

IX. PERSONNEL

A. EQUAL OPPORTUNITY

It is the policy of the Court of Appeals of Georgia to provide equal opportunity for employment to all employees and applicants for employment on a non-discriminatory basis. No person shall, on the basis of race, color, religion, national origin, age, sex, or mental or physical handicap be excluded from employment by, participation in, be deprived of, or be subject to discrimination. It is the policy of the Court of Appeals of Georgia to provide equal opportunity for employment, compensation, promotion, training, and other conditions of employment, on the basis of assessed qualifications, responsibility level and demonstrated performance.

B. SALARIES

1. As determined by the court and legislature. Categories by experience are generally in line with the State Merit System. "Experience" means years since admission to any Bar together with active practice of law and service as staff attorneys of this Court or the Supreme Court. (Source of this sentence: Order of 9/30/64, as stated in Minute Book 15, p. 294) One-half of the salaries of the Reporter, Assistant Reporter, Assistant to the Reporter, and Reporter's Clerk, all as set by the Supreme Court, shall be paid by the Court of Appeals.

The salaries of the staff attorneys and of the Deputy Clerk shall be the same as those respective positions in the Supreme Court insofar as possible. The salaries of Research Associates (summer interns) shall be set by the Court.

2. The following procedure shall be followed for any salary adjustment for Clerk's Office personnel and floating administrative assistants which is not a regular salary scale adjustment, a cost of living increase, merit increase or the like.
 - a. The Clerk/Court Administrator shall present the judge in charge of the Clerk's Office with a report stating the requested salary adjustment and the reasons therefore.
 - b. The report shall contain a work history and salary history of the employee while at the Court of Appeals.
 - c. The Fiscal Officer shall present the Judge in charge of the Clerk's Office with a complete fiscal history of the employee, a complete leave history of the employee and a fiscal note stating whether or not the Court has funds available for any salary increase and from which source or sources those funds are available.

NEW EMPLOYEE ORIENTATION GUIDELINE

The judge hiring the employee, the fiscal officer and/or the clerk/court administrator where appropriate, should direct new employees to the Internal Operations Manual and the Rules of the Court of Appeals for specifics about the court and the court's fiscal policies. Also, new employees should be oriented on the role of the judiciary; the important part each employee plays in fulfilling the court's public service role; the court's chain of command; each person's area of responsibility; and the following:

1. Confidentiality.
2. Office hours.
3. Outside employment and activities, including political involvement.
4. Role of summer research associates.
5. Use of Lexis, Westlaw, Georgia Law on Disc, Shepard's, Shepard's on CD Rom, telephone, copy machine, postage machine, and court stationery.
6. Method for ordering supplies.
7. Handling of transcripts and briefs, e.g., no writing on briefs or transcripts.
8. Judge's preferences as to opinion drafting.
9. No smoking policy.
10. Health, life insurance and retirement benefits.
11. Punctuality, sick leave, vacation, holidays, lunch breaks, absenteeism.
12. Parking arrangements.
13. Space allocation for staff attorneys.
14. Staff attorneys.
15. Continuing legal education.
16. Travel reimbursement.
17. Opinion drafting.
18. Proper attire.

No mention of equal opportunity policies here.

Q. COURT PARKING POLICY

The Court of Appeals now controls the parking spaces for its employees. All spaces are located in the Judicial-Old Labor, Trinity-Washington and Judicial-Old Labor Courtyard parking. Spaces that once were assigned to individuals by Georgia Building Authority (GBA) are now under the control of the Court.

The following parking facility procedures will be administered by the Chief Judge or his/her designee:

1. All space assignments and records will be maintained by the Court.
2. Those individuals who transferred their parking space from their names to the Court of Appeals have been assured that they can continue to use those spaces originally assigned to them until they

Employees are responsible for preserving their cards from loss and following the rules of GBA relative to replacement. Even though buildings are protected by security screening measures, employees are responsible for their personal belongings .

Employees must surrender all room keys and security /identification badges immediately upon termination of employment.

Nepotism, Discrimination or Harassment

A. Nepotism

Any person who is related by blood or marriage to a sitting judge on the Court of Appeals is ineligible for employment by the Court or any of its offices.

The employment of an individual who is a relative of another Court of Appeals employee by blood or marriage shall be discouraged. Such relationship shall not be an automatic barrier to employment, but shall require the approval of the Clerk in each case. Willful and intentional failure to disclose such relationship may be cause for disciplinary action.

These policies shall not apply to any employees and their relatives by blood or marriage who were employed by the court on April 1, 1993.

B. Equal Opportunity

It is the policy of the Court of Appeals to provide equal opportunity for employment and the benefits of employment based on performance on a non-discriminatory basis. (IOM, page 17)

C. Discrimination or Harassment

Discrimination or harassment based on race, color, religion, sex, age, disability, or national origin will not be tolerated. Sexual harassment, subtle or otherwise, shall not be tolerated. Violators of this harassment policy are subject to disciplinary action including termination and/or referral for criminal prosecution. Malicious or frivolous complaints of sexual harassment shall result in corrective or disciplinary action against the accuser. Voluntary compliance with this harassment policy is an indication of professionalism and will create a healthy environment for all.

Sexual harassment is defined as "any unwelcome sexual advances, requests for sexual favors and other verbal or physical conduct of a sexual nature." It occurs when:

(1) Sexual favors are demanded " as a term or condition of employment." For example, a supervisor demands that a subordinate employee sleep with the supervisor or the subordinate employee will be fired.

(2) Sexual demands, once made, are refused and the employee faces an adverse consequence for that refusal. For example, an employee rejects the sexual advance of the employee's supervisor and is demoted or later fired for the refusal.

(3) The acts of verbal abuse, physical touching, sexual demands or other conduct of a sexual nature are so pervasive and persistent as to have "the effect of unreasonably interfering with an individual's work performance or creating an offensive and intimidating working environment" for an employee. For example, males tease and insult women in the workplace with obscene jokes, sexual innuendoes, or similar conduct which embarrass and offend the female employees.

An employee who believes they have been sexually harassed should attempt to resolve the problem with the person with whom there is a problem. If this is too difficult for the employee or proves ineffective, the victim should contact either the Clerk of Court or Chief Judge who will investigate the accusation and recommend to the Court the actions necessary to resolve the problem.

See CCA Sexual Harassment Policy dated _____.

Political Activity

Political activity on state time or property is absolutely prohibited and is subject to disciplinary action.

On the other hand, employees have the right to cast their vote, express their opinions, make political contributions and support the candidates of their choice. Employees should be mindful that they work in a government organization, and these activities should be conducted during their off duty hours only. Employees should regulate their activities to minimize the risk of conflict with their court duties and so those activities will not detract from the dignity of their office or the court.

(IOM page 19.)

No employee shall be required, coerced, expected, induced or encouraged as a condition of employment in any form whatsoever to make any contribution, loan, subscription, or assessment for any political purpose, and no employee shall use, seek, or promise to use his or her position or influence, directly or indirectly, in connection with the solicitation or receipt of any such contribution, loan, subscription, or assessment.

Performance Evaluation

Regular employees' job performance will be evaluated on an annual basis approximately 5 weeks prior to the employee's hiring anniversary date. The overall rating will be determinative of continued employment.

Employees may be hired on a probationary status. Probationary employees will be evaluated 3 months from the hiring anniversary date and again at the end of the fifth month. The overall rating of the second evaluation will be determinative of a recommendation that the employee be retained and changed to the status of a regular employee.

