

Manager Fact Sheet: Equal Employment Opportunity, Nondiscrimination, and Harassment Policy

February 2012

Introduction:

This fact sheet provides executive branch managers and human resource (HR) professionals an overview of significant changes to the Equal Employment Opportunity (EEO), Nondiscrimination, and Harassment Prevention policy located in ARM 2.21.4001 et seq.

Who is subject to this policy?

This policy covers all agencies in Montana's executive branch except the Montana university system, the Montana State Fund, elected officials, personal staff of elected officials, and any other position specifically excluded under [Section 2-18-103](#) and [-104](#), Montana Code Annotated (MCA). (See rule [2.21.4002](#).)

Why do the rules place emphasis on agency managers?

Emphasis is placed on agency managers because of the significant role they play in preventing and addressing inappropriate behaviors including discrimination and harassment.

Are there any changes to protected classes?

Yes. Based on Executive Order #48-2008, the policy includes five new protections:

- 1) genetic information,
- 2) veterans' status,
- 3) culture,

- 4) social origin or condition, and
- 5) ancestry.

Are agency managers responsible for promoting work and customer service environments free from discrimination?

Yes. Agency managers have responsibilities to:

- a) make hiring decisions based on an applicant's competencies and qualifications,
- b) promote an inclusive work environment,
- c) recognize and value individual differences as key to organizational and team success,
- d) treat individuals with dignity and respect, and
- e) promote equal access to the programs, services, and activities they provide for their customers.

What should an agency managers do if they observe what may be perceived as discrimination or harassment?

Stop the behavior. Agency managers must stop the behavior and notify their agency's EEO officer, Americans with Disabilities Act (ADA) Coordinator, or HR manager.

Do agency managers have other responsibilities under this policy?

Yes. Agency managers are required to:

- a) retain electronic employment records,

- b) provide reasonable accommodations upon request,
- c) post the EEO, non-discrimination, and harassment prevention policy and poster in high-traffic areas,
- d) provide the policy to all employees;
- e) provide mandatory EEO and harassment prevention training, and
- f) maintain records of all training.

What is the Genetic Information and Nondiscrimination Act (GINA)?

GINA is federal legislation prohibiting employers from collecting or using genetic information in employment, with certain exceptions, or in state-sponsored group health plans.

Does the policy define harassment?

Yes. Harassment is described in [Rule 2.21.4013](#). This rule states even mutually agreeable behavior between two or more individuals may violate the standard and harassment does not have to constitute *illegal* harassment to result in a violation.

Does the policy cover retaliation?

Yes. [Rule 2.21.4014](#) states "agency managers may not retaliate or allow, condone, or encourage others to retaliate. . ."

It is an unlawful discriminatory practice for a state or local governmental agency to discharge, expel, blacklist, or otherwise discriminate against an individual because the individual has opposed discriminatory practices or because the individual has filed a complaint, testified, assisted, or participated in any manner in an investigation or legal proceedings involving unlawful discrimination.

What should agency managers do if they become aware of retaliation?

Inform the agency's HR manager, HR staff, EEO officer, or ADA coordinator immediately.

Does the policy create internal complaint procedures?

Yes. Rules 2.21.4019 through 4021 establish the internal complaint procedures.

- [Rule 2.21.4019](#)
- [Rule 2.21.4020](#)
- [Rule 2.21.4021](#)

Are there confidentiality requirements?

Yes. [Rule 2.21.4022](#) directs management to make every attempt to protect individual privacy, but they cannot guarantee it.

Employees involved in the complaint process are also bound by confidentiality requirements, with specific exceptions.

Agency managers may discipline employees under the discipline policy for discussing the complaint or the investigation.

Are there reporting requirements?

Yes. Agency EEO officers must track and report internal complaints to State HR no later than the fifteenth day of each quarter – based on a calendar year.

State HR provides a template for capturing and reporting complaint data. The template is located under the policy on <http://hr.mt.gov/hrpp/policies.mcpx> .

Can someone file an external complaint if they've already filed an internal complaint?

Yes. Employees and customers have the right to file complaints with the Montana Human Rights Bureau (HRB) or the federal Equal Employment Opportunity Commission (EEOC) even if they've filed an internal complaint. Complainants may contact HRB or the EEOC at any time, even if an internal investigation is ongoing.

Can agency managers discipline employees who violate this policy?

Yes. Agency managers may discipline employees under the discipline policy located in [ARM Title 2, chapter 21, subchapter 65](#).

Violations can include failure to conduct an investigation in a proper and timely manner, interference with an investigation, failure to cooperate with an investigator, or making a false statement to an investigator.

Agency managers may violate these rules by allowing discrimination to occur and failing to take appropriate action to correct inappropriate behavior, including discrimination and harassment.

Closing:

For additional information, please contact your agency's HR manager, EEO officer, or ADA coordinator. You can also contact John Pavao, State Diversity Program Coordinator, at 444-3984 or by email at jpavao@mt.gov, if you need additional clarification.

Alternative accessible formats of this Fact Sheet will be provided on request. Persons who need an alternative format should contact the State Human Resources Division, Department of Administration, 125 N. Roberts St., PO Box 200127, Helena, MT 59620-0127. Telephone 406-444-3871. Those using a TTY may call through the Montana Relay Service at 711.