

## Attachment A

### **GUIDELINES ON DISCRIMINATION**

Administrators and supervisors in the Metropolitan Government are familiar with and will comply with all laws, regulations and guidelines governing various forms of discrimination. Specific guidelines are summarized in this document. Furthermore, harassment of any person in the form of verbal or physical conduct based on a person's race, religion, creed, gender identity, sexual orientation, national origin, color, age, and/or disability will not be condoned within such conduct:

1. Has the purpose or effect of creating an intimidating, hostile or offensive work environment;
2. Has the purpose or effect of unreasonably interfering with an individual's work performance; or
3. Otherwise adversely affects an individual's opportunities associated with employment.

A. Race Discrimination (Civil Rights Act of 1964, Title VII, as amended by the Civil Rights Act of 1991)

It shall be against the policy of the Metropolitan Government to discriminate against an individual as a result of that person's race. This policy applies to applicants for employment as well as current employees.

B. Sexual Discrimination

It is the policy of the Metropolitan Government that there shall be no discrimination against any individual based on gender. This covers all employment actions and conditions of employment and benefits.

1. Job Policies and Practices (Civil Rights Acts of 1964, Title VII, as amended by the Civil Rights Act of 1991 & Equal Pay Act of 1963)

- a. Personnel policies do not discriminate on the basis of gender.
- b. Employees and applicants of both genders are equally considered for any positions for which they are qualified.
- c. Employment opportunities, wages, hours, conditions of employment and benefits are equally offered to all employees regardless of gender.
- d. Marital status shall not be a factor in any employment opportunity or decision.
- e. Appropriate physical facilities shall be provided for people of both genders.

2. Maternity Leave (Pregnancy Act of 1978 & Tennessee Maternity Leave Law)

Accrued sick leave shall be granted for the time that a woman is physically unable to work due to childbirth as documented by her physician. Additional vacation and/or leave without pay may be granted in accordance with applicable law. The same vacation and/or leave without pay may be granted as paternity or adoption leave.

3. Sexual Harassment (Civil Rights Act of 1964, Title VII, as amended by the Civil Rights

Act of 1991; Guidelines on Discrimination Because of Sex, 1980)

The Metropolitan Government prohibits sexual harassment of any employee. Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when:

- a. Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment, or
- b. Submission to or rejection of such conduct is used as the basis for employment decisions affecting such individual, or
- c. Such conduct has the purpose of substantially interfering with an individual's work performance or creating an intimidating, hostile, or offensive work environment.

Sexual harassment can take many forms. It is not limited to overt physical acts. Suggestive comments, jokes of a sexual nature, sexually suggestive objects or pictures, obscene gestures, sexually graphic stories, as well as unwanted touching, may all constitute sexual harassment.

Sexual harassment of any employee will not be tolerated. No employee will be allowed to sexually harass, either verbally or physically, another employee; nor shall any supervisor allow the harassment of any of his/her employees, either by other employees or by persons not employed by Metro Government. It will be the responsibility of managers and supervisors to take all steps necessary to enforce the provisions of this policy. Any complaint of harassment will be promptly investigated and corrective and/or disciplinary action taken if the charges are found to be true.

Action can only be taken when managers and supervisors have knowledge of sexually harassing conduct. Employees have a duty to inform managers and supervisors when they observe or they are aware of improper sexual conduct exhibited by a Metropolitan Government employee. This obligation to inform includes improper conduct committed by non-government employees if the conduct is directed toward government employees.

C. Religious Discrimination (Civil Rights Act of 1964, Title VII, as amended by the Civil Rights Act of 1991)

The Metropolitan Government expresses its commitment to prohibit religious discrimination against applicants for employment and employees in all areas of employment and benefits. No distinction based on religion shall apply in employment opportunities, wages, hours of work, and other conditions of employment or benefits.

Efforts will be made to accommodate the religious observance and practices of an employee unless such accommodation is unreasonable and would result in an undue hardship on the conduct of business.

