



**STATE OF MONTANA  
DEPARTMENT OF PUBLIC HEALTH & HUMAN SERVICES  
DEPARTMENT WIDE POLICY**

DPHHS Policy No.: 5.1.016 (former HR Policy #300)	Subject: Equal Employment Opportunity, Nondiscrimination, and Harassment Prevention Policy
/s/ _____ Richard H. Opper, Director, DPHHS	Pages: 13
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## **EQUAL EMPLOYMENT OPPORTUNITY, NONDISCRIMINATION, AND HARASSMENT PREVENTION POLICY**

**I. PURPOSE:**

This policy may be cited as the DPHHS Equal Employment Opportunity, Nondiscrimination, and Harassment Prevention Policy.

**II. POLICY:**

- A. This policy establishes the minimum requirements for implementing and maintaining an equal opportunity program that promotes compliance with:
  - 1. federal laws and regulations prohibiting illegal discrimination including Section 504 of the Rehabilitation Act of 1973 and Title II of the Americans with Disabilities Act (“ADA”) of 1990;
  - 2. the Montana Human Rights Act, Title 49, MCA;
  - 3. the Governmental Code of Fair Practices, Title 49, Chapter 3, MCA; and
  - 4. the Governor's Executive Order 41-2008, Equal Employment Opportunity, Nondiscrimination, and Harassment Prevention.
  
- B. This policy establishes complaint procedures to promote prompt and equitable resolution of discrimination complaints.
  
- C. This policy covers all employees of the Department of Public Health and Human Services (“DPHHS”).

- D. DPHHS is committed to equal employment opportunity, nondiscrimination, and harassment prevention in all aspects of employment and in programs, services, and activities offered to the public.
- E. DPHHS will not tolerate discrimination or harassment based on an individual's race, color, national origin, age, physical or mental disability, marital status, religion, creed, sex, sexual orientation, political belief, genetic information, veteran status, culture, social origin or condition, or ancestry. Likewise, DPHHS will not tolerate discrimination or harassment because of a person's marriage to or association with individuals in one of the previously mentioned protected classes.
- F. Managers of DPHHS may use a bona fide occupational qualification (“BFOQ”) where the reasonable demands of a position require a distinction based on age, physical or mental disability, marital status, sex, religion, or national origin. A BFOQ is a legal exception to an otherwise discriminatory hiring practice. Exceptions are strictly construed, as provided in § 49-2-303, MCA, and the burden rests with DPHHS to demonstrate the exemption should be granted. Federal and state laws prohibit BFOQs based on race or color.
- G. To promote a work and customer service environment free from discrimination, DPHHS managers shall:
  - 1. base hiring decisions on individual competencies and qualifications;
  - 2. promote an inclusive work environment where individuals are afforded every opportunity to reach their fullest potential;
  - 3. recognize individual differences as a key element of organizational and team success;
  - 4. treat individuals with dignity and respect; and
  - 5. value the rights of all Montanans to benefit from equal access to employment and programs, services, and activities offered to the public.
- H. DPHHS managers who observe behaviors that may be viewed as discriminatory shall stop the behavior and notify the DPHHS Civil Rights/EEO Specialist or the Office of Human Resources Director.

### **III. DEFINITIONS:**

- A. “Cause Finding” is a conclusion that there is sufficient evidence to support a finding of unlawful discrimination or retaliation.
- B. “Civil Rights/EEO Specialist” is the DPHHS contact person for handling questions, concerns, or complaints regarding Titles I and II of the ADA, the ADA Amendments Act (“ADAAA”), Section 504 of the Rehabilitation Act, the Montana Human Rights Act, and the Governmental Code of Fair Practices.
- C. “Complainant” is an individual who reports alleged unlawful discrimination or retaliation or files a complaint alleging unlawful discrimination or retaliation.

- D. "Investigating Officer" is the individual responsible for investigating a formal complaint and documenting the results of the investigation.
- E. "No Cause Finding" is a conclusion that there is insufficient evidence to support a finding of unlawful discrimination or retaliation.
- F. "Respondent" is a person or entity accused of having unlawfully discriminated or retaliated against the Complainant or another individual.
- G. "Retaliation" is any adverse or hostile action, expressed or implied, including but not limited to, intimidation, threats, coercion, or discrimination against an individual because he or she has made a complaint of unlawful discrimination or testified, assisted or participated in any manner in an investigation or proceeding associated with a complaint of unlawful discrimination.

