incidents of harassment and discrimination should be reported immediately regardless of whether or not the employee addressed the incident with the offending party.
4. To initiate a formal investigation into an alleged violation of this policy, employees must file a Harassment and Discrimination Complaint Form with the Human Resource Manager or Human Relations Officer. Human Resources can assist the complainant in completing the Harassment and Discrimination Complaint Form. To ensure a prompt and thorough investigation, the complainant should provide as many details as possible.
5. Charges of unlawful discrimination or sexual harassment may also be filed with the Missouri Commission on Human Rights within 180 days of the most recent unlawful act.

#### Management Responsibilities

Harassment and discrimination is a violation of federal and state law and cannot legally be ignored or hidden. All managers/supervisors are responsible for:



## POLICY STATEMENT

<b>Subject: Harassment and Discrimination Policy</b>	<b>Issued:</b>	<b>Policy Section:</b> HR
	<b>Revised:</b> 5/08	<b>Page:</b> 4 of 5

1. Immediately reporting all incidents of harassment or discrimination to the Human Relations Officer or Human Resource Manager whether or not a written complaint is received.
2. Taking steps to maintain a work environment free of harassment and discrimination and for taking corrective action if such incidents occur.

### Human Resources

Upon receiving a complaint or notification of an incident possibly involving harassment or discrimination, Human Resources will be responsible for:

1. Ensuring that both the individual filing the complaint and the accused individual are aware of the seriousness of the allegations being made;
2. Explaining the Harassment and Discrimination Policy as well as the investigation procedures to both the complainant and the respondent;
3. Exploring informal means of resolving complaints, depending on the seriousness of the charges;
4. Notifying the police if criminal activities are alleged;
5. Arranging for an investigation of the alleged harassment or discrimination in a timely fashion and the preparation of a written report; and
6. Notifying the complainant of the findings in writing. However, no details about the nature or extent of any disciplinary or corrective actions will be disclosed to the complainant(s) and/or witness(es) unless there is a compelling reason such as the personal safety of the complainant.

### **Remedial Action**

1. Appropriate remedial action will be taken to remove all forms of harassment or discrimination.
2. Violating this policy may result in reprimand, suspension, demotion or dismissal.
3. All employees are required to cooperate with any investigation of situations of which they have knowledge. Any employee who impedes an investigation or provides false information may be subject to disciplinary action.

### **Retaliation**

1. Any employee who in good faith reports incidents of harassment or discrimination, or who participates in a related investigation should not experience retaliation as a result.
2. Any employee who believes they have been retaliated against should immediately inform his/her supervisor or Human Resources.



## POLICY STATEMENT

<b>Subject: Harassment and Discrimination Policy</b>	<b>Issued:</b>	<b>Policy Section:</b> HR
	<b>Revised:</b> 5/08	<b>Page:</b> 5 of 5

3. Any employee who retaliates against another employee for filing or participating in an investigation of harassment or discrimination may be subject to disciplinary action.

### **Confidentiality**

1. All inquiries, complaints, and investigations are treated confidentially. Information is revealed strictly on a need to know basis. Information contained in a formal complaint is kept confidential and maintained in secure files.



## POLICY STATEMENT

<b>Subject: Accommodation</b>	<b>Issued:</b> 02/20/09	<b>Policy Section:</b> HR
	<b>Revised:</b>	<b>Page:</b> 1 of 3

It is the policy of the Department of Economic Development (DED) to comply with the Americans with Disabilities Act. DED is committed to the fair and equal employment of people with disabilities. DED does not discriminate against qualified job applicants or employees with disabilities with regard to job application procedures, hiring, employee compensation, advancement, training, discharge or other terms, conditions and privileges of employment.

Job applicants and employees with disabilities shall be provided reasonable employment-related accommodations when necessary, unless the accommodation would impose an undue hardship. This policy provides guidelines for employees and job applicants who wish to apply for reasonable accommodations with DED.