(2) Second offense	10 days suspension w/o pay	Dismissal
(3) Third offense	Dismissal	

12. Loafing

Offense Number	Minimum	Maximum
(1) First offense	Written warning	1 day suspension w/o pay
(2) Second offense	5 days suspension w/o pay	10 days suspension w/o pay
(3) Third offense	15 days suspension w/o pay	Dismissal

13. Mistreatment of the Public or Other Employees

A. Verbal Abuse

Offense Number	Minimum	Maximum
(1) First offense	Written warning	1 days suspension w/o pay
(2) Second offense	5 days suspension w/o pay	Dismissal
(3) Third offense	15 days suspension w/o pay	Dismissal

B. Sexual and Other Harassment

Offense Number	Minimum	Maximum
(1) First offense	5 days suspension w/o pay	Dismissal
(2) Second offense	Dismissal	

C. Sexual involvement or physical abuse.

First Offense - Dismissal

14. Political Activity

SEXUAL HARASSMENT POLICY

A Model for Georgia Courts

**Prepared by the
Supreme Court Committee for Gender Equality**

(Source: Minutes, June 1995 Banc Meeting)

Appendix 8

SEXUAL HARASSMENT POLICY
A Model for Georgia Courts

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SEXUAL HARASSMENT

I. PURPOSE

Court employees are entitled to work in an environment free from sexual harassment. The purpose of this policy is to achieve a workplace free from sexual harassment by establishing a procedure for submitting complaints regarding sexual harassment and for the investigation and resolution of those complaints.

II. SCOPE

This policy shall apply to all judicial and non-judicial employees. This policy governs the process for the filing, investigation, and resolution of a complaint. The policy does not govern the grievance and appeal procedure. This policy does not govern the discipline procedure.

III. SEXUAL HARASSMENT DEFINED

Discrimination or harassment based on race, color, religion, sex, age, disability, or national origin will not be tolerated in the courts. Sexual harassment is of particular concern to court management, and any form of sexual harassment will not be permitted. Sexual harassment is defined as "any sexual advances, requests for sexual favors or other verbal or physical conduct of a sexual nature, which is unwelcome." It occurs when:

- (1) Sexual favors are demanded "as a term or condition of employment." Example: A supervisor demands sexual favors from a subordinate and threatens with termination.
- (2) Sexual demands, once made, are refused and the employee faces an adverse consequence for that refusal. Example: An employee rejects the sexual advance of the supervisor, is demoted and later fired for the refusal.
- (3) The acts of verbal abuse, physical touching, sexual demands or other conduct of a sexual nature are so pervasive and persistent as to have "the effect of unreasonably interfering with an individual's work performance or creating an offensive and intimidating working environment" for an employee. Example: Persons tease and insult others in the workplace with obscene jokes, sexual innuendoes or similar conduct designed to embarrass and offend.

Sexual harassment, subtle or otherwise, shall not be tolerated. Voluntary compliance with the policy and procedure outlined below will increase professionalism and create a healthy environment for all. Malicious or frivolous complaints of sexual harassment shall result in corrective or disciplinary action against the accuser.

IV. POLICY

- A. 1. No employee shall engage in conduct constituting sexual harassment. Any employee determined after investigation to have engaged in conduct constituting sexual harassment shall be disciplined.
2. Supervisors who knew or should have known of incidents of sexual harassment and failed to take appropriate action in accordance with this policy shall be disciplined.
3. An employee who takes reprisals against another employee for (1) filing a complaint alleging sexual harassment or (2) for appearing as a witness for any party in a sexual harassment complaint shall be disciplined. An employee who submits a fraudulent or bad faith claim of sexual harassment shall be disciplined.
4. The process for filing complaints and for investigation and resolution of complaints shall be free from bias and intimidation.
5. Conduct occurring off duty or off court premises may constitute sexual harassment.
6. Any judicial or non-judicial employee who has reason to believe that another judicial or non-judicial employee is the victim of sexual harassment should encourage the victim to submit a complaint. In the alternative, the judicial or non-judicial employee may inform a designated person of the existence of a possible complaint.

V. PROCEDURE

- A. Designated Person.
 1. The judge of each court shall designate a person on the staff to receive complaints of sexual harassment as well as a person to serve in such position in the event the complaint is against the person designated to hear the complaints. The Executive Director of the Office of Gender Equality, in consultation with the court administrator for each district, shall appoint from among the employees of that district a designated person for each judicial administrative district. The Executive Director, in consultation with the Director of the Administrative Office of the Courts, shall appoint from among the employees of the Administrative Office of the Courts a designated person for that office. The names of the designated persons shall be published as part of the policy of the court, district or office from which designated.

2. The person selected as designated person shall display through interest, education, and experience the ability to mediate and negotiate the settlement of disputes among employees. The duties of the designated person shall be added to the job description of the person selected.
3. The Executive Director, in consultation with the Executive Director of the Institute of Continuing Judicial Education, shall develop a program for the initial and continuing education of designated persons in the skills necessary for the successful resolution of complaints of sexual harassment and in the techniques of witness interviewing.

B. Informal Process for Submitting a Complaint of Sexual Harassment Against a Court Employee

1. An employee who is the victim of sexual harassment should inform the harasser that the behavior is unwelcome or submit a complaint to a designated person.
 - a. Submitting the complaint to the designated person for the district in which the victim is employed is preferred. A complaint may be submitted to any other designated person. The designated person for the district shall provide to employees the names, addresses, and telephone numbers of all designated persons.
2. The designated person shall receive and investigate informal complaints of sexual harassment, facilitate communication between the parties, and resolve the complaint.

C. Formal Process for Submitting a Complaint of Sexual Harassment Against a Court Employee

1. A formal complaint shall be written. Upon request the designated person shall assist the complainant in submitting a written complaint. A formal complaint should be submitted if:
 - a. the informal process does not resolve the complaint
 - b. the complaint is a second complaint against the same harasser after the harasser had been informed that the behavior was unwelcome, whether or not submitted by the same complainant; or
 - c. in the discretion of the designated person or the complainant, the conduct complained of is egregious. In determining the seriousness of the conduct the designated person shall consider but is not bound by the request of the complainant.

2. The designated person shall receive formal complaints of sexual harassment and refer them to the designated person of the district of the complainant's employment or the designated person at the Administrative Office of the Courts. If the designated person of the district is the alleged harasser, the designated person shall refer the complaint to the Director of the Administrative Office of the Courts. If the complainant is employed by the Administrative Office of the Courts, the designated person shall refer the formal complaint to the three-member panel appointed by the Judicial Council. Upon referral, the designated person shall provide the alleged harasser with a copy of the written complaint.
3. The designated person of the district shall investigate the complaint and determine whether the conduct complained of occurred and whether the conduct constitutes sexual harassment. The designated person of the district shall prepare a written report of the nature of the investigation and the findings and conclusions of the investigation. The report shall be completed within twenty days of the referral from the designated person. The court administrator shall provide a copy of the report to the parties.
4. The designated person of the district may recuse himself or herself from the investigation and determination if the designated person of the district is the immediate supervisor of either party, is a personal friend or member of the immediate family of either party, is so closely involved in the matter that the impartiality of the investigation or determination may be questioned, or determines that the time required for the investigation and determination is greater than the designated person of the district can provide.
5. If the designated person of the district does not conduct the investigation and determination, the designated person of the district shall refer the matter within three days to a three member panel appointed by the designated person of the district for that purpose. The designated person of the district shall notify all parties of the referral.
6. The panel shall investigate the complaint and determine whether the conduct complained of occurred and whether the conduct constitutes sexual harassment. The panel shall prepare a written report of the nature of the investigation and the findings and conclusions of the investigation. The panel may include in the report a recommendation regarding discipline. The panel shall complete the report within twenty days of the appointment of the panel. The panel shall file the report with the designated person of the district and provide a copy to the parties. Provided, however, that this time period may be extended by the panel for a reasonable time for good cause shown.