#### **IV. RESPONSIBILITIES:**

- A. The Civil Rights/EEO Specialist shall:
  - 1. Manage DPHHS's nondiscrimination program;
  - 2. Assure employee training on nondiscrimination;
  - 3. Assist employees and managers with resolving discrimination issues;
  - 4. Conduct internal investigations;
  - 5. Develop written nondiscrimination action plans;
  - 6. Assure employee training on the ADA, disability awareness, and reasonable accommodations;
  - 7. Conduct self-evaluations to assess accessibility of programs, services, and activities; and
  - 8. Assist with reasonable accommodation requests.
- B. The Office of Human Resources Director shall:
  - 1. Retain electronic records for all jobs recording the sex, race, and ethnic group of employees and applicants as provided in § 49-2-102, MCA, and the Uniform Guidelines on Employee Selection Procedures (1978); 43 FR 38295 (August 25, 1978);
  - 2. Provide reasonable accommodations, upon request, for qualified individuals with disabilities and for applicants and employees based on their religious practices, unless doing so would create an undue hardship;
  - 3. Post the Notice of Nondiscrimination and complaint procedures, including contact information for the DPHHS Civil Rights/EEO Specialist, in areas frequented by employees and the public;
  - 4. Provide a copy of this policy to all employees;
  - 5. Provide discrimination and harassment prevention training to all new employees within 90 days of hire;
  - 6. Provide discrimination and harassment prevention refresher training for all employees every three years or more frequently as needed; and
  - 7. Document all training of employees required by this policy.

**V. COMPLIANCE WITH THE FEDERAL GENETIC INFORMATION NONDISCRIMINATION ACT OF 2008 (“GINA”):**

- A. To comply with GINA, which prohibits discrimination based on genetic information with respect to employment or state-sponsored group health plans, DPHHS managers may not:
1. Request, require, or purchase genetic information about employees or their family members; or
  2. Use genetic information to:
    - a) Discriminate against an individual in hiring, discharge, compensation, terms, conditions or privileges of employment;
    - b) Make decisions about admission to apprenticeship and training programs, including on-the-job training;
    - c) Limit, segregate, or classify an individual;
    - d) Fail or refuse to refer an individual for employment;
    - e) Deprive an individual of employment opportunities; or
    - f) Acquire health insurance or set premiums under the group health plan.
- B. Requests for genetic information include, but are not limited to:
1. Conducting Internet searches on individuals in a way that is likely to result in obtaining genetic information;
  2. Knowingly or purposefully listening to third-party conversations or searching an individual's personal effects for the purpose of obtaining genetic information;
  3. Requesting information about an individual's current health status in a way that is likely to result in obtaining genetic information.
- C. To avoid inadvertently receiving genetic information, DPHHS representatives who request medical information as part of an employment-related medical exam or a medical certification in response to a request for sick leave, leave qualifying under the Family Medical Leave Act (“FMLA”), or a reasonable accommodation request under the ADA, shall include the following statements verbatim in their written request for medical information:
1. "The Genetic Information Nondiscrimination Act of 2008 (GINA) prohibits employers and other entities covered by GINA Title II from requesting or requiring genetic information of employees or their family members. To comply with this law, we ask you not to provide any genetic information when responding to this request for medical information."
  2. "Genetic information, as defined by GINA, includes an individual's family medical history, the results of an individual's or family member's genetic tests, the fact that an individual or an individual's family member sought or received genetic services, and genetic information of a fetus carried by an individual or an individual's family member or an embryo lawfully held by an individual or family member receiving assistive reproductive services."
  3. "Genetic test means an analysis of human DNA, RNA, chromosomes, proteins, or metabolites that detects genotypes, mutations, or chromosomal changes."

- D. DPHHS managers may not ask probing questions of an individual if they inadvertently learn of a health condition of an applicant, employee, or the health condition of a family member. Probing questions include, but are not limited to, asking the individual whether other family members have the condition or whether the individual has been tested for the condition. These questions are likely to result in the acquisition of genetic information.
- E. DPHHS representatives possessing genetic information about an employee shall maintain the information as confidential.