D. Age Discrimination (Civil Rights Act of 1964, Title VII, as amended by the Civil Rights Act of 1991 & Age Discrimination in Employment Act of 1967, as amended)

The policy of the Metropolitan Government prohibits age-based discrimination against individuals 40 years of age or older. No Appointing Authority shall be allowed to refuse to hire,

to discharge, or otherwise discriminate against any individual with respect to compensation, terms, conditions, or privileges of employment because of an individual's age.

Exceptions:

1. There may be differentials in bona fide employee benefit plans.
2. For some areas of work, age may be a bona fide occupational qualification.

E. National Origin Discrimination (Civil Rights Act of 1964, Title VII, as amended by the Civil Rights Act of 1991)

1. Policy

It shall be against the policy of the Metropolitan Government to discriminate because of an individual's or his or her ancestor's place of origin or because an individual has the physical, cultural or linguistic characteristics of a national origin group. Furthermore, it is against the policy to discriminate for reasons which are grounded in national origin, such as (a) marriage or association with persons of a national origin group; (b) membership in, or association with an organization identified with or seeking to promote the interests of national origin groups; (c) attendance or participation in schools, churches, temples or mosques, generally used by persons of a national origin group; and (d) because an individual's name or spouse's name is associated with a national origin group. There shall be no discrimination based on national origin in any area of employment or condition of employment or in the granting of employment benefits.

2. Citizenship

The Metro Civil Service Commission requires that all employees be United States citizens, legal resident aliens, or aliens authorized to work in the United States. Specified classifications require U.S. citizenship as a bona fide occupational qualification.

F. Disability Discrimination (State and Local Fiscal Assistance Act of 1972 and Rehabilitation Act of 1973: Americans with Disabilities Act of 1990: Americans with Disabilities Amendments Act of 2008)

1. Policy

It is the policy of the Metropolitan Government to assure equal employment opportunity to disabled persons on the basis of qualifications and ability to perform the job. There shall be no discrimination in terms of employment opportunities, wages, hours of work or other conditions of employment or benefits.

An individual with a disability is one who has a physical or mental impairment that substantially limits one or more major life activities, a record of such an impairment, or who is regarded as having such an impairment.

## 2. Application Process

Disabled persons are guaranteed the same application process as other applicants. Assistance may be provided when needed, such as the following:

- a. A reader may be provided for completing an application or written examination for qualified applicants who are vision-impaired or illiterate due to a learning disability.
- b. Waiver of a driver's license may be requested for qualified disabled applicants who are not allowed to drive.

## 3. Post Offer of Employment Physical

All new appointees are considered provisionally hired until a standard post offer of employment physical examination, where applicable, is completed at the Metro Health Department at Metro expense. If a physical limitation is determined which is considered by the Appointing Authority as justification for reversing the provisional appointment, the applicant and Appointing Authority shall determine the possibility of reasonable accommodation. Information obtained in the post offer of employment physical shall be confidential except for the following:

- a. Supervisors shall be informed of any restrictions on the duties required for reasonable accommodation
- b. Safety personnel shall be informed of any possibility of emergency treatment.

## 4. Reasonable Accommodation

A department shall make reasonable accommodation to the known physical or mental limitations of an otherwise qualified disabled individual unless to do so would be an undue hardship. The specific accommodations needed shall be determined jointly by the individual and the Appointing Authority with technical assistance provided by the EEO Coordinator. Reasonable accommodation may include, but shall not be limited to:

- a. Making facilities readily accessible to and usable by disabled persons
- b. Job restructuring, job sharing or modified work schedule, acquisition or modification of equipment or devices and other similar actions.
- c. Assignment to a vacant position for which the person is otherwise qualified

In determining whether an accommodation would impose an undue hardship on the operation of the department, factors to be considered include:

- a. The overall size of the specific work area or program with respect to the number of employees and budget;
- b. The type of operation;
- c. The nature and cost of the accommodation needed.