7. At the conclusion of the investigation and determination the designated person of the district shall impose discipline in accordance with the applicable local policies and procedures regarding discipline.
 8. Either party may submit a grievance regarding the findings of the report by submitting the grievance to the Judicial Council of Georgia. Only the person disciplined may submit a grievance regarding such discipline.
- D. Process for Submitting a Complaint of Sexual Harassment Against a Person not Employed by the Courts.
1. The process for submitting a complaint against a person who is not an employee of the courts is the same as the process for a complaint against a judge with the exception that the three judges on the panel be from the same Administrative Judicial District.
 2. The designated person and, upon referral, the court administrator shall use all reasonable means to resolve the complaint, including referring the complaint to the employer of the harasser or to the regulatory agency to which the harasser is subject.
- E. Informal Process for Submitting a Complaint of Sexual Harassment Against a Judge.
1. An employee who is the victim of sexual harassment should inform the harasser that the behavior is unwelcome or should submit a complaint to a designated person.
 - a. Submitting the complaint to the designated person for the circuit in which the victim is employed is preferred. A complaint may be submitted to any other designated person.
 2. The designated person shall receive informal complaints of sexual harassment and inform the chief judge of the existence of the complaint. If the chief judge is the alleged harasser or if the alleged harasser is the judge of a single judge circuit, the designated person shall notify the Director of the Administrative Office of the Courts or designee. In conjunction with the chief judge or the administrative judge, the designated person shall facilitate communication between the parties and resolve the complaint.
- F. Formal Process for Submitting a Complaint of Sexual Harassment Against a Judge.
1. A formal complaint shall be written. Upon request the designated person shall assist the complainant in submitting a written complaint. A formal complaint should be submitted if:

- a. the informal process does not resolve the complaint;
 - b. the complaint is a second complaint against the same harasser after the harasser had been informed that the behavior was unwelcome, whether or not submitted by the same complainant; or
 - c. in the discretion of the designated person or the complainant, the conduct complained of is egregious. In determining the seriousness of the conduct the designated person shall consider but is not bound by the request of the complainant.
2. The designated person shall receive formal complaints of sexual harassment and refer them to the chief judge of the circuit of the complainant's employment. If the chief judge is the alleged harasser or if the alleged harasser is the judge of a single judge circuit, the designated person shall notify the Director of the Administrative Office of the Courts or designee. Upon referral, the designated person shall provide the alleged harasser and the court administrator with a copy of the written complaint.
 3. The chief judge, the administrative judge, or the Director of the Administrative Office of the Courts shall refer the complaint to the Judicial Council. The Council shall appoint a three member panel to investigate the complaint and determine whether the conduct complained of occurred and whether the conduct constitutes sexual harassment. The panel shall prepare a written report of the nature of the investigation and the findings and conclusions of the investigation. The panel may include in the report a recommendation regarding discipline. The panel shall file the report with the Council within twenty days of the appointment of the panel and shall provide a copy of the report to the parties, the chief judge, and the court administrator. Provided, however, that this time period may be extended by the panel for a reasonable time for good cause.
 4. The chief judge or the Director of the Administrative Office of the Courts shall take appropriate disciplinary action against the harasser.
 5. The judge may petition to have the complaint reviewed by the Judicial Council. The complainant may petition to have the complaint reviewed by the Judicial Qualifications Commission.

G. The Investigative Process.

1. Informal Process re Sections V.B. and V.E. -- The investigation conducted by the designated person is informal. The principal objective of the designated person is not to determine whether sexual harassment occurred in the past but rather to govern future conduct. The designated person shall first talk separately with the complainant and then with the alleged harasser.

The designated person should not talk with witnesses identified by either party unless necessary. The designated person may talk with the parties jointly.

2. Formal Process re Sections V.C. and V.F. — The investigation by the designated person of the district or the three member panel is formal and shall include an interview of the parties and any witnesses identified by the parties. Other witnesses may be called by the official or body conducting the investigation. In order to provide a recommendation regarding discipline, the official or body shall consider discipline imposed in other cases involving similar circumstances.

H. Investigative Panel

1. The investigative panel selected by the designated person of the district shall consist of three members from among the designated persons. No designated person involved in the complaint under investigation may serve on the panel. No designated person supervised directly or indirectly by the designated person of the district may serve on the panel. The three member panel selected by the Judicial Council shall be chosen from its members and/or staff of the Administrative Office of the Courts. The panel shall not be comprised exclusively of one sex. The members of the panel shall select a chair from among themselves.

I. Records.

1. All written complaints, notices, correspondence, reports, and other documents regarding a formal complaint of sexual harassment shall be maintained in a file by the Executive Director of the Office of Gender Equality. The file shall be considered a private record of personnel matters involving personnel policy and procedures.
2. All records of complaints found to be without merit shall be destroyed. Provided, however, that records of complaints found to be without merit but involving the complainant shall not be destroyed but shall be retained as part of the disciplinary file in that action.
3. Records regarding discipline imposed as a result of a complaint of sexual harassment or violation of this policy shall be retained in the Office of Gender Equality.

Draft Revision
COURT OF APPEALS OF GEORGIA
SEXUAL HARASSMENT POLICY
March 8, 2005

I. PURPOSE

Court employees are entitled to work in an environment free from sexual harassment. The purpose of this policy is to achieve a workplace free from sexual harassment by establishing a procedure for submitting complaints regarding sexual harassment and for the investigation and resolution of those complaints.

II. SCOPE

This policy shall apply to all judicial and non-judicial employees. This policy governs the process for the filing, investigation, and resolution of a complaint. The policy does not govern the grievance and appeal procedure. This policy does not govern the discipline procedure.

III. SEXUAL HARASSMENT DEFINED

Discrimination or harassment based on race, color, religion, sex, age, disability, or national origin will not be tolerated in the courts. Sexual harassment is of particular concern to court management and any form of sexual harassment will not be permitted. Sexual harassment is defined as "any sexual advances, requests for sexual favors or other verbal or physical conduct of a sexual nature, which is unwelcome." It occurs when:

- (1) Sexual favors are demanded "as a term or condition of employment." Example: A supervisor demands sexual favors from a subordinate and threatens the subordinate with termination.
- (2) Sexual demands, once made, are refused and the employee faces an adverse consequence for that refusal. Example: An employee rejects the sexual advance of the supervisor, is demoted and later fired for the refusal.
- (3) The acts of verbal abuse, physical touching, sexual demands or other conduct of a sexual nature are so pervasive and persistent as to have "the effect of unreasonably interfering with an individual's work performance or creating an offensive and intimidating working environment" for an employee. Example: Persons tease and insult others in the workplace with obscene jokes, sexual innuendoes or similar conduct designed to embarrass and offend.

Sexual harassment, subtle or otherwise, shall not be tolerated. Voluntary compliance with the policy and procedure outlined below will increase professionalism and create a healthy environment for all. Malicious or frivolous complaints of sexual harassment shall result in

corrective or disciplinary action against the accuser.

IV. POLICY

~~A.~~ 1. No employee shall engage in conduct constituting sexual harassment. Any employee determined after investigation to have engaged in conduct constituting sexual harassment shall be disciplined.

~~2.~~ Supervisors who knew or should have known of incidents of sexual harassment and failed to take appropriate action in accordance with this policy shall be disciplined.

~~3.~~ An employee who takes reprisals against another employee for (1) filing a complaint alleging sexual harassment or (2) for appearing as a witness for any party in a sexual harassment complaint shall be disciplined. An employee who submits a fraudulent or bad faith claim of sexual harassment shall be disciplined.

~~4.~~ The process for filing complaints and for investigation and resolution of complaints shall be free from bias and intimidation.

~~5.~~ Conduct occurring off duty or off court premises may constitute sexual harassment.

~~6.~~ Any judicial or non-judicial employee who has reason to believe that another judicial or non-judicial employee is the victim of sexual harassment should encourage the victim to submit a complaint. In the alternative, the judicial or non-judicial employee may should inform ~~a~~the designated person of the existence of a possible complaint.

V. PROCEDURE

A. Designated Person.

- ~~1. The judge of each court shall designate a person on the staff to receive complaints of sexual harassment as well as a person to serve in such position in the event the complaint is against the person designated to hear the complaints. The executive Director of the Office of Gender Equality in consultation with the court administrator for each district, shall appoint from among the employees of that district a designated person for each judicial administrative district. The Executive Director, in consultation with the Director of the Administrative Office of the Courts, shall appoint from among the employees of the Administrative Office of the Courts a designated person for that office. The names of the designated persons shall be published as part of the policy of the court, district, or office from which designated. The Court~~

has designated the Clerk/Court Administrator to receive complaints of sexual harassment. In the event the complaint is against the person designated to hear complaints, the Chief Judge shall serve in the Clerk/Court Administrator's place. The Clerk/Court Administrator will inform the Chief Judge of any informal or formal complaints made against a judge or employee of the Court. If the complaint is made against the Chief Judge, the Clerk/Court Administrator will inform the most senior judge of the court other than the Chief Judge of the complaint.