**VI. HARASSMENT:**

- A. Harassment, including sexual harassment, consists of, but is not limited to, verbal, written, or electronic communications (for example, voice mails, emails, text messages, or other social networking tools) in the form of repeated and unwelcome jokes, slurs, comments, visual images, or innuendos based on a protected class. Even mutually agreeable behavior or behavior accepted between two or more people can be offensive to others; for this reason it is prohibited in the workplace.
- B. Sexual harassment is a form of discrimination that includes unwelcome verbal or physical conduct of a sexual nature when:
  - 1. Submission to the conduct is implicitly or explicitly made a term or condition of employment;
  - 2. Submission to or rejection of the conduct is used as the basis for an employment decision affecting the individual; 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.
- C. DPHHS managers will not tolerate any behavior that negatively focuses on a protected class. Although a behavior or pattern of behavior might not constitute illegal discrimination, it might still violate this policy.
- D. DPHHS managers who observe behavior that could be viewed as discrimination or harassment shall stop the behavior and notify the DPHHS Civil Rights/EEO Specialist or the Office of Human Resources Director.

**VII. RETALIATION:**

- A. Retaliation against individuals exercising rights under these procedures is strictly prohibited. Employees who retaliate against individuals exercising their right to report perceived unlawful discrimination or retaliation are subject to disciplinary action, up to and including termination of their employment with DPHHS.

- B. DPHHS managers will not retaliate or allow, condone, or encourage others to retaliate against any customer, client, applicant, or current or former employee for opposing unlawful discriminatory practices, filing a discrimination complaint or participating in a discrimination proceeding, including testifying in court.
- C. DPHHS managers who perceive retaliatory behavior must notify the Office of Human Resources Director or the DPHHS Civil Rights/EEO Specialist as soon as possible but no later than two (2) working days after the manager becomes aware of the retaliatory behavior.

#### **VIII. MANAGEMENT RESPONSIBILITIES:**

- A. The Office of Human Resources has assigned the DPHHS Civil Rights/EEO Specialist the responsibility of assisting DPHHS in its compliance with Titles I and II of the Americans with Disabilities Act (ADA), the ADA Amendments Act (ADAAA), Section 504 of the Rehabilitation Act, the Montana Human Rights Act, and the Governmental Code of Fair Practices.
- B. Other employees of DPHHS may be assigned to assist the DPHHS Civil Rights/EEO Specialist.
- C. The Office of Human Resources will distribute the Americans with Disabilities Act Public Notice and Notice of Nondiscrimination to all DPHHS office locations and will post them on its official website. Each office is required to post the notices in locations that are visible to employees and members of the public.
- D. Any member of DPHHS management receiving a report or complaint of discrimination or retaliation must notify the Office of Human Resources Director or Civil Rights/EEO Specialist of the report or complaint as soon as possible but no later than two (2) working days after management receives the report or complaint.

#### **IX. EMPLOYEE RESPONSIBILITIES:**

Employees who believe they or others have been subjected to unlawful discrimination or retaliation must report the incident(s) or action(s) to their immediate supervisor or to the DPHHS Civil Rights/EEO Specialist. Failure to report an incident or action may subject the employee to disciplinary action.

#### **X. DUTY TO COOPERATE:**

- A. All Complainants and Respondents involved in an investigation of a complaint of unlawful discrimination or retaliation have a duty to fully cooperate with the Investigating Officer.
- B. Failure of a Complainant to fully cooperate with the Investigating Officer may result in a “no cause” finding.

- C. Failure of a Respondent to fully cooperate with the Investigating Officer may result in a “cause” finding and subsequent disciplinary action, up to and including termination of the Respondent’s employment with DPHHS.

**XI. INITIATING AN INTERNAL COMPLAINT:**

- A. DPHHS managers shall encourage employees, applicants, clients, and customers who believe they have been discriminated against, harassed or retaliated against to contact their supervisor, a manager, or the DPHHS Civil Rights/EEO Specialist.
- B. Complaints may be verbal or in writing. Complainants are encouraged to use the complaint form attached to this policy or found at either the DPHHS home page or <http://www.dphhs.mt.gov/ada/adapoliciesprocedure.shtml>.
- C. For complaints not submitted on a complaint form, the DPHHS representative receiving the complaint should obtain and document the following information:
  - 1. Name, address, and phone number(s) of the Complainant(s);
  - 2. Date(s), time(s), and location(s) of the alleged discriminatory behavior or conduct;
  - 3. Name(s), if known, of the Respondent(s);
  - 4. Description of the behavior or conduct that resulted in an alleged violation;
  - 5. Whether the alleged discrimination was based on a protected class; and
  - 6. Names of potential witnesses who may have heard or observed the alleged discriminatory conduct or behavior.
- D. DPHHS representatives who receive a complaint or become aware of allegations of discrimination, harassment or retaliation shall promptly notify the Office of Human Resources Director or the DPHHS Civil Rights/EEO Specialist regardless of their perception of the validity of the complaint.
- E. If the Office of Human Resources Director determines an internal investigation would not be appropriate because of a potential conflict, a request for assistance from an outside source shall be made.
- F. The Office of Human Resources Director or designee, as appropriate, shall coordinate with the Investigating Officer and advise management throughout the course of the investigation.