### Resources

- U. S. Equal Employment Opportunity Commission, Chapter XIV – Part 1630 – Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act: <http://www.eeoc.gov>

### Definitions

*Disability* – means, with respect to an individual,

- A physical or mental impairment that substantially limits one or more of the major life activities of such individual;
- A record of such an impairment; or
- Being regarded as having such an impairment.
- Refer to §1630.3 for exceptions to this definition.

*Essential Functions* – *In general.* The term *essential functions* means the fundamental job duties of the employment position the individual with a disability holds or desires.

- The term “essential functions” does not include the marginal functions of the position.
- Refer to §1630.2 for additional information regarding essential functions.

*Major Life Activities* – means functions such as caring for oneself, performing manual tasks, walking seeing, hearing, speaking, breathing, learning, and working.



## POLICY STATEMENT

<b>Subject: Accommodation</b>	<b>Issued:</b> 02/20/09	<b>Policy Section:</b> HR
	<b>Revised:</b>	<b>Page:</b> 2 of 3

*Reasonable accommodation* – The term *reasonable accommodation* means;

- Modifications or adjustments to a job application process that enable a qualified applicant with a disability to be considered for the position such as qualified applicant desires; or
- Modifications or adjustments to the work environment, or to the manner or circumstances under which the position held or desired is customarily performed, that enable a qualified individual with a disability to perform the essential functions of that position; or
- Modifications or adjustments that enable a covered entity’s employee with a disability to enjoy equal benefits and privileges of employment as are enjoyed by its other similarly situated employees without disabilities.
- Refer to §1630.2 for additional information regarding “reasonable accommodation”.

*Undue hardship* – *In general. Undue hardship* means, with respect to the provision of an accommodation –

- Significant difficulty or expense incurred by a covered entity, when considered in light of the factors set forth in paragraph (p)(2) of this section (§1630.2).
- Refer to §1630.2 for additional information regarding “undue hardship”.

### Accommodation Request Procedure for Employees:

1. Employees requesting an accommodation will need to complete the Accommodation Request form and submit it, along with medical documentation to support the request, to Human Resources.
2. In an effort to determine if the employee is a qualified individual with a disability and to evaluate the request for an accommodation Human Resources may:
  - Discuss the requested accommodation with the employee.
  - Discuss the purpose and essential functions of the particular job involved with the supervisor/manager and the employee.
  - Identify/evaluate potential accommodations and assess the effectiveness each would have in allowing the individual to perform the essential functions of the job. While an individual’s preference will be given consideration, DED is free to choose among equally effective accommodations and may choose the one that is less expensive or easier to provide.
  - Review undue hardships by considering and discussing with the Division Director.
3. Human Resources will provide a decision regarding the employees request for a reasonable accommodation to the employee within 30 days of receiving all necessary documentation/information.



## POLICY STATEMENT

<b>Subject: Accommodation</b>	<b>Issued:</b> 02/20/09	<b>Policy Section:</b> HR
	<b>Revised:</b>	<b>Page:</b> 3 of 3

### Accommodation Request Procedure for Job Applicants:

1. The job applicant shall inform Human Resources of the need for an accommodation in writing.
2. Human Resources will discuss the needed accommodation and possible alternatives with the applicant.
3. Human Resources will make a decision regarding the request for accommodation and, if approved, take the necessary steps to see that the accommodation is provided.

### Funding for Accommodations:

Funding for accommodations that do not cause an undue hardship must be agreed to and approved by the Division Director.

### Employee Appeal Process:

- Employees who are dissatisfied with the decision(s) pertaining to his/her accommodation request may file an appeal with Human Resources within 30 days of the decision for a final decision.
- The Accommodation Request Appeal form may be found at <http://intra.ded.state.mo.us/index.cfm> or by contacting Human Resources at (573) 751-4162.
- If the employee believes the decision is based on discriminatory reasons, they may file a complaint through the agency's complaint procedure.