~~2. The person selected as designated person shall display through interest, education, and experience the ability to mediate and negotiate the settlement of disputes among employees. The duties of the designated person shall be added to the job description of the person selected.~~

2. The Court shall permit the Clerk/Court Administrator to attend from time to time continuing education programs for developing and maintaining the skills necessary for interviewing witnesses and successful resolution of sexual harassment complaints. The Clerk/Court Administrator shall share this information with the appropriate judges of the court.

~~3. The Executive Director, in consultation with the Executive Director of the Institute of Continuing Judicial Education, shall develop a program for the initial and continuing education of designated persons in the skills necessary for the successful resolution of complaints of sexual harassment and in the techniques of witness interviewing.~~

B. Informal Process for Submitting a Complaint of Sexual Harassment Against a Court Employee or Judge

1. An employee who is the victim of sexual harassment should inform the harasser that the behavior is unwelcome or submit a complaint to the person designated in A ~~(2)~~ (1) above.

~~a. Submitting the complaint to the designated person for the district in which the victim is employed is preferred. A complaint may be submitted to any other designated person. The designated person for the district shall provide to the employees the names, addresses, and telephone numbers of all designated persons.~~

2. The Clerk/Court Administrator or Chief Judge as appropriate under A (1) above shall investigate an informal complaint of sexual harassment, facilitate communication between the parties, and resolve the complaint.

C. Formal Process for Submitting a Complaint of Sexual Harassment Against a Court

Employee or Judge

1. A formal complaint shall be written. Upon request, the designated person shall assist the complainant in submitting a written complaint. A formal complaint should be submitted if:
 - a. the informal process does not resolve the complaint;
 - b. the complaint is a second complaint against the same harasser after the harasser had been informed that the behavior was unwelcome, whether or not submitted by the same complainant; or
 - c. in the discretion of the designated person, or the complainant, the conduct complained of is egregious. In determining the seriousness of the conduct the designated person shall consider but is not bound by the request of the complainant.

2. The designated person shall receive formal complaints of sexual harassment and refer them to the Chief Judge or if the complaint is against the Chief Judge to the most senior judge other than the Chief Judge. ~~designated person of the district of the complainant's employment or the designated person at the Administrative Office of the Courts. If the designated person of the district is the alleged harasser, the designated person shall refer the complaint to the Director of the Administrative Office of the Courts. If the complainant is employed by the Administrative Office of the Courts, The Chief Judge or, if necessary, the most senior judge in conjunction with the Clerk/Court Administrator (unless the Clerk Court Administrator is the alleged harasser), the designated person shall refer the formal complaint to the~~ shall appoint a three member panel to handle the formal complaint, appointed by the Judicial Council. ~~Upon referral, the~~ The designated person shall provide the alleged harasser with a copy of the written complaint.

3. ~~The designated person of the district shall investigate the complaint and determine whether the conduct complained of occurred and whether the conduct constitutes sexual harassment. The designated person of the district shall prepare a written report of the nature of the investigation and the findings and conclusions of the investigation. The report shall be completed within twenty days of the referral from the designated person. The court administrator shall provide a copy of the report to the parties.~~

4. ~~The designated person of the district may recuse himself or herself from the investigation and determination if the designated person of the district is the~~

~~immediate supervisor of either party, is a personal friend or member of the immediate family of either party, is so closely involved in the matter that the impartiality of the investigation or determination may be questioned, or determines that the time required for the investigation and determination is greater than the designated person the district can provide.~~

~~5. If the designated person of the district does not conduct the investigation and determination, the designated person of the district shall refer the matter within three days to a three member panel appointed by the designated person of the district for that purpose. The designated person of the district shall notify all parties of the referral.~~

6. The panel shall investigate the complaint and determine whether the conduct complained of occurred and whether the conduct constitutes sexual harassment. The panel shall prepare a written report of the nature of the investigation and the findings and conclusions of the investigation. The panel shall complete the report within twenty days of the appointment of the panel provided, however, that this time period may be extended by the panel for a reasonable time for good cause shown. The panel shall file the report with the designated person of the district Clerk/Court Administrator and provide a copy to the parties, the Chief Judge and the Court's Personnel Office. Provided; however, that this time period may be extended by the panel for a reasonable time for good cause shown.

4. 7. At the conclusion of the investigation and determination, the designated person of the district Court may impose discipline in accordance with the applicable local policies and procedures regarding discipline.

~~8. Either party may submit a grievance regarding the findings of the report by submitting the grievance to the Judicial Council of Georgia. Only the person disciplined may submit a grievance regarding such discipline. If the complaint was made against a judge of the Court, the complainant may request the Judicial Qualifications Commission to determine whether there has been a violation of judicial ethics. (From F. 5.)~~

D. Process for Submitting a Complaint of Sexual Harassment Against a Person not Employed by the Courts.

~~1. The process for submitting a complaint against a person who is not an employee of the courts is the same as the process for a complaint against a judge with the exception that the three judges on the panel be from the same Administrative Judicial District. An employee who is the victim of sexual~~

harrassment should inform the harasser that the behavior is unwelcome or submit a complaint to the person designated in A (1) above. Once a complaint has been submitted to the designated person, he or she shall use all reasonable means to resolve the complaint including communication with the alleged harasser and referring the complaint to the employer of the alleged harasser or to the regulatory agency to which the alleged harasser is subject.
(Used parts of A and D 2in this revision)

- ~~2. The designated person and, upon referral, the court administrator shall use all reasonable means to resolve the complaint, including referring the complaint to the employer of the harasser or to the regulatory agency to which the harasser is subject.~~

F. Delete this whole section on Complaints versus Judge. Now combined into C.
See old version for former language of this section.

~~F. G. The Investigative Process~~

1. ~~Informal Complaint Process re Sections V. B. and V. E.~~—The investigation conducted by the designated person is informal. The principal objective of the designated person is not to determine whether sexual harassment occurred in the past but rather to govern future conduct. The designated person shall first talk separately with the complainant and then with the alleged harasser. The designated person should not talk with witnesses identified by either party unless necessary. The designated person may talk with the parties jointly.
2. ~~Formal Complaint Process re Sections V. C. and v. F.~~—The investigation by the ~~designated person of the district or the three member panel~~ is formal and shall include an interview of the parties and any witnesses identified by the parties. Other witnesses may be called by the ~~official or~~ body conducting the investigation. In order to provide a recommendation regarding discipline, the ~~official or~~ body investigating the complaint shall consider the Court policies on discipline and the discipline imposed in other cases involving similar circumstances.

~~G. H. Investigative Panel~~

- ~~1. The investigative panel selected by the designated person of the district shall consist of three members from among the designated persons. No designated person directly involved in the complaint under investigation may serve on~~

~~the panel. No designated person supervised directly or indirectly by the designated person of the district may serve on the panel. The three member panel selected by the Judicial Council shall be chosen from its members and/or staff of the Administrative Office of the Courts. The panel shall not be comprised exclusively of one sex. The members of the panel shall select a chairperson from among themselves.~~

~~H.I. Records~~

1. All written complaints, notices, correspondence, reports, and other documents regarding a formal complaint of sexual harassment shall be maintained in a file by the Court Personnel Office. The file shall be considered a private record of personnel matters involving personnel policy and procedures.
2. All records of informal complaints found to be without merit shall be destroyed. ~~Provided, however, that~~ However, records of complaints found to be without merit, but in which the complainants have been disciplined involving the complainant shall not be destroyed but shall be retained as part of the complainant's the disciplinary file in that action. *Records of court*
3. ~~Records regarding discipline imposed as a result of a complaint of sexual harassment or violation of this policy shall be retained in the Office of Gender Equality:~~

EQUAL EMPLOYMENT OPPORTUNITY

1. EEO Policy. The Company is committed to maintaining a work environment that is free of inappropriate or unlawful conduct. In keeping with this commitment, we will not tolerate harassment, discrimination or the unlawful treatment of employees by anyone, including any supervisor, co-worker, vendor, client or customer of the Company.