**XII. INVESTIGATING A COMPLAINT:**

- A. Before the investigation begins, the appropriate manager may separately explain the following to the Complainant and Respondent:
  - 1. The investigation process and anticipated timelines;
  - 2. What retaliation is and that it is unacceptable behavior; and
  - 3. The expectations and consequences of discussing the complaint with anyone other than the Investigating Officer, management, union representative, or legal counsel.

- B. The DPHHS Civil Rights/EEO Specialist or designee chosen by the Office of Human Resources Director shall begin an investigation upon receipt of a complaint.
- C. DPHHS managers shall provide documentation of their initial meeting and all subsequent follow-up actions to the Investigating Officer.
- D. The Investigating Officer shall:
  1. Gather evidence to determine a “cause” or “no cause” finding by conducting a fair and objective investigation and exercising professionalism during the course of the investigation by allowing each party to provide evidence, statements, and witnesses to support their position;
  2. Consult with DPHHS Office of Human Resources’ legal counsel as needed throughout the investigation;
  3. Provide periodic updates to the Office of Human Resources Director; and
  4. Issue a written decision to the Complainant and Respondent within 120 days of the date of filing the complaint.

**XIII. POST-INVESTIGATION ACTIONS:**

- A. In the case of a “cause” finding, the appropriate DPHHS manager shall:
  1. Take appropriate disciplinary action, if necessary, according to DPHHS disciplinary policy;
  2. Advise Complainant of any corrective action taken to stop the behavior but not disclose the details of disciplinary action taken, if any; and
  3. Reemphasize to Respondent that retaliation is unacceptable behavior.
- B. In either a “cause” or “no cause” finding, the Office of Human Resources shall contact the Complainant periodically to ensure the Complainant has not experienced retaliation.

**XIV. CONFIDENTIALITY REQUIREMENTS:**

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



- D. Because of the private nature of most discrimination or retaliation complaints and the emotional complexities surrounding such matters, all reasonable efforts will be made by DPHHS to resolve complaints as confidentially and expeditiously as possible. To safeguard individual privacy, dissemination of information relating to complaints of unlawful discrimination or retaliation will be limited to those individuals with a legitimate reason to know. Absolute confidentiality, however, cannot be guaranteed. Certain information may be disclosed to the Respondent, witnesses, and members of DPHHS management, among others, in order to conduct fact finding, institute remedial and/or corrective action, or informally resolve a complaint.
- E. The Office of Human Resources shall maintain the investigative finding and supporting documents in a secure, confidential case file separate from the regular employee file. However, certain information will be disclosed if required by law or order of a court of competent jurisdiction.

**XV. POLICY VIOLATIONS:**

Employees who violate this policy are subject to discipline, up to and including discharge. Violations include, but are not limited to:

- A. Managers who receive a complaint or become aware of allegations of discrimination, harassment or retaliation and who fail to conduct an investigation and/or properly report the information to the DPHHS Civil Rights/EEO Specialist for investigation;
- B. Managers who allow discrimination or retaliation to occur or fail to take appropriate action to correct inappropriate behavior, including discrimination, harassment or retaliation;
- C. Employees who interfere with an investigation, fail to cooperate with the Investigating Officer, or make a false statement to the Investigating Officer; and
- D. Employees who make a complaint determined to be frivolous, intentionally dishonest or made maliciously without regard for the truth.