## 5. Accessibility

Each department is required to periodically survey their programs and physical facilities to determine if they are accessible to disabled persons. If structural problems are found, it is the responsibility of the Appointing Authority to budget for changes. Non-structural problems requiring some form of reasonable accommodation will be addressed on an individual basis. The EEO Coordinator will provide technical assistance in areas of accessibility related to employment

## **THE LAW**

In our efforts to achieve equal employment opportunity for everyone in the service of the Metropolitan

Government we are guided by the intent and mandates of all applicable laws. Major laws governing employment in the public sector include but are not limited to the following:

### A. Federal Laws and Regulations

1. Civil Rights Act of 1964, Title VII - makes it unlawful for an employer to discriminate as to hiring, firing, compensation, terms, conditions or privileges of employment on the basis of race, color, religion, gender, or national origin. It also forbids employers to limit, segregate or classify employees in any way that tends to deprive any individual of employment opportunities or adversely affects his employment status because of his race, color, religion, gender or national origin. This also applies to people in apprenticeship, training and retraining programs. It is also illegal to indicate a preference in advertisements relating to employment.

### Major Amendments

- a. Pregnancy Act of 1978 - clarified that women affected by pregnancy and related conditions must be treated the same as other applicants and employees on the basis of their ability or inability to work.
  - b. Guidelines on Discrimination Because of Sex (1972 and 1980) - establish specific prohibitions of discrimination based on gender and make sexual harassment a violation of Title VII.
2. Civil Rights Restoration Act of 1987 - specifies that entire institutions receiving federal funds, rather than just programs or activities receiving the funds, must comply with Civil Rights laws.
  3. Executive Order 11246 (as amended by Executive Order 11375) - imposes on government contractors and subcontractors obligations parallel to those established by Title VII of the Civil Rights Act. This order also prohibits discrimination on the basis of age or physical disability and requires that contractors take affirmative action to ensure equal opportunity.
  4. Fourteenth Amendment - declares that "No State make any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws".

5. Equal Pay Act of 1963 (amendment to the Fair Labor Standards Act) - mandates equal pay for equal work regardless of gender: the benchmarks for a job are skill, effort, responsibility and working conditions and the exceptions are applications of seniority or a merit system, a measure of quantity or quality of production or any other factor other than gender.
6. Age Discrimination in Employment Act of 1967 (as amended in 1978) - prohibits age-based employment discrimination against individuals 40 years of age or older.
7. Rehabilitation Act of 1973 - Section 503 requires employers with federal contracts to take affirmative action for the employment of disabled people. Section 504 forbids discrimination against disabled persons by any employers receiving federal financial assistance.
8. Americans with Disabilities Act of 1990, Title I - prohibits covered employers from discriminating against a qualified individual with a disability in all areas of employment. (Also: Americans with Disabilities Amendments Act of 2008)
9. Immigration and Nationality Act (Immigration Reform and Control Act of 1986 as amended) - The IRCA establishes sanctions against employers who knowingly recruit or hire illegal aliens and allows preference for U.S. citizens or nationals over equally qualified aliens. The law prohibits discrimination against foreign nationals by employers who are not covered by Title VII of the Civil Rights Act.
10. Civil Rights Act of 1991 - amends and provides statutory guidelines for implementation of Title VII of the Civil Rights Act of 1964.

**B. State Laws and Regulations**

1. Tennessee Human Rights Act - forbids job discrimination on the basis of race, creed, color, religion, gender, age or national origin.
2. Tennessee Maternity Leave Law - allows a female employee to take four months leave, paid or unpaid, for pregnancy, childbirth and nursing the infant.
3. Tennessee Handicapped Discrimination Act – prohibits discrimination against disabled persons.
4. Tennessee Equal Pay Act - prohibits discrimination in the rate of pay because of gender.

**C. Metro Ordinance BL2009-502** – It is unlawful for the Metropolitan Government to fail or refuse to hire or promote or to discharge any individual, because of such individual's race, religion, creed, gender, gender identity, sexual orientation, national origin, color, age, and/or disability.

**UTILIZATION ANALYSIS**

A periodic utilization analysis will be done to help monitor representation by race and sex in each department. Such analysis will compare departmental representation within EEO categories to similar numbers in the local labor market work force. Statistics used are taken from the most current U.S. Census data adjusted by State reports on unemployment.