2. Prohibited Conduct. Harassment, discrimination and/or improper conduct consists of misconduct that includes unwelcome conduct, whether verbal, physical, or visual, that is based upon a person's protected status, such as sex, color, race, religion, national origin, age, disability or other protected group status or activity (e.g. opposition to prohibited discrimination or participation in the statutory complaint process) as provided for by law. This includes conduct by someone to another of the same gender. The Company will not tolerate conduct that affects tangible job benefits, that interferes unreasonably with an individual's work performance, or that creates an intimidating, hostile, or offensive working environment. No supervisor or Company employee has authority to engage in such conduct. If you feel you have been subject to the type of conduct prohibited by this policy, you must report this conduct. You are specifically authorized to bypass your supervisor and directly file an EEO complaint with the Human Resources Department as provided for in this policy. If you complain to your supervisor and no action is taken, you are directed to report the conduct as described below to the Human Resources Department. You should report any improper conduct before it becomes severe or pervasive and do not have to wait until it rises to the level of an unlawful action.

3. Sexual Harassment. Sexual harassment deserves special mention. Unwelcome sexual advances, requests for sexual favors, and other physical, verbal, or visual conduct based on sex constitute sexual harassment when (1) submission to the conduct is an explicit or implicit term or condition of employment; (2) submission to or rejection of the conduct is used as the basis for an employment decision; or (3) 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. Inappropriate conduct may include explicit sexual propositions, sexual innuendo, suggestive comments, sexually oriented "kidding" or "teasing," "practical jokes," jokes about gender-specific traits, foul or obscene language or gestures, displays of foul or obscene printed or visual material, and physical contact, such as patting, pinching, or brushing against another's body.

4. Complaint Procedure. All employees should help to assure that we avoid any form of unlawful or inappropriate treatment. If you feel that you have experienced or witnessed harassment,

discrimination or unlawful or inappropriate treatment, you are to notify immediately (preferably in writing within 24 hours) the Director of Department of Human Resources. The address and telephone number for the Human Resources Department is _____. If you are not contacted promptly about your complaint, you are to re-file it with the Director of Human Resources and also send a copy by certified mail or contact the Company's Chief Executive Officer at _____. The Company forbids retaliation against anyone who has made a complaint or provides information related to a complaint.

The Company will undertake an objective and appropriate review of any complaint. To the extent practicable and appropriate, the Company will keep any complaint and the terms of its resolution confidential. The Company will take corrective action as it determines is appropriate, including such discipline up to and including immediate termination of employment. The Company will undertake corrective action to stop inappropriate conduct before it rises to the level of an unlawful action. You will be notified as to the outcome of your complaint. If you have any questions about the status of your complaint, you should contact the Director of Human Resources at the above telephone number and address.

The Company recognizes that intentional or malicious false accusations of misconduct can have a serious effect on innocent men and women. Individuals falsely accusing another of misconduct will be disciplined in accordance with the nature and extent of his or her false accusation. The Company encourages any employee to raise questions he or she may have regarding misconduct or this policy with the Director of Human Resources or higher level officer.

Each employee should be aware they have the right to file a charge of discrimination with the Equal Employment Opportunity Commission (EEOC) or other state agency as provided by law. According to the EEOC, the deadline for filing any such charge runs from the last date of unlawful harassment, not from the date that the complaint to the Company is resolved.

I hereby acknowledge that I have received and have reviewed the EEO policy.

Employee Signature

Date

O.C.G.A. § 45-19-29

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*** Current Through the 2008 Regular Session ***
*** Annotations Current Through April 4, 2008 ***

TITLE 45. PUBLIC OFFICERS AND EMPLOYEES
CHAPTER 19. LABOR PRACTICES
ARTICLE 2. FAIR EMPLOYMENT PRACTICES

Commission on Equal Opportunity

Go to the Georgia Code Archive Directory

O.C.G.A. § 45-19-29 (2008)

§ 45-19-29. Unlawful practices generally

It is an unlawful practice for an employer:

(1) To fail or refuse to hire, to discharge, or otherwise to discriminate against any individual with respect to the individual's compensation, terms, conditions, or privileges of employment because of such individual's race, color, religion, national origin, sex, disability, or age;

(2) To limit, segregate, or classify his employees in any way which would deprive or tend to deprive an individual of employment opportunities or otherwise adversely affect an individual's status as an employee because of such individual's race, color, religion, national origin, sex, disability, or age; or

(3) To hire, promote, advance, segregate, or affirmatively hire an individual solely because of race, color, religion, national origin, sex, disability, or age, but this paragraph shall not prohibit an employer from voluntarily adopting and carrying out a plan to fill vacancies or hire new employees in a manner to eliminate or reduce imbalance in employment with respect to race, color, disability, religion, sex, national origin, or age if the plan has first been filed with the administrator for review and comment for a period of not less than 30 days.

HISTORY: Ga. L. 1978, p. 859, § 3; Ga. L. 1983, p. 1097, § 1; Ga. L. 1984, p. 22, § 45; Ga. L. 1995, p. 1302, § 10.

NOTES:

CROSS REFERENCES. --Constitutional guarantee of freedom of religion, Ga. Const. 1983, Art. I, Sec. I, Para. III and Para. IV. Discrimination in employment on basis of sex generally, Ch. 5, T. 34. Giving of preference to veterans, their widowed spouses, and dependents in the matter of employment in Department of Veterans Service, § 38-4-9.

LexisNexis 50 State Surveys, Legislation & Regulations

Affirmative Action Compliance

2. Civil Rights

JUDICIAL DECISIONS

O.C.G.A. § 45-19-36

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*** Current Through the 2008 Regular Session ***
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TITLE 45. PUBLIC OFFICERS AND EMPLOYEES
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O.C.G.A. § 45-19-36 (2008)

§ 45-19-36. Filing complaints of unlawful practice; action by administrator

(a) As used in this Code section, the term "respondent" means an employer charged with an alleged unlawful practice.

(b) An individual claiming to be aggrieved by an unlawful practice or another person on behalf of an individual claiming to be aggrieved by an unlawful practice may file with the administrator a written, sworn complaint stating that an unlawful practice has been committed setting forth the facts upon which the complaint is based and setting forth facts sufficient to enable the administrator to identify the employer charged. The administrator's staff shall promptly investigate the allegations of unlawful practice set forth in the complaint and, within 15 days of filing, shall serve the respondent with a copy of the complaint. The complaint shall be barred unless filed within 180 days after the alleged unlawful practice occurs.

(c) Within 90 days after the complaint has been filed, the administrator shall determine whether there is reasonable cause to believe the respondent has engaged in an unlawful practice. If it is determined that there is no reasonable cause to believe that the respondent has engaged in an unlawful practice, the administrator shall issue an order dismissing the complaint.

(d) Within ten days after receiving a copy of the order dismissing the complaint, the complainant may file with the administrator an application for reconsideration of the order. Upon such application, the administrator shall determine within 15 days whether there is reasonable cause to believe that the respondent has engaged in an unlawful practice. If it is again determined that there is no reasonable cause to believe that the respondent has engaged in an unlawful practice, the administrator shall issue an order dismissing the complaint and notifying the complainant that such complainant has the right to request a right to bring an action letter from the appropriate federal agency or petition for review in the appropriate superior court as provided for in Code Section 45-19-39.