**XVI. INITIATING AN EXTERNAL COMPLAINT:**

In addition to, or in lieu of, filing a complaint of unlawful discrimination or retaliation under this complaint process, individuals may file a complaint with an applicable state or federal agency. Jurisdiction may vary based on the nature of the complaint. For advice, assistance and an explanation of filing deadlines, individuals may contact the following:

- Montana Human Rights Bureau (HRB) – 1625 11th Avenue, P.O. Box 1728, Helena, MT 59624-1728, (406) 444-2884, (800) 542-0807; Fax (406) 444-2798; TTY (406) 444-0532, [montanadiscrimination.com](http://montanadiscrimination.com); or

- United States Equal Employment Opportunity Commission (EEOC) – Federal Office Building, 909 First Avenue, Suite 400, Seattle, WA 98104-1061, (800) 669-4000; Fax (206) 220-6911; TTY (800) 669-6820, <http://www.eeoc.gov>; or
- Office for Civil Rights (OCR), U.S. Department of Health and Human Services – 999 18th Street, Suite 417, Denver, CO 80202, Voice Phone (800) 368-1019; Fax (303) 844-2025; TDD (800) 537-7697, <http://www.hhs.gov/ocr/office/index.html>.



## DISCRIMINATION COMPLAINT RESOLUTION FORM

*Submit completed form to:*

**DPHHS Office of Human Resources**

**P.O. Box 4210**

**Helena, MT 59604 Phone: (406) 444-3136, Fax: (406) 444-0262**

Alternative accessible formats of this document are available on request.

Complainant's Name: \_\_\_\_\_

Mailing Address: \_\_\_\_\_

Phone: \_\_\_\_\_

**Complainant's Status**

Employee     Job Applicant     Department Customer

**Basis of Complaint:**

- Race     Color     National Origin  
 Retaliation     Political Belief  
 Creed     Age     Sexual Orientation     Marital Status  
 Religion     Sex     Physical or Mental Disability  
 Genetic Information – Applies only to employment

Name of person you believe discriminated against you: \_\_\_\_\_

Department or Address: \_\_\_\_\_

Date, time and place of incident(s): \_\_\_\_\_

\_\_\_\_\_

**Documentation:**

Please attach copies of any documents or material you believe are relevant.

**Witnesses:**

Did anyone witness the incident(s) of discrimination? If so, please list names and phone numbers of any witnesses to the incident(s) below. Use additional pages, if necessary.

Name: \_\_\_\_\_ Phone: \_\_\_\_\_

Name: \_\_\_\_\_ Phone: \_\_\_\_\_

Name: \_\_\_\_\_ Phone: \_\_\_\_\_

**Statement:**

Describe the incident(s) as clearly and concisely as possible. Provide as much detail as you can recall, including when and where the events occurred and who said what to whom. Explain why you believe the conduct or treatment was discriminatory. Use additional pages, if necessary.

**Action Sought:**

Please describe what you would like to see done to correct the situation.

**Complaint Authorization**

I understand that complete confidentiality cannot be guaranteed in the process of handling informal and formal complaints. I agree that this statement of allegations may be used during the investigation of the case. I further consent that this statement and certain information in the complaint file may be disclosed to certain DPHHS employees including the person I believe discriminated against me, in order to resolve my complaint, conduct fact finding, or implement remedial action. I also understand that information may also be disclosed if required by law, rule, regulation, or court order.

I affirm that this complaint statement is true, accurate, and complete to the best of my knowledge.

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Signature of Complainant

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Date

In addition to, or in lieu of, filing a complaint of unlawful discrimination or retaliation under this complaint process, individuals may file a complaint with an applicable state or federal agency. Jurisdiction may vary based on the nature of the complaint. For advice, assistance and an explanation of filing deadlines, individuals may contact the following:

- Montana Human Rights Bureau (HRB) – 1625 11th Avenue, P.O. Box 1728, Helena, MT 59624-1728, (406) 444-2884, (800) 542-0807; Fax (406) 444-2798; TTY (406) 444-0532, [montanadiscrimination.com](http://montanadiscrimination.com); or
- United States Equal Employment Opportunity Commission (EEOC) – Federal Office Building, 909 First Avenue, Suite 400, Seattle, WA 98104-1061, (800) 669-4000; Fax (206) 220-6911; TTY (800) 669-6820, <http://www.eeoc.gov>; or
- Office for Civil Rights (OCR), U.S. Department of Health and Human Services – 999 18th Street, Suite 417, Denver, CO 80202, Voice Phone (800) 368-1019; Fax (303) 844-2025; TDD (800) 537-7697, <http://www.hhs.gov/ocr/office/index.html>.