(e) After investigation or after the review provided for in subsection (d) of this Code section, if the administrator determines that there is reasonable cause to believe that the respondent has engaged in an unlawful practice, then the administrator's staff shall first endeavor to eliminate the alleged unlawful practice by conference, conciliation, and persuasion. The terms of a conciliation agreement reached with a respondent may require the respondent to refrain from the commission of unlawful discriminatory practices in the future and make such further provisions as may be agreed upon between the administrator and the respondent. If a conciliation agreement is entered into, the administrator shall issue and serve on the complainant a final order stating its terms. Except for the terms of the conciliation agreement, neither the administrator nor any agent thereof shall make public without the written consent of the complainant and the respondent information concerning efforts in the particular case to eliminate an unlawful practice by

conference, conciliation, or persuasion, whether or not there is a determination of reasonable cause or a conciliation agreement.

(f) In the event the administrator determines that there is reasonable cause to believe that an agency or authority has engaged in an unlawful practice as defined in this article and the administrator's staff is unable to eliminate the alleged unlawful practice by conference, conciliation, and persuasion, the administrator shall refer the complaint to a special master as provided for in Code Section 45-19-37.

(g) At the expiration of one year from the date of a conciliation agreement and at other times in its reasonable discretion, the administrator's staff may investigate whether the terms of the agreement have been and are being complied with by the respondent. The administrator shall report the findings to the complainant and respondent. If the administrator finds reasonable cause to believe that the agreement has been breached, the complainant may seek enforcement of the agreement in the superior court of the county in which the alleged violation took place or in the county of the respondent's residence.

(h) The administrator shall issue to the complainant and the respondent, 90 days from the date the complaint was filed and every 30 days thereafter, a status report summarizing any action taken with respect to the complaint. The status reports required by this subsection shall be issued until final resolution of the complaint.

HISTORY: Ga. L. 1978, p. 859, §§ 12, 14; Ga. L. 1983, p. 1097, § 1; Ga. L. 1984, p. 22, § 45; Ga. L. 1985, p. 149, § 45; Ga. L. 1986, p. 10, § 45; Ga. L. 1989, p. 1210, § 1.

NOTES:

CODE COMMISSION NOTES. --Pursuant to Code Section 28-9-5, in 1987, deleted a comma between "employer" and "charged" in the first sentence in subsection (b).

LexisNexis 50 State Surveys, Legislation & Regulations

1. Affirmative Action Compliance

2. Civil Rights

JUDICIAL DECISIONS

REFUSAL TO TAKE POLYGRAPH EXAMINATION. --Dismissal of public employees from employment upon refusal to take a polygraph examination is permissible if the employee is informed: (1) that the questions will relate specifically and narrowly to the performance of official duties; (2) that the answer cannot be used against the employee in any subsequent criminal prosecution; and (3) that the penalty for refusal is dismissal. Moss v. Central State Hosp., 179 Ga. App. 359, 346 S.E.2d 580 (1986).

APPLICATION OF STATUTE OF LIMITATIONS TO FEDERAL ACTIONS. --O.C.G.A. § 45-19-36 with its 180 day statute of limitations applies to employment discrimination claims brought against state employees under the Civil Rights Act of 1871, 42 U.S.C. § 1983, and Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d. Champion v. Georgia Bureau of Investigation, 568 F. Supp. 712 (N.D. Ga. 1983).

The limitations period of O.C.G.A. § 45-19-36 is not applicable to 42 U.S.C. § 1983 public employment discrimination actions. Cook v. Ashmore, 579 F. Supp. 78 (N.D. Ga. 1984).

Since the federal civil rights statute, 42 U.S.C. § 1983, does not contain its own statute of limitations, it is well settled that the period of limitations to be used is the most analogous one provided by state law. The applicable limitations period for first amendment and due process claims is not the six-month period provided by O.C.G.A. § 45-19-36; the most analogous limitations period provided by Georgia law for these claims appears to be either the one provided by O.C.G.A. § 9-3-22 (enforcement of statutory rights) or the one provided by O.C.G.A. § 9-3-33 (injuries to person or reputation). Cook v. Ashmore, 579 F. Supp. 78 (N.D. Ga. 1984).

The appropriate statute of limitations to be borrowed in a federal civil rights action under 42 U.S.C. §

The U.S. Equal Employment Opportunity Commission

Discriminatory Practices

Under Title VII of the Civil Rights Act of 1964, the Americans with Disabilities Act (ADA), and the Age Discrimination in Employment Act (ADEA), it is illegal to discriminate in any aspect of employment, including:

- hiring and firing;
- compensation, assignment, or classification of employees;
- transfer, promotion, layoff, or recall;
- job advertisements;
- recruitment;
- testing;
- use of company facilities;
- training and apprenticeship programs;
- fringe benefits;
- pay, retirement plans, and disability leave; or
- other terms and conditions of employment.

Discriminatory practices under these laws also include:

- harassment on the basis of race, color, religion, sex, national origin, disability, or age;
- retaliation against an individual for filing a charge of discrimination, participating in an investigation, or opposing discriminatory practices;
- employment decisions based on stereotypes or assumptions about the abilities, traits, or performance of individuals of a certain sex, race, age, religion, or ethnic group, or individuals with disabilities; and
- denying employment opportunities to a person because of marriage to, or association with, an individual of a particular race, religion, national origin, or an individual with a disability. Title VII also prohibits discrimination because of participation in schools or places of worship associated with a particular racial, ethnic, or religious group.

Employers are required to post notices to all employees advising them of their rights under the laws EEOC enforces and their right to be free from retaliation. Such notices must be accessible, as needed, to persons with visual or other disabilities that affect reading.

Note: Many states and municipalities also have enacted protections against discrimination and harassment based on sexual orientation, status as a parent, marital status and political affiliation. For information, please contact the EEOC District Office nearest you.

Other Discriminatory Practices Under Federal EEO Laws

Title VII

Title VII prohibits not only intentional discrimination, but also practices that have the effect of discriminating against individuals because of their race, color, national origin, religion, or sex.

National Origin Discrimination

- It is illegal to discriminate against an individual because of birthplace, ancestry, culture, or linguistic characteristics common to a specific ethnic group.
- A rule requiring that employees speak only English on the job may violate Title VII unless an employer shows that the requirement is necessary for conducting business. If the employer believes such a rule is necessary, employees must be informed when English is required and the consequences for violating the rule.

The Immigration Reform and Control Act (IRCA) of 1986 requires employers to assure that employees hired are legally authorized to work in the U.S. However, an employer who requests employment verification only for individuals of a particular national origin, or individuals who appear to be or sound foreign, may violate both Title VII and IRCA; verification must be obtained from all applicants and employees. Employers who impose citizenship requirements or give preferences to U.S. citizens in hiring or employment opportunities also may violate IRCA.

Additional information about IRCA may be obtained from the Office of Special Counsel for Immigration-Related Unfair Employment Practices at 1-800-255-7688 (voice), 1-800-237-2515 (TTY for employees/applicants) or 1-800-362-2735 (TTY for employers) or at <http://www.usdoj.gov/crt/osc>.

Religious Accommodation

An employer is required to reasonably accommodate the religious belief of an employee or prospective employee, unless doing so would impose an undue hardship.

Sex Discrimination

Title VII's broad prohibitions against sex discrimination specifically cover:

- **Sexual Harassment** - This includes practices ranging from direct requests for sexual favors to workplace conditions that create a hostile environment for persons of either gender, including same sex harassment. (The "hostile environment" standard also applies to harassment on the bases of race, color, national origin, religion, age, and disability.)
- **Pregnancy Based Discrimination** - Pregnancy, childbirth, and related medical conditions must be treated in the same way as other temporary illnesses or conditions.

Additional rights are available to parents and others under the Family and Medical Leave Act (FMLA), which is enforced by the U.S. Department of Labor. For information on the FMLA, or to file an FMLA complaint, individuals should contact the nearest office of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor. The Wage and Hour Division is listed in most telephone directories under U.S. Government, Department of Labor or at http://www.dol.gov/esa/whd_org.htm.

Age Discrimination in Employment Act

The ADEA's broad ban against age discrimination also specifically prohibits:

- statements or specifications in job notices or advertisements of age preference and limitations. An age limit may only be specified in the rare circumstance where age has been proven to be a *bona fide* occupational qualification (BFOQ);
- discrimination on the basis of age by apprenticeship programs, including joint labor-management apprenticeship programs; and
- denial of benefits to older employees. An employer may reduce benefits based on age only if the cost of providing the reduced benefits to older workers is the same as the cost of providing benefits to younger workers.

Equal Pay Act

The Equal Pay Act (EPA) prohibits discrimination on the basis of sex in the payment of wages or benefits, where men and women perform work of similar skill, effort, and responsibility for the same employer under similar working conditions.

Note that:

- Employers may not reduce wages of either sex to equalize pay between men and women.
- A violation of the EPA may occur where a different wage was/is paid to a person who worked in the same job before or after an employee of the opposite sex.
- A violation may also occur where a labor union causes the employer to violate the law.

Titles I and V of the Americans with Disabilities Act

The ADA prohibits discrimination on the basis of disability in all employment practices. It is necessary to understand several important ADA definitions to know who is protected by the law and what constitutes illegal discrimination:

Individual with a Disability

An individual with a disability under the ADA is a person who has a physical or mental impairment that substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment. Major life activities are activities that an average person can perform with little or no difficulty such as walking, breathing, seeing, hearing, speaking, learning, and working.

Qualified Individual with a Disability

A qualified employee or applicant with a disability is someone who satisfies skill, experience, education, and other job-related requirements of the position held or desired, and who, with or without reasonable accommodation, can perform the essential functions of that position.

Reasonable Accommodation

Reasonable accommodation may include, but is not limited to, making existing facilities used by employees readily accessible to and usable by persons with disabilities; job restructuring; modification of work schedules; providing additional unpaid leave; reassignment to a vacant position; acquiring or modifying equipment or devices; adjusting or modifying examinations, training materials, or policies; and providing qualified readers or interpreters. Reasonable accommodation may be necessary to apply for a job, to perform job functions, or to enjoy the benefits and privileges of employment that are enjoyed by people without disabilities. An employer is not required to lower production standards to make an accommodation. An employer generally is not obligated to provide personal use items such as eyeglasses or hearing aids.

Undue Hardship

An employer is required to make a reasonable accommodation to a qualified individual with a disability unless doing so would impose an undue hardship on the operation of the employer's business. Undue hardship means an action that requires

significant difficulty or expense when considered in relation to factors such as a business' size, financial resources, and the nature and structure of its operation.

Prohibited Inquiries and Examinations

Before making an offer of employment, an employer may not ask job applicants about the existence, nature, or severity of a disability. Applicants may be asked about their ability to perform job functions. A job offer may be conditioned on the results of a medical examination, but only if the examination is required for all entering employees in the same job category. Medical examinations of employees must be job-related and consistent with business necessity.

Drug and Alcohol Use

Employees and applicants currently engaging in the illegal use of drugs are not protected by the ADA when an employer acts on the basis of such use. Tests for illegal use of drugs are not considered medical examinations and, therefore, are not subject to the ADA's restrictions on medical examinations. Employers may hold individuals who are illegally using drugs and individuals with alcoholism to the same standards of performance as other employees.

The Civil Rights Act of 1991

The Civil Rights Act of 1991 made major changes in the federal laws against employment discrimination enforced by EEOC. Enacted in part to reverse several Supreme Court decisions that limited the rights of persons protected by these laws, the Act also provides additional protections. The Act authorizes compensatory and punitive damages in cases of intentional discrimination, and provides for obtaining attorneys' fees and the possibility of jury trials. It also directs the EEOC to expand its technical assistance and outreach activities.

This page was last modified on September 2, 2004.



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The U.S. Equal Employment Opportunity Commission

Retaliation

Need more information?

The law:

- [Title VII of the Civil Rights Act](#)

The regulations:

- [29 C.F.R Part 1604.11](#)

Enforcement guidances and policy documents:

- [EEOC Compliance Manual, Section 8, Retaliation](#) (May 20, 1998)
- [EEOC Compliance Manual, Section 2, Threshold Issues](#) (May 12, 2000)

You may also be interested in:

- [How to File a Charge of Employment Discrimination](#)
- [Mediation at EEOC](#)
- [Training and Outreach](#)
- [Information for Small Employers](#)

An employer may not fire, demote, harass or otherwise "retaliate" against an individual for filing a charge of discrimination, participating in a discrimination proceeding, or otherwise opposing discrimination. The same laws that prohibit discrimination based on race, color, sex, religion, national origin, age, and disability, as well as wage differences between men and women performing substantially equal work, also prohibit retaliation against individuals who oppose unlawful discrimination or participate in an employment discrimination proceeding.

In addition to the protections against retaliation that are included in all of the laws enforced by EEOC, the Americans with Disabilities Act (ADA) also protects individuals from coercion, intimidation, threat, harassment, or interference in the exercise of their own rights or their encouragement of someone else's exercise of rights granted by the ADA.

There are three main terms that are used to describe retaliation. Retaliation occurs when an employer, employment agency, or labor organization takes an **adverse action** against a **covered individual** because he or she engaged in a **protected activity**. These three terms are described below.

Adverse Action

An adverse action is an action taken to try to keep someone from opposing a discriminatory practice, or from participating in an employment discrimination proceeding. Examples of adverse actions include:

- employment actions such as termination, refusal to hire, and denial of promotion,
- other actions affecting employment such as threats, unjustified negative evaluations, unjustified negative references, or increased surveillance, and

- any other action such as an assault or unfounded civil or criminal charges that are likely to deter reasonable people from pursuing their rights.

Have a Question?

Ask us! Contact us by phone (toll free) or email, or check our FAQs.

Adverse actions do not include petty slights and annoyances, such as stray negative comments in an otherwise positive or neutral evaluation, "snubbing" a colleague, or negative comments that are justified by an employee's poor work performance or history.

Even if the prior protected activity alleged wrongdoing by a different employer, retaliatory adverse actions are unlawful. For example, it is unlawful for a worker's current employer to retaliate against him for pursuing an EEO charge against a former employer.

Of course, employees are not excused from continuing to perform their jobs or follow their company's legitimate workplace rules just because they have filed a complaint with the EEOC or opposed discrimination.

For more information about adverse actions, see EEOC's Compliance Manual Section 8, Chapter II, Part D.

Covered Individuals

Covered individuals are people who have opposed unlawful practices, participated in proceedings, or requested accommodations related to employment discrimination based on race, color, sex, religion, national origin, age, or disability. Individuals who have a close association with someone who has engaged in such protected activity also are covered individuals. For example, it is illegal to terminate an employee because his spouse participated in employment discrimination litigation.

Individuals who have brought attention to violations of law other than employment discrimination are NOT covered individuals for purposes of anti-discrimination retaliation laws. For example, "whistleblowers" who raise ethical, financial, or other concerns unrelated to employment discrimination are not protected by the EEOC enforced laws.

Protected Activity

Protected activity includes:

Opposition to a practice believed to be unlawful discrimination

Opposition is informing an employer that you believe that he/she is engaging in prohibited discrimination. Opposition is protected from retaliation as long as it

is based on a reasonable, good-faith belief that the complained of practice violates anti-discrimination law; and the manner of the opposition is reasonable.

Examples of protected opposition include:

- Complaining to anyone about alleged discrimination against oneself or others;
- Threatening to file a charge of discrimination;
- Picketing in opposition to discrimination; or
- Refusing to obey an order reasonably believed to be discriminatory.

Examples of activities that are NOT protected opposition include:

- Actions that interfere with job performance so as to render the employee ineffective; or
- Unlawful activities such as acts or threats of violence.

Participation in an employment discrimination proceeding.

Participation means taking part in an employment discrimination proceeding. Participation is protected activity even if the proceeding involved claims that ultimately were found to be invalid. Examples of participation include:

- Filing a charge of employment discrimination;
- Cooperating with an internal investigation of alleged discriminatory practices; or
- Serving as a witness in an EEO investigation or litigation.

A protected activity can also include requesting a reasonable accommodation based on religion or disability.

For more information about Protected Activities, see EEOC's Compliance Manual, Section 8, Chapter II, Part B - Opposition and Part C - Participation.

Statistics

In Fiscal Year 2007, EEOC received 26,663 charges of retaliation discrimination based on all statutes enforced by EEOC. The EEOC resolved 22,265 retaliation charges in 2007, and recovered more than \$124 million in monetary benefits for charging parties and other aggrieved individuals (not including monetary benefits obtained through litigation).

The U.S. Equal Employment Opportunity Commission

Sexual Harassment

Sexual harassment is a form of sex discrimination that violates Title VII of the Civil Rights Act of 1964. Title VII applies to employers with 15 or more employees, including state and local governments. It also applies to employment agencies and to labor organizations, as well as to the federal government.

Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when this conduct explicitly or implicitly affects an individual's employment, unreasonably interferes with an individual's work performance, or creates an intimidating, hostile, or offensive work environment.

Sexual harassment can occur in a variety of circumstances, including but not limited to the following:

- The victim as well as the harasser may be a woman or a man. The victim does not have to be of the opposite sex.
- The harasser can be the victim's supervisor, an agent of the employer, a supervisor in another area, a co-worker, or a non-employee.
- The victim does not have to be the person harassed but could be anyone affected by the offensive conduct.
- Unlawful sexual harassment may occur without economic injury to or discharge of the victim.
- The harasser's conduct must be unwelcome.

It is helpful for the victim to inform the harasser directly that the conduct is unwelcome and must stop. The victim should use any employer complaint mechanism or grievance system available.

When investigating allegations of sexual harassment, EEOC looks at the whole record: the circumstances, such as the nature of the sexual advances, and the context in which the

Need more information?

The law:

- Title VII of the Civil Rights Act

The regulations:

- 29 C.F.R Part 1604.11

Enforcement guidances and policy documents:

- Policy Guidance on Current Issues of Sexual Harassment
- Enforcement Guidance: Vicarious Employer Liability for Unlawful Harassment by Supervisors
- **See also:** Questions & Answers for Small Employers on Employer Liability for Harassment by Supervisors
- Enforcement Guidance on Harris v. Forklift Sys., Inc.
- Policy Guidance on Employer Liability under Title VII for Sexual Favoritism

You may also

alleged incidents occurred. A determination on the allegations is made from the facts on a case-by-case basis.

Prevention is the best tool to eliminate sexual harassment in the workplace. Employers are encouraged to take steps necessary to prevent sexual harassment from occurring. They should clearly communicate to employees that sexual harassment will not be tolerated. They can do so by providing sexual harassment training to their employees and by establishing an effective complaint or grievance process and taking immediate and appropriate action when an employee complains.

It is also unlawful to retaliate against an individual for opposing employment practices that discriminate based on sex or for filing a discrimination charge, testifying, or participating in any way in an investigation, proceeding, or litigation under Title VII.

Statistics

In Fiscal Year 2007, EEOC received 12,510 charges of sexual harassment. 16.0% of those charges were filed by males. EEOC resolved 11,592 sexual harassment charges in FY 2007 and recovered \$49.9 million in monetary benefits for charging parties and other aggrieved individuals (not including monetary benefits obtained through litigation).

- [Charge Statistics: Sexual Harassment](#)

be interested in:

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- [Mediation at EEOC](#)
- [Training and Outreach](#)
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The U.S. Equal Employment Opportunity Commission

Disability Discrimination

Need more information?

Title I of the Americans with Disabilities Act of 1990 prohibits private employers, state and local governments, employment agencies and labor unions from discriminating against qualified individuals with disabilities in job application procedures, hiring, firing, advancement, compensation, job training, and other terms, conditions, and privileges of employment. The ADA covers employers with 15 or more employees, including state and local governments. It also applies to employment agencies and to labor organizations. The ADA's nondiscrimination standards also apply to federal sector employees under section 501 of the Rehabilitation Act, as amended, and its implementing rules.

An individual with a disability is a person who:

- Has a physical or mental impairment that substantially limits one or more major life activities;
- Has a record of such an impairment; or
- Is regarded as having such an impairment.

A qualified employee or applicant with a disability is an individual who, with or without reasonable accommodation, can perform the essential functions of the job in question. Reasonable accommodation may include, but is not limited to:

- Making existing facilities used by employees readily accessible to and usable by persons with disabilities.
- Job restructuring, modifying work schedules, reassignment to a vacant position;
- Acquiring or modifying equipment or devices, adjusting or modifying examinations, training materials, or policies, and providing qualified readers or interpreters.

An employer is required to make a reasonable

The law:

- Titles I and V of the ADA

The regulations:

- 29 C.F.R Part 1630:
- 29 C.F.R Part 1640:
- 29 C.F.R Part 1641:

EEOC Enforcement
Guidances and Policy
Documents:

- Selected list

See also:

- Veterans with Service-Connected Disabilities in the Workplace and the ADA
- Veterans with Service-Connected Disabilities in the Workplace and the ADA-A Guide for Employers
- Reasonable Accommodations for Attorneys with Disabilities
- The Family and Medical Leave Act, the ADA, and Title VII

accommodation to the known disability of a qualified applicant or employee if it would not impose an "undue hardship" on the operation of the employer's business. Undue hardship is defined as an action requiring significant difficulty or expense when considered in light of factors such as an employer's size, financial resources, and the nature and structure of its operation.

An employer is not required to lower quality or production standards to make an accommodation; nor is an employer obligated to provide personal use items such as glasses or hearing aids.

Title I of the ADA also covers:

- **Medical Examinations and Inquiries**

Employers may not ask job applicants about the existence, nature, or severity of a disability. Applicants may be asked about their ability to perform specific job functions. A job offer may be conditioned on the results of a medical examination, but only if the examination is required for all entering employees in similar jobs. Medical examinations of employees must be job related and consistent with the employer's business needs.

- **Drug and Alcohol Abuse**

Employees and applicants currently engaging in the illegal use of drugs are not covered by the ADA when an employer acts on the basis of such use. Tests for illegal drugs are not subject to the ADA's restrictions on medical examinations. Employers may hold illegal drug users and alcoholics to the same performance standards as other employees.

It is also unlawful to retaliate against an individual for opposing employment practices that discriminate based on disability or for filing a discrimination charge, testifying, or participating in any way in an investigation, proceeding, or litigation under the ADA.

Statistics

In Fiscal Year 2007, EEOC received 17,734 charges of disability discrimination. EEOC resolved 15,708 disability discrimination charges in FY 2006 and recovered \$54.4

<http://www.eeoc.gov/types/ada.html>

of the Civil Rights Act of 1964

- The ADA: A Primer for Small Business
- Your Responsibilities as an Employer
- Your Employment Rights as an Individual With a Disability
- Job Applicants and the ADA
- Small Employers and Reasonable Accommodation
- Work At Home/Telework as a Reasonable Accommodation
- Obtaining and Using Employee Medical Information as Part of Emergency Evacuation Procedures
- How to Comply with the Americans with Disabilities Act: A Guide for Restaurants and Other Food Service Employers

The Questions and Answers Series

- Health Care Workers and the Americans with Disabilities Act
- Deafness and Hearing

million in monetary benefits for charging parties and other aggrieved individuals (not including monetary benefits obtained through litigation).

- Americans With Disabilities Act Charges

Impairments in the Workplace and the Americans with Disabilities Act

- Blindness and Vision Impairments in the Workplace and the ADA
- The Americans with Disabilities Act's Association Provision
- Diabetes in the Workplace and the ADA
- Epilepsy in the Workplace and the ADA
- Persons with Intellectual Disabilities in the Workplace and the ADA
- Cancer in the Workplace and the ADA

Mediation and the ADA

- Questions and Answers for Mediation Providers: Mediation and the Americans with Disabilities Act (ADA)
- Questions and Answers for Parties to Mediation: Mediation and the Americans with Disabilities Act (ADA)